LEGISLATIVE COUNCIL

Wednesday 28 October 2009

The PRESIDENT (Hon. R.K. Sneath) took the chair at 11:04 and read prayers.

STANDING ORDERS SUSPENSION

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (11:05): I move:

That standing orders be so far suspended as to enable petitions, the tabling of papers, question time, notices of motion and orders of the day, private business to be taken into consideration at 2:15pm.

Motion carried.

AUDITOR-GENERAL'S REPORT

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (11:05): I move:

That standing orders be so far suspended as to enable the report of the Auditor-General for the year ended 30 June 2009 to be referred to a committee of the whole and for ministers to be examined on matters contained in the report for a period of one hour.

Motion carried.

In committee.

The Hon. P. HOLLOWAY: I have with me from the Department of Planning and Local Government Mr Andrew McKeegan, who is Manager, Finances with the department.

The Hon. D.W. RIDGWAY: My first question on the Auditor-General's Report, year ended 2009, refers to page 841 and, in particular, the heading 'Payroll'. On that page it states that payroll had not implemented a central register to monitor the effectiveness of the review of bona fide certificates and leave returns by PayPoint managers. Will the minister please explain the Auditor's criticism in further detail, including the problems caused by the lack of a central register and what it means in terms of the recent state budget?

The Hon. P. HOLLOWAY: First, I indicate that the Department of Planning and Local Government was a new department. Planning SA, a unit within the Department of Primary Industries and Resources, was established as a new unit on 1 July 2008. Later that year, from 3 November 2008, following the merger of Planning SA with the Office of the Southern Suburbs, the Office of the Northern Suburbs and the Office for State/Local Government Relations, the new Department of Planning and Local Government was formed. That also was a recommendation from the planning review committee. We had a new department established and it was really a new unit that was developed, particularly following the merger with the Office of Local Government, to strengthen the financial management of the new department.

The Auditor-General refers to his interim audit finding and the Leader of the Opposition has referred to some of those issues, namely, that the department had at that stage not implemented a central register to monitor the effectiveness of the review of bona fide certificates and leave returns by PayPoint managers, and that was commented on by the Auditor in his report. The Department of Planning and Local Government has responded that policies and procedures have been established to ensure that bona fide reports, leave returns and time sheets are effectively and efficiently managed.

The policies and procedures require divisional administrative officers to maintain and record the return of bona fide certificates and leave returns reviewed by PayPoint managers. As I said, I think that one needs to consider the comments of the Auditor-General, first, in the context that this is a new department establishing practices, and also that the department is committed to ensuring that those issues raised by the Auditor-General are addressed; and, of course, there is reference to that within the Auditor-General's Report. The Auditor-General did express satisfaction with the controls exercised by the Department of Planning and Local Government except for those matters raised, and, as I said, they are being addressed by the department.

The Hon. D.W. RIDGWAY: My second question also relates to page 841, particularly under the heading 'Revenue'. The Auditor-General's Report on that page states that there were some concerns about the department's revenue, namely, that there were no procedures to ensure

the completion of regulatory fees paid by councils. There was no independent review of the calculation of such fees and there had been no independent review of the revenue and receipting being reconciled. The department said that it engaged a firm to undertake an independent review of certain matters in 2008-09. What were the recommendations of that review?

The Hon. P. HOLLOWAY: My advice is that that review was conducted by Ernst & Young. Approximately 15 recommendations were made by the committee, and they have been passed on to the Audit and Finance Committee of the department for implementation. Any further detail I would have to take on notice, but, clearly, they would be technical recommendations, one would presume, in relation to those financial matters identified by audit.

The Hon. D.W. RIDGWAY: As a supplementary question, what was the cost of that review performed by Ernst & Young, and could the minister also advise the length of time it took?

The Hon. P. HOLLOWAY: My advice is that the actual spending in 2008-09 was $42,230. The total contract price was $48,970. Obviously, some work was done in the current financial year we are in, so there was that carryover of that small amount of work to the start of this financial year. As for timing, we do not have the exact figure. We will have to check it, but it is about four months. If it is anything significantly different than that, I will advise the committee.

The Hon. D.W. RIDGWAY: By way of a supplementary question, will the minister provide a copy of the 15 recommendations provided by Ernst & Young? Page 845 of the Auditor-General's Report gives the department's statement of its financial position. Listed at the bottom of the page is 'unrecognised contractual commitments'. In the financial notes this is comprised of $5.52 million in lease commitments, $5.8 million in remuneration commitments and $240,000 in other commitments. Particularly with respect to the first two amounts, where lease contracts and fixed-term employment contracts were in existence before the reporting date, why are they not recognised as liabilities?

The Hon. P. HOLLOWAY: I am advised that the only lease for office accommodation which is applicable and of which we are aware is Roma Mitchell House across the road on North Terrace where the Department of Planning and Local Government is located. I presume it simply relates to that matter. We will take it on notice. If there is any lease other than that applicable to the department's main office (which is several floors within Roma Mitchell House), we will bring back that information. I think the other part of the honourable member's question related to salaries.

The Hon. D.W. RIDGWAY: Where lease contracts and fixed term employee contracts were in existence before the reporting date, why are they not recognised as liabilities? They are listed as 'unrecognised contractual commitments'.

The Hon. P. HOLLOWAY: I imagine that is to do with the accounting treatment. I would assume it is standard treatment of all government departments. I would not have thought they would normally be shown as liabilities, given the accounting treatment of liabilities, but rather as expenses in the financial statements. However, clearly, for completeness of information, one assumes that it is put in there so that the total lease commitment is clear. I would not have thought that it was normal treatment to have lease commitments—

The Hon. D.W. Ridgway: That is why I am asking the question. I do not understand why it is there.

The Hon. P. HOLLOWAY: I think the Auditor-General has referred to it. I am not sure what his treatment is with other departments, because nearly every government department, apart from those in their own building, would have lease commitments. If we look at other departments, I am not sure whether the treatment is any different. In fact, I see under PIRSA, there is 'unrecognised contractual commitments'. Perhaps if Mr Brumford could assist, because the same question could be asked for PIRSA, as well.

It is simple accounting treatment whereby they recognise that the contract is in existence. So, for interests of accountability, that is acknowledged in the accounts but, in terms of liabilities, it is not recognised as a liability because it has not yet been expensed. Similarly, with employees, you do not have an obligation to pay an employee until they have performed the work. Whereas the Auditor-General, quite rightly, is indicating what the contract is in relation to salaries, it is not a liability in an accounting sense because the performance of work has not yet been expensed.

So, in accounting terms, it is not part of the statement of financial position, but for completeness that information is added. I guess that is good accountability so that anyone who

wants to understand the accounts can get that information, but normally you would not put those lease costs as a liability. They only come in as an expense when they fall due.

The Hon. D.W. RIDGWAY: I have a supplementary question. I am sure the minister will not have the details. I refer to the $204,000 which is recognised under 'other commitments'. Could the minister detail what that is and, if not now, at a later date?

The Hon. P. HOLLOWAY: Just to clarify that, I assume that is under note 26.

The Hon. D.W. Ridgway: Note 26, 5.522 and then 5.889, and $204,000, 'other commitments'. The bottom of note 26.

The Hon. P. HOLLOWAY: It states:

The Department's other commitments include agreements with Fleet SA for long-term hire of light vehicles and other amounts owing under fixed price contracts outstanding at the end of the reporting period.

Obviously vehicles will be one of them. I guess it could be for anything like photocopier services. It is best we take that on notice, but obviously it would be similar in nature. Since we specifically refer to 'light vehicle hire', it would be equipment of that nature, but we will see whether we can get a more detailed breakdown for the honourable member.

The Hon. D.W. RIDGWAY: My next question is directed to page 855, under the heading 'Activities of the Department', and, in particular, the four activities listed. Of particular interest is Activity 2, which is the Office for the Southern Suburbs; and Activity 3, Office of the Northern Suburbs. What is the budgeted and actual expenditure for those offices, and who is employed in those offices at this point in time?

The Hon. P. HOLLOWAY: Of course, the Office for the Southern Suburbs reports to my colleague, the Minister for the Southern Suburbs (Hon. John Hill).

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: Yes, it is under the department. We will seek to get that information. I want to clarify that it is not directly responsible to me. I am informed that the Office for the Southern Suburbs has two staff and the Office of the Northern Suburbs has three staff. On page 848, under heading 2, employee benefit costs are $136,000 for the year ended 30 June 2009. Under heading 3, which is the Office of the Northern Suburbs, the employee benefit costs are $112,000. That has been established only recently, so I presume that is not a full year cost.

The Hon. D.W. RIDGWAY: My next question refers to page 862 of the report, the remuneration bands for board and committee members. It appears that seven members of boards and committees earn in excess of $20,000: four people are in the band from $20,000 to $29,999, two people are in the $30,000 to $39,999 band, and there is one in the $40,000 to $49,999 band. Will the minister provide advice on which board positions those are?

The Hon. P. HOLLOWAY: Are you are talking about the four people who earn $20,000 or above?

The Hon. D.W. Ridgway: Yes, which board positions are those?

The Hon. P. HOLLOWAY: Under my portfolio, the most highly remunerated committee, if I can call it that, is the Development Assessment Commission, which has a key function, and the remuneration of members was adjusted for the first time in many years.

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: Yes, it was during the course of this year. Obviously, the highest remuneration would be that of the chair of the Development Assessment Commission and its members. I think there are seven.

The Hon. D.W. Ridgway: The seven positions you are talking about, are they all on the Development Assessment Commission?

The Hon. P. HOLLOWAY: We will seek that information but, certainly, if there are seven members, within my portfolio they would comprise the highest paid committee—and appropriately so. The fact is that, with the nature of the approvals it has to make, it was the government's decision to upgrade the importance and remuneration of that committee, reflecting the very important role it undertakes in terms of approving major projects and other projects referred to it., but we will clarify that. I believe that the full year of remuneration for members of the DAC would be

in excess of $20,000, reflecting the nature of that committee. Whether there are any committees in other portfolios that are part of Planning and Local Government I will take on notice.

Certainly, most of the other committees, such as the Building Rules Assessment Committee, the Building Advisory Committee, the Local Heritage Advisory Committee, the Port Waterfront Redevelopment Committee, etc. are remunerated on a sessional basis. It is essentially an attendance fee. I think that the Development Policy Advisory Committee and DAC are certainly the only two in my portfolio that I believe have a standing remuneration. However, we will check that and, as I said, if there are any other committees that come under other ministerial portfolios looked after by DPLG, we will provide that information.

The Hon. D.W. RIDGWAY: So, are you saying that you think that all seven positions above $20,000 relate to the Development Assessment Commission?

The Hon. P. HOLLOWAY: In my portfolio, that is the one in which I know an increase was made, where remuneration for the members is above $20,000. I believe that there are seven members, but whether those are the seven that that reflects, it may well be that there are other committees in other portfolios. Certainly, those listed in note 31 on pages 862 and 863 all appear to be within my portfolio, so it might suggest that it is that way.

However, we will check that and, if there is some sort of cross-membership, if somebody is on more than one committee, it is just possible that they have come up into the lower levels. However, by and large, of all the committees and boards within my portfolio, DAC is clearly the most important and the best remunerated for appropriate reasons.

The Hon. D.W. RIDGWAY: My next question relates to page 864, statement of comprehensive income. I note that $961,000 of interest income was generated from entities within the South Australian government (page 871). Will the minister provide further details on the source of that income?

The Hon. P. HOLLOWAY: Is this note A12?

The Hon. D.W. Ridgway: Yes, A12, interest from entities within SA government.

The Hon. P. HOLLOWAY: Without the note, I know that one of the areas where there would be significant income would be the Planning and Development Fund, which last year had about $15 million, from memory, both paid into and paid out of the fund.

There is obviously a balance in there, and I think it is $10 million or something of that order. The interest revenue attributable to the Planning and Development Fund was $850,000. That is money which obviously contributes to the fund and which in turn can be used to increase the payments to local government and other applicants for work under the Planning and Development Fund, so it is a source of income for it. That is probably the largest fund. In my colleague's portfolio, I am informed that the Local Government Grants Commission is the other item of $77,000. The great bulk of the interest revenue comes from the Planning and Development Fund.

The Hon. D.W. RIDGWAY: The minister may wish to take this further question on notice. There is a range of funds. For the Planning and Development Fund, the South Australian Local Government Grants Commission Fund and the Local Government Taxation Fund, will the minister provide the balance of how much is paid in and out of each fund and what is the current balance?

The Hon. P. HOLLOWAY: I preface my answer by pointing out that funds such as the Planning and Development Fund are hypothecated funds. They are statutory funds, and their funds can be used only for the purposes that are set out in the act that covers their operation.

In relation to the Planning and Development Fund, in the year ended 30 June, $13.312 million was paid out of that fund. For the total income, again, I refer to page 868 of the report. I am advised that, if one looks at the first column, the information in column 1 essentially relates to the Planning and Development Fund, so the total income was $19.572 million, with net revenue of $4.48 million. We do not have the cash balance of the fund; it was somewhere between $5 million and $15 million or something of that order. I will take that part of the question on notice.

That is the main fund: the Planning and Development Fund. The only other funds would be under the portfolio of my colleague the Minister for State/Local Government Relations. There are administered items but not really funds, so I believe the Planning and Development Fund is the only fund under the urban development and planning portfolio.

The Hon. D.W. RIDGWAY: I have a further question regarding the note on the bottom of page 869. It refers to note A3, which is employee benefit expenses. It states that one executive received remuneration in the bandwidth of $130,000 to $139,000, with total remuneration of $131,890 in 2009. Other employees received remuneration greater than $100,000 in 2009. Which position are we talking about? It appears under the administrative statement of comprehensive income, note A3. I would like some clarification as to which position that is.

The Hon. P. HOLLOWAY: My advice is that that A3 refers to administered items, so it is likely to be someone in the portfolio of my colleague the Minister for State/Local Government Relations. My advice is that it would be the director who looked after the Outback Areas Trust.

The Hon. D.W. RIDGWAY: I refer again to page 865, which lists in the statement of administered financial position $1.2 million of receivables. Financial note A16 notes that items of receivables are usually settled within 30 days. Does the department have an established process for pursuing unsettled receivables? What is the balance of bad debts at the end of the last financial year, and what is the current estimate of receivables which will not be recovered?

The Hon. P. HOLLOWAY: As a new department, the Department of Planning and Local Government is developing a number of internal controls to reflect the new nature of the organisation, and one of those policies it is developing is to monitor receivables. I will take the question on notice in relation to any further information that we need to provide in relation to that.

The Hon. D.W. RIDGWAY: For the minister's and his advisers' benefit, that concludes the DPLG. I have a couple of questions on minerals and PIRSA before we move to the other portfolio.

I refer to page 937 of Volume III of the report. In relation to PIRSA's tenement management system, last year's audit review reviewed aspects of the system, and early this year audit followed up on actions being taken to address matters raised in the initial audit. In August, audit undertook a further review, and some areas have been identified as having further action still remaining. The department has responded that it will finalise this by April 2010. What action will the department be taking between now and April in relation to the formal endorsement of the tenement management system documentation?

The Hon. P. HOLLOWAY: Can I first introduce my adviser, Tony Brumfield, who is the Director, Finance and Business Services, PIRSA. My advice is that four matters are still being progressed following the audit review from the early 2009 follow-up review. The four matters still being progressed are:

1. Implementation of a quarterly review of user access permissions and a termination process.

2. Improvements to business continuity documentation and the undertaking of a business impact analysis.

3. Progressive upgrading of tenement management system (TMS) user documentation procedural position manuals.

4. Finalisation and approval of draft information security policies.

The August 2009 review confirmed that satisfactory resolution of all matters being addressed by PIRSA had generally occurred, although there are some opportunities for further improvement over controls identified in some other areas, which are also being acted upon.

The Hon. D.W. RIDGWAY: Page 994 of the financial statement for this audit year states that $152.413 million was collected in royalties. The minister said, in answer to the 2007 questions, that the Olympic Dam expansion task force was busy discussing and negotiating on the revised act and that the department and BHP were working through a process to review the current process of royalty calculation. What progress has been made on the review of royalty calculations, and when will parliament be provided with a draft of the revised act? The act probably does not have much to do with the Auditor-General's Report, but I thought I would slip that in.

The Hon. P. HOLLOWAY: The honourable member obviously means the indenture. Obviously, BHP is now working through the detailed response to its environmental impact statement, so one would expect its board will not be in a position to finalise that for some time. I would think it will take at least until half way through next year, but that is obviously a stab in the dark at this stage. Clearly, it will depend on the response to that document.

There are two issues, really, in relation to royalties with the Olympic Dam mine. One is the royalties paid under the existing indenture. The other, of course, is negotiation of what might be an appropriate royalty rate into the future, which is part of the indenture negotiations. While the two issues are related, they are obviously separate. While the Olympic Dam task force is conducting, on behalf of the government, negotiations in relation to all the future issues related to the expansion of the Olympic Dam mine, there are also the issues of auditing and ensuring that the royalties that are due under the current arrangements are properly paid.

As part of the audit program, a review of revenue collected by both the mining and petroleum geothermal groups for the 2008-09 financial year was undertaken. No material findings were identified for either the minerals or the petroleum geothermal groups. Audits relating to previous financial years had identified material matters relating to royalty payments, and a review of the actions to address these matters was included in the audit scope—and I think the honourable member referred to the 2007-08 audits. In reviewing those actions, it was noted that the department had received audit reports related to the BHP Billiton and OneSteel manufacturing 2007-08 mining returns and that audit reports related to the 2008-09 mining returns had been requested.

The independent audit report for BHP Billiton's Olympic Dam found that no exceptions were identified in the royalty return calculations. The royalty calculations were completed in accordance with the Roxby Downs Indenture Act 1982 and the Mining Act 1971. The independent audit for OneSteel, Whyalla, which is also covered by an indenture, did not identify any significant findings in the royalty calculations. PIRSA has requested that OneSteel pay an additional royalty of $217,540 and to implement the improvement opportunities identified in the audit.

In summary, the government still ensures that the royalties due are paid under those two indenture acts, as well as generally by other operations under the Mining Act and, similarly, the Petroleum and Geothermal Energy Act. In relation to the future of Olympic Dam, the negotiations on the appropriate level of royalties will be discussed, along with all of the other matters that need to be discussed with BHP in relation to a future indenture. Obviously, the government will be looking at the bottom line for the operation. Clearly, it is not just a question of the royalty returned to the state but also a question of how much employment is generated in the state—it is a matter of all of the other costs and benefits that will come out of that project. It is all part of that one big equation that will be negotiated by the government and, hopefully, that will be made clear some time in 2010.

The Hon. D.W. RIDGWAY: I have asked two small questions on minerals. I am mindful that other members have questions they would like to ask. However, I have one question I want to put on notice in relation to small business. I refer to page 1,436 of the Auditor-General' Report. In relation to the Department of Trade and Economic Development, it lists the activities of the department, and activity seven relates to small business growth. How many employees are dedicated to that activity and what was the expenditure in 2008-09? According to the 2008 small business statement, only 2 per cent of Business SA's 2008 survey had engaged with their local BECs, and many of that group were dissatisfied with the communications.

Given that 95 per cent of the approximately 145,000 South Australian businesses are classified as small businesses, how is this activity effectively and efficiently marketing small business support services? Finally, how is the government assisting small and medium enterprises in having a fair go in bidding for state government contracts, particularly for major developments?

The Hon. P. HOLLOWAY: I will take that on notice.

The Hon. J.M.A. LENSINK: I refer to the Agency Audit Reports Volume I, page 127, which relates to activities of the Attorney-General's Department, activity 11 being Consumer and Business Affairs. I understand that the federal parliament has now passed Australian consumer laws which will take over some of the responsibilities that have been the responsibility of state jurisdictions. Is there any requirement for the South Australian parliament to repeal its laws in relation to any of the mortgage broking or consumer credit laws, for instance?

The Hon. G.E. GAGO: States and territories have agreed to refer our credit powers to the commonwealth. I am not able to outline exactly what that entails in terms of our current legislation, but obviously we have state legislation in place and I suspect that that would have to be repealed once we refer powers to the commonwealth. However, I will check that and bring back a response.

This is an attempt to coordinate powers around the nation. Each jurisdiction currently has its own credit legislation and there are some differences across jurisdictions. As part of the

COAG agenda we are seeking to bring in a nationally consistent approach to credit legislation. As I said, I am aware that we are referring our powers to the commonwealth and I imagine that in light of that we would have to repeal our state legislation.

The Hon. J.M.A. LENSINK: On the same reference, I also refer to what is probably best described as a communiqué issued by the Hon. Chris Bowen. He referred to the matter I just raised, but he also referred to home builders warranty insurance, a topic on which I have received correspondence from particular builders in Victoria and New South Wales. The communiqué refers to reforms based on a more harmonised approach to consumer protection. Can the minister outline whether home builders warranty insurance has been an issue for OCBA here and, if so, whether there are any plans to introduce changes to it?

The Hon. G.E. GAGO: Again, an approach to nationally harmonising consumer legislation is also part of the COAG agenda, and states are seeking to ensure that we have consistent legislation throughout the nation, making it a far simpler and more consistent approach. I am not sure of the status of home builders warranty insurance under these reforms, but I am happy to take that question on notice and bring back a response.

The Hon. S.G. WADE: My questions are referred, and will be directed through the minister to the Minister for Families and Communities. I refer to Volume IV, page 1176, and the rental operations of the South Australian Housing Trust. The Auditor-General's Report states that the South Australian Housing Trust had a vacancy rate of 2 per cent in 2008-09. In relation to that reference, what is the average length of time that a property is vacant? Of the properties currently vacant, what is the longest period that a Housing Trust property has been vacant? What are the average waiting times for clients in each of the Housing Trust's priority categories?

My next questions refer to Volume II, page 459, and the reference to unexpended funding commitments. Is the reference to case management systems a reference to the C3MS system? If so, how much has the department spent on C3MS to date and how much more is expected to be expended? To how many sites has C3MS been rolled out, and how many of these sites currently have work bans in place in relation to the use of C3MS?

When is the roll out of C3MS expected to be completed? In light of the concerns raised by the Public Service Association and its worksite representatives, what level of additional costs will be incurred to address the issues raised by the PSA in regard to the C3MS system, and what is the government's view as to the long-term suitability of C3MS for both initial receipt and actioning of issues and for ongoing case management?

I refer to Volume IV, page 1176, and to the rental operations of the South Australian Housing Trust. The Auditor-General's Report states that the level of housing stock, excluding unlettable properties, was 45,103, a 2 per cent decrease from the previous financial year. In that regard I ask: in total, how many properties did the Housing Trust sell in 2008-09, where were those properties located and how many of those properties were sold or transferred to Housing SA clients? Lastly, how many unlettable properties does the Housing Trust currently hold?

The Hon. G.E. GAGO: I thank the honourable member for his questions and will refer them to the relevant ministers in another place and bring back a response.

The Hon. J.M.A. LENSINK: I refer to Volume I, part B, agency audit reports and activities of the Attorney-General's Department, activity 13, Office for Women on page 127, and refer to some of the minister's comments in the estimates committee this year, wherein she stated that the Premier's Council for Women is focusing on two areas: first, women's economic status; and, secondly, women's health, safety and well-being. She mentioned that Professor Barbara Pocock is conducting a research project on women's economic status in South Australia. Will the minister advise on the progress of that report, whether it has been published and whether she has an indication of the findings?

The Hon. G.E. GAGO: I thank the honourable member for her question. Professor Barbara Pocock's report, Working Women in South Australia: Progress, Prospects and Challenges, has been released. I assume that is the report to which the honourable member refers. Professor Pocock is the director of the Centre for Work + Life at the University of South Australia and has done extensive study and is renowned for her knowledge on this topic. The report builds on other research done about the participation of women in the paid workforce in South Australia, and I am advised that for the past three years women have participated in VET courses at a higher rate than men, which is interesting. I understand that women also complete more university education than do men, so one could say that we are better qualified than men.

The Hon. J.M.A. Lensink interjecting:

The Hon. G.E. GAGO: The honourable member is right: there is still a significant income differential. The Premier's Council for Women is to be commended for commissioning this important research. The research, as well as work done previously by the Department of Further Education, Employment, Science and Technology, will provide a foundation for the development of the women's employment strategy.

I met recently with minister O'Brien to discuss the development of that strategy. It is anticipated that there needs to be significant cross agency involvement in that, considering the areas it covers. Obviously we would want that to focus on achievable outcomes relating to work/life balance, women's participation in non-traditional industries, flexible work arrangements and reskilling and upskilling of women seeking to participate in the paid workforce. That report has been released and will inform our policy development and program strategies in future.

The Hon. J.M.A. LENSINK: Will the minister advise, following this line of questioning, whether that report is feeding into any training of women in the public sector, with a view to advancing them into more senior management positions?

The Hon. G.E. GAGO: It needs to be a multi-agency approach because of the scope of policy these issues cut across. It is not just training and education but also areas to do with industrial relations, such as workplace conditions and improving workplace flexibility. It cuts across a number of agencies, and obviously they all need to be involved in the way we input into and develop our future programs for women, including training and education.

The Hon. J.M.A. LENSINK: On the same volume reference, the second area the Premier's Council for Women focuses on is women's health, safety and well-being. The minister mentioned in estimates that the Premier's Council for Women meets with minister Hill to address emerging women's health issues. Will the minister provide more details on what emerging health issues have been identified by the Premier's Council for Women?

The Hon. G.E. GAGO: My understanding of the work that has been done in relation to the Premier's Council for Women is that it does meet reasonably regularly with the health agency and that it has a position on and provides input into the Women's Health Action Plan Steering Committee. The council feeds in that way and continues to advocate that health policy. Implementation strategies should continue to be viewed through a gendered lens in order to best address women's health needs.

The council closely monitors the development of that Women's' Health Action Plan through that position in particular. The other thing in which the Premier's council is actively involved is promoting gender disaggregation of the South Australian Strategic Plan target data and implementing strategies to ensure its disaggregated status so that we are better able to see the way in which our policy impacts on women in particular.

The CHAIRMAN: That concludes the examination of the Auditor-General's Report.

CORRECTIONAL SERVICES (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 27 October 2009. Page 3687.)

The Hon. T.J. STEPHENS (12:04): I am pleased to speak on this bill, and I would like to start by thanking the shadow attorney-general for providing our main contribution in the other place. The shadow attorney-general addressed our concerns in great detail, so I will not go through them again. However, I do wish to reiterate a number of the shadow attorney-general's concerns and place them on the record. The main point the opposition has made about the legislation is that there is a lot that it fails to address; but, in the end, much of it is sensible and requires the support of the parliament. It is therefore not our intention to delay the legislation.

As both the shadow attorney-general and the shadow minister for correctional services in the other place have stated, it is unfortunate that we have had to debate this bill earlier than we were first advised by the government. As the shadow attorney-general indicated, we have been undertaking a substantial amount of consultation with interested parties on this legislation. Regrettably, it has taken a long time for some of these parties to get back to us with their advice, so it is somewhat disappointing that we have been pushed into debating this issue right now and not given time to go through the full process. That being said, we move on, and the opposition is thankful for the briefings with which we were provided by correctional services staff.

The Minister for Correctional Services introduced this bill on 17 June 2009, which claims to streamline existing processes and maximise the use of the Department for Correctional Services' resources and remove the impediments that impact on effective custodial management. The opposition has argued that the amendments that are presented to us in this bill reflect what we call the Rann government's centralised policy on the management of our prisons and, in particular, the prisoners.

The Rann government's centralist approach is evidenced by reforms, which include the removal of committees, the increase of management and punishment options in respect of the Chief Executive Officer and the exclusion of the minister from some of this decision-making process, which we believe is not in the best interests of the protection of those in custody. As the shadow attorney indicated in the other place, that is not meant to be a personal reflection on the Chief Executive Officer who currently holds that position or that he would ever act in a manner that is inconsistent with the interests of the prisoners.

We just make the point that, here in this parliament, we do not make legislation on the assumption of the views of a particular person who might hold office. Legislation completely ignores that aspect and assumes that a person with that responsibility may or may not have the same standards as the incumbent. We make the decisions here based on the lowest common denominator, as the shadow attorney put it, and when we look at the checks and balances that operate in relation to any legislation where there is considerable control of management—and in this case we are talking about people who are incarcerated—it is a pretty serious matter and one we really need to get right.

The shadow attorney has already explained that it is the opposition's belief that we do not have it right in relation to this bill. We have already queried and asked for a review between the houses on a number of aspects. Having said that, I place on the record the opposition's support for the amendments moved by the member for Mitchell in the other place regarding abolishing automatic parole for violent offenders; namely, those people who are in prison as a result of being convicted of offences such as assault, stalking, leaving the scene of an accident, kidnapping, unlawful threats, home invasion and aggravated robbery. Whilst the opposition party room did not have time to consider that specific amendment, members might be aware that the state Liberal's position and part of our last election policy is that all offenders—not just those involved in violent offences—who have been incarcerated for more than 12 months should appear before the Parole Board before release.

We have argued for years that this is something that needs to be done and, as the shadow attorney stated in the other place, there has been support from the community and those who have a specific interest, including Frances Nelson QC as Chair of the Parole Board, who has made several public statements about the need for more offenders to appear before the Parole Board before release. I for one certainly find it peculiar that the government tries to paint us wrongly as being soft on crime, when this has been a strong position we have taken for some time now. The member for Mitchell's sensible amendment is the type of provision we would always support.

Lastly, I take the opportunity to explain the amendments that will be moved in my name on behalf of our party. These amendments have come from the member for Davenport and have been considered by the government between the houses. I am pleased that the Minister for Correctional Services has indicated that he will consider them carefully. The member for Davenport's original bill (Correctional Services (Parole) Amendment Bill), which was introduced some months ago, sought to prevent individuals who had been convicted for certain arson and bushfire offences and who were serving a sentence of less than five years from being eligible for automatic parole. It was a sensible bill and it is a shame that it was adjourned on several occasions in the other place. It was proposed so as to reduce the risk of arsonists reoffending after being released prematurely and to serve as a deterrent from offending in the first place.

The first amendment deals with individuals convicted of certain arson and bushfire offences. The member for Davenport explained in the other place that it uses exactly the same words as the bill which he tabled on 30 April this year and which was adjourned a number of times. That bill related to arson and bushfires and provided that those people gaoled for arson in certain categories (as per the bill) of a bushfire offence should not get automatic parole. These are dangerous offenders. Members are well aware of the carnage and loss of life created by deliberately lit fires. We believe it is important and it makes sense that these types of offenders should also have to make their case to the Parole Board for their release, instead of being entitled to automatic release.

On Tuesday, I was delighted that the Minister for Correctional Services put out a press release advising that the government is supporting this amendment. The minister stated that the government will always listen to and support good ideas wherever they come from. In fact, he said that is why 'I am happy to support the changes to the law flagged by the member for Davenport (Hon. Iain Evans)'. I congratulate the Rann government for realising that it had not gone far enough on this bill and it was not tough enough. I congratulate it for taking the advice of the opposition to make these laws stronger.

The transitional provision provides that, where the Parole Board has already decided the date of release for a prisoner who was sentenced to imprisonment of less than five years with a nonparole period, that decision stands. Without this transitional provision, the position for prisoners in these circumstances is unclear, and we believe that that is wrong in principle. With those comments I conclude my remarks and look forward to the committee stage of the bill.

The Hon. R.L. BROKENSHIRE (12:11): I indicate the support of Family First for the second reading. I will address a range of issues relating to corrections in my contribution, and I foreshadow that we are looking at filing some amendments to the bill. I indicate at this point that, generally, the amendments take up the minister (Hon. Tom Koutsantonis) on his promise on talkback radio to my colleague, the Hon. Dennis Hood MLC, that he will be taking a zero tolerance approach to drugs in prison, something for which I commend him. We would like to support the government in that important commitment, as well as looking at reforming the treatment of victims in the parole system and expanding the matters that should be considered on the question of whether to release a prisoner on parole and the conditions under which they should be released.

I also put on the record that I do have some concerns about MOCamp, the work camps that have been operating for some time and, in particular, Operation Challenge. I ask the minister at the committee stage to advise me—giving time now for his staff to look at it—why Operation Challenge was cancelled; whether or not they intend to bring back Operation Challenge; and whether or not they would also look at some other operations similar to Operation Challenge that may be framed to assist our indigenous people in particular.

I raised bullying and harassment in this council just recently. I raised the issue of two constituents who work in correctional services, Mr Neil Franklin and Mr Alan Radford, in an MOI last week but, given that this is a miscellaneous amendment bill for correctional services, I will be looking at issues in respect of bullying and harassment, and human resource management within correctional services.

It is also interesting to note admissions by the Under Treasurer, Mr Jim Wright, at Monday's Budget and Finance Committee that the government faces compensation of up to $15 million for failing to go ahead with the Mobilong prison expansion. Whilst I was concerned and opposed to the fact that women were to be relocated to Mobilong, which is wrong—it is wrong for the women and it is wrong for their families and children—the fact is that we do need upgraded facilities for correctional services and we cannot continue to push the line that we will rack them, stack them and pack them, as the Treasurer does.

I will also raise a couple of other issues in this second reading contribution. One concerns looking at other aspects of rehabilitation within correctional services. I have already mentioned the MOCamps, Operation Challenge and initiatives to bring in programs similar to Operation Challenge, but specifically to design programs for different offenders.

I advise the council and the government that we will continue to look at issues regarding the faith-based units in prisons. It is interesting that the founder of Prison Fellowship (which does a good job in South Australia, and I always enjoyed working with them when I had this portfolio), Chuck Colson, was often quoted as saying that the church and the state want the same thing: changed lives, drug-free, crime-free, working, tax-paying citizens. That should be the bottom line objective in any rehabilitation within the prison system, particularly when you consider that taxpayers are paying about $80,000 a year for every prisoner in the system. For the record, in October 2002, a former member of this place the Hon. Andrew Evans said:

> I ask all members who must be concerned about our crime rate, the growing prison costs, the ever-increasing insurance premiums and the need for additional police to consider faith based initiatives for reducing the return to prison rates and crime rates. I urge the government and the community to support something that has been proven to work.

Interestingly enough, since then there has been huge success in New Zealand, and I know that even the CEO of Correctional Services has visited them. A number of these programs are working

in countries such as Argentina, Bolivia, Brazil, Bulgaria, Costa Rica, Germany, Hungary, Latvia, New Zealand, Singapore and the United States of America.

I put that on the public record at the second reading stage without spending as much time on it as I could at this point. However, it would be good if the department and the government looked at some of these policy initiatives, as they would certainly get support from Family First, and Family First will further develop this initiative as part of our policy platform and position paper coming up to the next election.

I put this as an option to the government that I believe could reduce recidivism rates by up to two-thirds, as that is how successful some of these programs have been, and it would be great if that money then went into other more productive areas. Even if it is amongst only those who voluntarily choose to enter a trial program in a prison, surely it is an option worth considering for both economic and social reasons. I conclude with a number of questions on notice to the minister:

1. Will the minister explain the level of internet use by prisoners, the purpose for which they use the internet and the safeguards in place to ensure prisoners cannot interact with members of the public on the internet?

2. Are prisoners entitled to have computer games in prison; if so, are there any controls on the rating of the games they are allowed to access?

3. Are any restrictions imposed on television programs or videos available for viewing?

4. How many inmates are currently in prison, and what are the projections over forward years for prison numbers in South Australia?

5. How many home detention bracelets are in the department's possession (broken down into operational and non-operational), and what is the budget into forward estimates for such bracelets to be acquired and brought onstream?

6. What has been the activity of the section 70 visiting tribunals and section 20 inspectors in terms of the number of visits to each correctional institution by either and their findings on those visits? Are any visits made without notice to the institution?

7. Has the minister declared any probation hostels; if so, how many are there, how many beds do they have and what is their location?

As I have already said, I ask the minister to advise on the status of the MOCamps and the background to ceasing Operation Challenge. Again, I foreshadow my amendments that will be on file, and I will speak further to those when they are tabled. I support the second reading and look forward to the committee stage of the debate.

Debate adjourned on motion of Hon. J.M. Gazzola.

RAIL COMMISSIONER BILL

Adjourned debate on second reading.

(Continued from 13 October 2009. Page 3472.)

The Hon. D.W. RIDGWAY (Leader of the Opposition) (12:20): I rise on behalf of the opposition to speak to the Rail Commissioner Bill, which establishes the new position of Rail Commissioner to act as the rail transport operator for the delivery of state government rail infrastructure projects. We know that the state government has embarked on a pretty large rail infrastructure project.

The Hon. B.V. Finnigan: Massive.

The Hon. D.W. RIDGWAY: Massive, as the Hon. Bernard Finnigan says.

The Hon. B.V. Finnigan: Unprecedented.

The Hon. D.W. RIDGWAY: Unprecedented—a bit like his position. It is bit unprecedented to have somebody of Bernard's standing in the council. It seems a bit surprising that we have had these budget announcements over the past three years (especially over the past two years) about the expansion of the rail network, the electrification of the metropolitan network and some quite significant expansion of the tram network although it appeared at the last budget that that may have been pushed out or dropped off altogether.

The opposition is happy to progress this legislation, but we have had government announcements, talk, spin, razzmatazz and fanfare about all this rail expansion, with the minister often talking about an unprecedented level of investment; in fact, at an infrastructure lunch the other day he talked about all the wonderful things they were doing. However, we are being asked to deal with this bill in the last seven days of this parliamentary term.

It seems a little strange that, once the commitment was given by the government to invest in this rail infrastructure (and, of course, the federal government bailed it out and gave it some money to help it do the major works at Noarlunga and Gawler), we see this legislation coming in at the 11th hour.

Prior to 2008, the Rail Act defined a rail operator as an owner or operator of rail infrastructure or rolling stock, and they were accredited under the act. In 2008, changes to the act altered the accreditation requirements to effective management and control rather than ownership or operation of rail infrastructure and rolling stock. The 2007 rail safety bill implemented the National Rail Safety Bill 2006 developed by the National Transport Commission. The bill was unanimously approved by the transport ministers throughout the Australian Transport Council and was part of the process to implement a nationally consistent framework of regulation of rail safety across the nation and across the national rail network over the following five years. At that time the opposition supported that bill.

This change was part of a process toward a national regulatory scheme, and the bill before us is now the next step. It would appear appropriate; given that the government has gone down the legislative path it has gone down, it is appropriate that we support this bill. The state government now says the bill adheres more closely than any other state to the National Transport Commission's model for rail safety legislation.

Prior to the Rail Act 2007 the state government had absolved TransAdelaide of its responsibility for rail infrastructure assets and any future responsibility for major infrastructure projects such as those announced in the last state budget, as I have briefly talked about. In the recent government briefing it was stated that TransAdelaide was not qualified to manage these big projects that we have had all the fanfare and razzamatazz about.

Two changes have culminated in the need for the government to determine who will effectively manage and control the new rail infrastructure projects. It has been determined that a statutory body corporate is the best option, and that body will be the rail commissioner, who would be constituted by a person accredited under the Rail Safety Act and appointed by the Governor.

It is interesting to note that Mr Rod Hook, who is well respected in South Australia for his ability to deliver major projects, who is the Deputy Executive Director of Major Projects and who oversees a team of staff with expertise in rail infrastructure and operations, has been appointed by the Governor to be the Rail Commissioner for 12 months, pursuant to section 68 of the Constitution Act or until the enactment of this bill for the progression of contracts. Until then, Mr Hook is required to act as if he is accredited.

If the bill passes, the Department for Transport, Energy and Infrastructure will apply to the Rail Safety Regulator for Mr Hook's accreditation. Obviously, there is no guarantee that this application will be successful. However, the department is working closely with the regulator to ensure that competence and capacity is demonstrated and the application is successful.

It raises an interesting question about whether there should be a selection process for this position, open to anybody but particularly to public servants and the public, to ensure that the best person becomes our rail commissioner—not that I wish to offer any criticism at all of Mr Hook. He has served the state over the terms of a number of state governments, and he is well respected by all sides of politics. However, my understanding is that, given the interim requirement that Mr Hook must act as if accredited and become accredited once the bill is enacted, he will be unable to perform his role if his application is not successful.

I would like to ask the minister a question when she sums up or when we go through the committee stage of the bill about how you would possibly attract the best person. I am not sure of Mr Hook's age but sadly, like all of us, he will not work forever, so at some point there will be a replacement for Mr Hook. What would happen if the regulator deemed that another applicant might be more appropriate? I would like the minister to get her advisers to contemplate why this position of rail commissioner is not open to anybody.

The rail commissioner will have the following functions: to construct rail structures; to manage and maintain rail infrastructure; to commission and maintain rolling stock; to operate or move rolling stock; to move rolling stock to operate a railway service; to act as a transport operator for the operations carried out by the commissioner; to hold accreditation under the Rail Safety Act; to manage risks associated with railway operations; to operate passenger transport services by train or tram; and to enter into service contracts under the Passenger Transport Act.

That raises another question. We have seen the way the Western Australian government has electrified its rail network. I cannot recall the company involved, but my understanding is that the electrification and supply of all the new rolling stock has been outsourced to another body—almost privatised. The minister might like to offer some answers to these questions.

Does this appointment of a rail commissioner with the functions to enter into service contracts under the Passenger Transport Act, to operate transport services by train or tram and to manage risks associated with the operations (just to point out three) now mean that this will allow a much simpler mechanism for the state government, once it undertakes or goes to tender for the electrification, to privatise our rail assets by offering a long-term supply, maintenance and operation contract for our state rail? I would like some answers from the minister when she sums up.

The rail commissioner will also have the following powers: to enter railway premises for particular functions; to aid and abide by particular conditions regarding the time of entry, safety, financial compensation and notification; subject to ministerial approval, to acquire land in accordance with the Land Acquisition Act; and to remove or cut back any tree or vegetation on or overhanging rail infrastructure. This matter was raised within our party room. For example, we have some disused railway lines. Does this allow the rail commissioner to clear vegetation off those disused railway lines?

Also, it appears to be a sensible decision to create a statutory body where the responsibility does not sit with an accredited individual. However, it does provide some questions about conflicts of interest in relation to the current person being proposed, who, of course, is Mr Hook, in that he has a range of other powers. He is the Coordinator-General for the Building the Education Revolution program, and he has a whole range of functions within DTEI, including the delivery of major projects, etc. So, I wonder how the government expects Mr Hook to manage this particular role; is it expecting him to delegate most of his powers and does he have perhaps only an oversight role in the delivery of these projects? He is the deputy chief executive, he is the coordinator general, and it may well impact on his capacity to do the job. We would like some answers also on that, if possible.

Further, the bill provides for the appointment of staff for the rail commissioner. It has been clarified in briefings that this will require no extra staff as they all exist under DTEI now, and all the work will be carried out by existing organisations within major projects. The government has assured us that the estimated cost for the staff has been included in the 2009-10 budget lines for relative projects. Will the minister clarify on the record that it will mean no extra staff and that all staff allocations have been budgeted for in the creation of this new position?

As I said before, the opposition supports the appointment of the rail commissioner, but we look forward to the minister responding to those few questions, perhaps not when summing up, but at clause 1 in the committee stage.

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (12:31): I do not believe there are any further speakers on this bill. By way of concluding remarks, I would like to thank the opposition for its contribution on the second reading.

The bill provides for the establishment of the rail commissioner for the purpose of acting as a rail transport operator under the Rail Safety Act 2007 for the delivery of state government rail infrastructure projects, and to carry out any other function conferred on the commissioner by the Minister for Transport.

The rail commissioner, as a statutory authority, will come under the scrutiny of the South Australian Rail Regulator and the Minister for Transport as required by the Rail Safety Act 2007. This demonstrates the government's commitment to rail safety, the implementation of the new rail safety legislation, as well as ensuring the delivery of safe and efficient transport infrastructure projects meeting the state government's strategic objective for the benefit of commuters and the wider community.

Bill read a second time.

In committee.

Clause 1.

The Hon. G.E. GAGO: A number of questions have been asked, and I will attempt to answer them. In relation to the first question regarding attracting the best person, and the potential replacement of that person by a more appropriate applicant, it is the rail commissioner as an entity who is accredited. Rod Hook simply happens to be the person filling the position. The authority rests with the Rail Commissioner. Rod Hook will have oversight, and when he is not available there will be deputies available. In terms of the choice of Rod Hook, he is the obvious person. He is currently the head of major projects and it makes sense for him to be accredited.

In relation to the disused rail lines, I have been advised that currently we have to comply, and that the bill before us will not have a bearing on our requirement to comply with other legislation such as the Native Vegetation Act and the Environment Protection Act. In relation to the disused lines specifically, I am advised that that is likely to be included, but we will take that on notice and bring back a response.

In terms of staffing, I am advised that the honourable member was correct; there will be no extra staff, and the rail commissioner and deputies roles will be absorbed from within the Office of Major Projects in DTEI.

The Hon. D.W. RIDGWAY: I have two further questions. One I asked earlier was about whether having a Rail Commissioner would allow the government to tender out the electrification supply, maintenance and operation of a rail system—effectively, to privatise our metropolitan rail network. In terms of my second question, while I accept that Mr Hook is probably the best person to hold this position, and the opposition does not disagree, no-one stays in their role forever. When Mr Hook retires, what process will be put in place to find the next person to fill the role of rail commissioner?

The Hon. G.E. GAGO: In relation to the question of the issue around privatisation, I have been informed that the government has no intention to privatise through this bill. That is not its intention. Under the Rail Safety Act, whoever operates has to be accredited. In relation to operations, we cannot tender for something over which we do not have control. Whoever operates rolling stock, built infrastructure or such like has to be accredited, whether private or public. This bill simply provides a mechanism to accredit someone within government.

The Hon. D.W. RIDGWAY: What about a replacement mechanism?

The Hon. G.E. GAGO: It would be another appointment.

The Hon. D.W. Ridgway: No selection process—just an appointment?

The Hon. G.E. GAGO: No doubt the government will decide at the time what process will be most suitable.

The Hon. D.W. RIDGWAY: The minister might like to outline the process, if only because having it on one's CV that they were the South Australian rail commissioner for a period of time would be a significant feather in one's cap and a significant qualification if they were pursuing further career opportunities. Of course, as we have said, we know that Mr Hook serves the state well but, at some point in the next few years, he will probably retire and that will not be an issue. However, I think we need to have an open and transparent appointment selection process for this position.

The Hon. G.E. GAGO: I have already put on the record that that will be determined by the government at the time, so I cannot pre-empt what that process might be. Obviously, this time around Rod Hook was the person chosen. We would need to determine the appropriate process at the time, and I am not able to pre-empt that.

Clause passed.

Remaining clauses (2 to 18), schedule and title passed.

Bill reported without amendment.

Bill read a third time and passed.

[Sitting suspended from 12:52 to 14:18]

PAPERS

The following papers were laid on the table:

By the Minister for Mineral Resources Development (Hon. P. Holloway)—

Reports, 2008-09—
- Advisory Board of Agriculture
- Construction Industry Fund—Evaluation of Long Service Leave Liabilities
- Construction Industry Long Service Leave Board
- Dairy Authority of South Australia
- Department of the Premier and Cabinet
- Industrial Relations Advisory Committee
- Legal Services Commission of South Australia
- South Australian Forestry Corporation
- The Senior Judges of the Industrial Relations Court and the President of the Industrial Relations Commission

Reports, 2007-09—
- South Australian Alpaca Advisory Group
- South Australian Cattle Advisory Group
- South Australian Deer Advisory Group
- South Australian Goat Industry Advisory Group
- South Australian Horse Industry Advisory Group
- South Australian Pig Industry Advisory Group
- South Australian Sheep Advisory Group

Rules of Court—
- Workers Compensation Tribunal—Workers Rehabilitation and Compensation Act 1986—Rule 17—Conciliation

By the Minister for Urban Development and Planning (Hon. P. Holloway)—

Reports, 2008-09—
- Adelaide Cemeteries Authority
- West Beach Trust

By the Minister for State/Local Government Relations (Hon. G.E. Gago)—

Reports, 2008-09—
- Bordertown & Districts Health Advisory Council Inc
- Ceduna District Health Services Health Advisory Council Inc
- Northern Yorke Peninsula Health Advisory Council Inc
- Port Pirie Health Service Advisory Council
- South Australian Housing Trust
- South Australian Youth Arts Board—Carclew Youth Arts
- Quorn Health Services Health Advisory Council

LEGISLATIVE REVIEW COMMITTEE

The Hon. J.M. GAZZOLA (14:21): I bring up the 29th report of the committee.

Report received.

QUESTION TIME

TORRENS AQUEDUCT

The Hon. J.M.A. LENSINK (14:23): I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning a question about a parcel of land at Highbury, north of Nursery Way, known as the aqueduct land.

Leave granted.

The Hon. J.M.A. LENSINK: Members may be aware that the original open channel Torrens Aqueduct was constructed in the 1870s, delivering untreated bulk water from Kangaroo

Creek reservoir to the Hope Valley reservoir. Following an extensive communication process in 2004-05 with all relevant stakeholders, a number of options to upgrade the means of maintaining a secure water supply to the Hope Valley reservoir were considered, with SA Water finally determining that a buried gravity pipeline laid in the confines of the River Torrens would best deliver the desired environmental, social and economic outcomes.

Construction of the pipeline commenced in 2007 and is now complete, and the disused aqueduct land has been transferred from SA Water to the control of the Minister for Urban Development and Planning. The minister announced in September a consultative group to consider the future management of the disused land.

In light of the formation of the committee, will the minister give an iron clad guarantee that the land will be kept in public hands and remain open space for the enjoyment and betterment of the local community; that the Rann Labor government will not seek to sell this piece of land; that the Rann Labor government will not seek to amend the River Torrens Linear Park Act in any way that would substantially alter the use of this land; that the community will be consulted on the use of the land prior to any decision being made about its future use; and that neither the minister's department nor any other government department is planning any form of future development that will alter the use of this land?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:25): Some guarantees were given by the government prior to the 2006 election. It gave that undertaking then, it has honoured it and it will continue to honour it. That land is for open space.

The deputy leader is correct in that there is an open space group chaired by my colleague the member for Newland, Tom Kenyon. The land is in his electorate. The mayor of Tea Tree Gully (Miriam Smith) is also a member of that group.

Members interjecting:

The Hon. P. HOLLOWAY: What is your problem?

Members interjecting:

The Hon. P. HOLLOWAY: As announced, the amendments that this government made to the River Torrens Linear Park Bill were to stop the sorts of things that happened before. By incorporating that land within the Linear Park bill the only way it can be disposed of is by a resolution carried by both houses of parliament. The reason we introduced that was that the previous government allowed the University of South Australia at Underdale to sell off its land, which meant that a significant proportion of Linear Park land on the River Torrens that would have gone right down to the centre of the river, and the river frontage at Underdale, would have been lost for use by the people of South Australia.

In fact, it has cost taxpayers something like $1.5 million that this government has had to spend to buy back that land and landscape it. This government intends to incorporate the aqueduct land into the Linear Park, and it will be covered by legislation that we enacted to stop the sort of situation that happened at Underdale from happening again. There will be iron-clad protection in relation to that aqueduct land.

A committee has been set up, as the deputy leader referred to, to look at that. My understanding is that some work needs to be done on that particular land. The land was fenced off, obviously to stop people going on to the area. A number of trees have grown in that area, many of them Mediterranean pine trees, and some are in a fairly dangerous condition. That is one of the issues that the committee has been looking at.

Using the Planning and Development Fund, there will need to be some investment on the land in that area so that it can be made more useable by the community, and that is very much the intention of the committee. It is the role of that committee to consult with the local community to hear their views. I can assure everyone that the government intends to honour the promise that it made in 2006. We have gone a long way towards doing that by incorporating it within the Linear Park—or we will be doing it.

The issue was that the land had to be transferred over from SA Water to the Department of Urban Development and Planning. From memory, that took place about mid-year. It has taken a long time for that transfer to take place. However, that enables the government to be able to incorporate it within the Linear Park.

TORRENS AQUEDUCT

The Hon. J.M.A. LENSINK (14:28): I have a supplementary question. Does the minister have a time frame for when the committee is expected to report to him?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:28): I expect it to be ongoing. The committee has already met, and we have had some discussions. I believe there was an inspection of the area. As I indicated to the honourable member, one of the things that has been reported to me is that some of the Mediterranean pine trees growing there have falling branches and so on which will require attention before access is granted to the area, and that will take some time.

I believe that the committee has been looking at some interim measures it can take to try to make, at least for a start, some of the area available to the public. It is a very large piece of land. From memory, it is a significant proportion of the entire area in the River Torrens Linear Park. It is quite a large area and so, to make it safe to enable people to access it, it will take some time.

The government is hoping to hear some initial proposals, and we have to discuss that with the Tea Tree Gully council. As I said, the mayor, Miriam Smith, is a member of the committee. As soon as we get some specific proposals, the government will be happy to look at them.

As I have said, our intention is to at least have some of those areas opened up for public open space as soon as possible. However, for the rest of it, we will have to look at some of the security issues because the land has never really been maintained to the extent that it was meant to be opened to the public: because it was carrying mains water, it was obviously fenced off. However, they are issues I would expect the committee to look at. I do not think it is just a matter of it providing one report. I suspect the committee will be providing me with a range of advice over the coming months.

BUSHFIRE BUNKERS

The Hon. S.G. WADE (14:31): I seek leave to make a brief explanation before asking the Minister for Consumer Affairs a question about bushfire bunkers.

Leave granted.

The Hon. S.G. WADE: On 21 October, the minister issued a statement on bushfire bunkers, expressing the government's concern that consumers are being misled by some traders claiming that their bunkers meet an Australian standard for the product despite there being no standard in place. The government has urged consumers to approach the issue with caution. My questions are:

1. When the minister said that there is a lack of a 'formal Australian standard' was she referring to standards issued by Standards Australia?

2. When is it expected that the national standard being prepared by the Australian Building Codes Board will be promulgated?

3. Will the national standard being prepared by the Australian Building Codes Board be a formal Australian standard under Standards Australia?

4. Given that the cautionary note issued by the minister advises landholders that, if technical advice is required, they should consult with suitably qualified building professionals, what technical advice are these professionals expected to rely on while national standards are being developed?

5. Is the government recommending against the construction of bushfire bunkers, at least until standards are settled, but is not willing to be that clear with the public?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (14:32): I thank the honourable member for his most important question. Since the very tragic bushfires in Victoria, which brought about so many fatalities last year, we are even more conscious of the potential dangers around bushfires. No doubt because of the public's response to those events, we have seen a great deal more consumer interest in purchasing fire bunkers.

We know that, during the Victorian fires, there were survivor stories involving bushfire bunkers, but we also know that seven people died in bushfire bunkers during those Victorian fires. So, we need to approach the issue of bushfire bunkers with great caution, and that is why I recently issued a media release and also a cautionary note, which was published at the time.

My media release was in response to some web-based sites that were identified as advertising fire bunker products as meeting Australian standards and, of course, currently there are no Australian standards for fire bunkers. So, the advertising was, in fact, misleading, and that is how my office became involved in the issue in the first instance. Those traders were required to remove that advertising from the internet immediately.

In the media release it states that, while the Australian Building Codes Board is currently working on a national standard for the design and construction of bushfire bunkers for domestic use, there is currently no recognised standard for them. So, what we are saying to people is that currently in the marketplace there are no fire bunker products that are deemed to have met any Australian standard, because there is no standard.

I have prepared and distributed a comprehensive cautionary note—it is on the net, so I advise the honourable member to have a look at it—that outlines a whole range of quite complex issues that need to be considered if a person wishes to purchase or construct a fire bunker. This government is saying that, if a fire bunker is to be safe, it needs to meet those sorts of conditions and would need to be constructed by people with the appropriate skills and expertise. That would include an engineer and perhaps a surveyor, and it would also involve the local council. So the cautionary note lists, fairly comprehensively, the issues that would need to be satisfied for a bunker to be safe.

The government is not saying that there is no such thing as a safe fire bunker; it is saying that currently there is nothing in the marketplace that meets Australian standards, because no standards currently exist. The standards are being dealt with now but, in terms of whether or not they will be dealt with under Standards Australia, I will have to take that part of the question on notice and bring back a response.

BUSHFIRE BUNKERS

The Hon. S.G. WADE (14:36): I have a supplementary question. I thank the minister for her reference to the cautionary note, but my quote was actually from that note. So, if technical advice is required to be sought from suitably qualified building professionals, as the cautionary note suggests, to what standards does the government want these professionals to refer?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (14:37): There are currently no state or national standards; they are being dealt with at the moment. The cautionary note outlines a list of considerations that need to be taken into account if a person chooses to purchase or construct a fire bunker. There are issues relating, for instance, to the dispersal of carbon dioxide within the building and the management of smoke; there is a range of detailed issues outlined in the cautionary note that need to be considered in the design and construction of a fire bunker. It is called a cautionary note because we are saying to South Australians—

The Hon. S.G. Wade: Because the government is overly cautious.

The Hon. G.E. GAGO: No; because people died in them, you idiot. People died in these things. There are no national standards, and human beings trusted in and built these bunkers and then died in them. That is why the government is being cautionary. The honourable member implies that the government is being overly cautious; it is being cautious because people have lost their life in these structures. That is why it issued a cautionary note, which comprehensively lists a number of issues that must be addressed by suitably qualified people to ensure that if the structure is built it is safe to be in.

BUSHFIRE BUNKERS

The Hon. S.G. WADE (14:39): I have a further supplementary question. Would the minister accept the criticism that the government is being overly cautious because it is couching as consumer advice what should be clear bushfire prevention advice that bunkers should not be built until the national standards are released?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (14:39): I have already put on record the list of the parameters that have been assessed as needing to be addressed to the satisfaction of suitably qualified professionals for a fire bunker to be considered safe, and that is on the best technical and scientific advice we have received. They are the matters that need to be addressed, and they are comprehensive. The cautionary note is comprehensive and, in terms of the code, that is being undertaken at the moment. I believe that the government is not being overly cautious; we are being responsible.

GOVERNMENT SPENDING

The Hon. R.I. LUCAS (14:40): I seek leave to make a brief explanation before asking the minister representing the Premier a question about further examples of the Rann government wasting taxpayers' money.

Leave granted.

The Hon. B.V. Finnigan interjecting:

The Hon. R.I. LUCAS: No, that was the subject of the question; it was not opinion. Earlier this year, I asked a series of questions in relation to the Commissioner for Public Employment, Mr Warren McCann, who had previously been—

The Hon. B.V. Finnigan interjecting:

The PRESIDENT: Order! The Hon. Mr Lucas has the floor.

The Hon. R.I. LUCAS: —the chief executive of the Department of the Premier and Cabinet. Some of those questions related to whether the commissioner had demanded that he, as the commissioner, have two separate offices in his new place of residence: one an open space office and the second an enclosed office; whether he had required the installation of a dishwasher and what the cost had been; whether or not a contractor had been brought in especially over the Christmas holiday period to demolish offices and create the new office requirements for the new commissioner; and a range of other questions. It will not surprise you, Mr President, that some five months later those questions remain unanswered.

I have been further informed that when Mr McCann was the chief executive of the Department of the Premier and Cabinet he had the same requirements: that he must have two offices as the chief executive, that is, an open space office and an enclosed office for when he required the use of an enclosed office.

I am further advised that taxpayers' money was expended to bring about those renovations as well as equipment-related changes. I am now advised that the new Chief Executive, Mr Chris Eccles, does not like the office arrangements of the former chief executive and is now expending taxpayers' money to re-create the old office arrangements to make them more suitable, that is, not two separate offices but just one for himself as the Chief Executive.

Finally, I am advised that cabinet recently made a decision for pay increases for chief executives and has backdated those pay increases for all chief executive officers to 1 July 2009. I am further advised that all ministerial staffers will receive a flow-on benefit of that particular backdated pay increase to 1 July 2009. Again, Mr President, you might not be surprised that, evidently, the Premier has not publicly announced that particular pay rise decision. My questions to the minister are as follows:

1. When will the questions I asked in May of this year be answered by the minister?

2. What was the cost of the office renovations and equipment changes when Mr McCann was the chief executive of the Department of the Premier and Cabinet?

3. What is the cost for the further renovations by the new Chief Executive, Mr Chris Eccles, in relation to office and equipment changes in his department as a result of the earlier changes made by Mr McCann?

4. Has cabinet made a recent decision for pay increases for all chief executives and backdated them to 1 July, and is that also flowing on to all ministerial officers? If so, why has no public announcement been made of this decision?

5. Is it correct that the Commissioner for Public Employment, Mr McCann, is now being paid a total remuneration package of almost $400,000 per year to manage a staff of about 15 people, and how does the government justify that particular set of circumstances?

6. Has the Commissioner for Public Employment recently filled a manager level position in his office? As the commissioner, has he offered tenure to that position and the payment of extra allowances for that position to take it up to a position of director level? If so, is that consistent with all the guidelines for the employment of staff that govern the Commissioner for Public Employment's office? Is it correct that this position was not advertised and, if not, why was it not advertised for applications from other officers?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:45): It is unfortunate that the former leader of the opposition should be attacking Mr Warren McCann. Perhaps my memory is failing me, but I thought Mr McCann was appointed by the then premier, John Olsen. He has served this state very well. It was a very good choice and I do not mean in any way to criticise Mr Olsen for that as it was a very good choice; Mr McCann has served this state very well as the head of the premier's department.

The Hon. R.I. Lucas: He is not the head any more; he got sacked.

The Hon. P. HOLLOWAY: Mr McCann has served this state very well for many years. He has been a loyal public servant for a series of governments, and that really is a typical cheap shot by Mr Lucas. Similarly, in relation to any pay rise to chief executives, I understood that that information has been very well known because it flows on to the officers of members of parliament. I am sure the honourable member's staff have enjoyed that same level of pay rise. It is normally from 1 July each year, on my understanding, that those sorts of increases have applied.

I understand also that those increases are passed on to the staff of members of parliament as well as to ministerial staff and others, and any rate of increase is much more modest than one would expect in the private sector or in other sectors of the Public Service. The chief executives of this state do an incredibly good job. We are lucky that this state is served by a number of very dedicated and talented senior public servants, and the sorts of rises they get are the same as those for other members of the Public Service.

The Hon. Mr Lucas began this by talking about waste. I would not have thought that paying reasonable increases, in line with increases for the rest of the community, was waste. That is the new opposition policy! It has been promising money for everything. It will find an extra $25 million for the regions and get $20 million or $30 million for an ICAC, and it is all supposed to be funded by government waste. The only waste we have, apparently, are public servants. Let every public servant in this state know that under the Liberals there will be a wage freeze, because their salaries, according to Mr Lucas, are waste. Presumably, if we get a Liberal government next March, there will be no increases for the Public Service for some time as apparently that is waste. It is interesting we have discovered that fact.

This government has made clear that it believes public sector wage increases must be constrained in the current environment, but public servants should be treated the same as other members of the community. In relation to the other specific matters, I will refer them to the Premier.

McCANN, MR W.

The Hon. R.I. LUCAS (14:49): By way of supplementary question, arising out of the answer—

The PRESIDENT: I remind members that we have had only three questions in nearly 30 minutes.

The Hon. R.I. LUCAS: If the minister is indicating that the government believes Mr McCann was doing such an admirable job as chief executive of the Department of the Premier and Cabinet, why did the Rann government move him to a position where initially he was managing two people at a salary of well over $300,000 a year?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:49): Mr McCann not only served the previous but also the current government for at least five or six years, as is common in these sorts of jobs. There is a time to move on. It is certainly time for the Hon. Mr Lucas to move on. If someone should ever move on, he should, because we know how members opposite

regarded his performance as leader. They realised how divisive he is and how damaging he is out in the electorate, so they moved him on. I think that Mr McCann has made his position clear. He has done a very good job for this state, and, clearly—

An honourable member interjecting:

The Hon. P. HOLLOWAY: Because Mr McCann himself may have had some wish in that regard—

Members interjecting:

The PRESIDENT: Order! There are too many interjections.

The Hon. P. HOLLOWAY: —but it is not up to me to comment on that. What I can say is that he has done a very good job. I will certainly acknowledge it and I am sure that the Premier would also be only too happy to acknowledge the significant contribution Mr McCann made. He would not have been kept on, otherwise, as the chief executive following the change of government, nor would he have been kept on for such a significant period, which must have been at least five or six years, maybe longer.

GEOLOGICAL AWARDS

The Hon. R.P. WORTLEY (14:50): Will the Minister for Mineral Resources Development provide any details of recent successes by members of the Department of Primary Industries and Resources in terms of national awards?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:51): In fact, I can provide some details of recent successes by members of the PIRSA team. In the past year, the Geological Society of Australia has honoured two geologists from the Geological Survey Branch in the Mineral and Energy Resources Division and a former director of the mines department for their work. Dr Wolfgang Preiss (Principal Geologist), Dr Anthony Reid (Senior Geochronologist) and Mr Keith Johns have all been recognised by the South Australian division of the society for their contributions to geological research.

Wolfgang Preiss was awarded the 2008 Bruce Webb Medal (Bruce Webb, of course, being another former head of the old department of mines and energy), which is awarded to a person distinguished for leadership who has advanced the earth sciences and/or contributed to the advance of knowledge either within South Australia or from a South Australian base. The award is recognition of Wolfgang's long and distinguished career in geological survey spanning more than 40 years. Dr Preiss is acknowledged as a world authority on the neoproterozoic rocks of the Adelaide Geosyncline—rocks that make up a significant proportion of the Flinders and Mount Lofty Ranges.

New work from the Burra copper mine within the Adelaide Geosyncline undertaken with colleague John Drexel continues to produce important advances in our understanding of the neoproterozoic tectonic evolution and mineralisation of the region. Wolfgang's recent research focus has also been on mapping the palaeoprotoerozoic Willyama Supergroup within the Curnamona Province, rocks which host the giant Broken Hill ore body in New South Wales. Anthony Reid was awarded the 2009 Walter Howchin Medal, which is awarded to a researcher 35 years of age or younger who is distinguished by their significant published work within South Australia or from a South Australian base.

Anthony's ongoing research focus has been on the Gawler Craton and he co-authored the *Geological Survey Bulletin 55*, 'A Geochronological Framework for the Gawler Craton, South Australia', published in 2007. Anthony has also made contributions to understanding the regional geology of the Gawler Craton in collaboration with University of Adelaide researchers, notably Associate Professor Martin Hand. Anthony and Professor Hand have also co-authored a review paper on the geological evolution of the Gawler Craton.

Anthony's work has regularly appeared in the *MESA Journal* on topics ranging from tertiary sands of the Eucla Basin to a review of the Achaean geology of the Gawler Craton. Former director-general of mines and energy, Keith Johns, was awarded the 2009 Bruce Webb Medal. Keith was appointed deputy director of mines and government geologist in 1973 and director-general in 1983. He retired from this position in 1992 and continued to publish papers on the history of mining in South Australia.

I am delighted that geologists from the geological survey have been honoured in this way, and have been acknowledged by the geological community for their research efforts. The geological community is committed to supporting high quality geoscientific research aimed at unravelling South Australia's rich and fascinating geology. I add my congratulations to those three geologists on their important awards.

WORKCOVER

The Hon. J.A. DARLEY (14:54): I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development, representing the Minister for Industrial Relations, a question about WorkCover.

Leave granted.

The Hon. J.A. DARLEY: Over 15 months ago, the government introduced changes to the WorkCover scheme with the intention of reforming and improving workers' rehabilitation and compensation. This package of reforms included the introduction of medical panels that are required to make determinations regarding the medical condition of injured workers should there be any dispute or disagreement. Along with many of my crossbench colleagues, I was opposed to the introduction of the medical panels, as we held concerns over their operation and effectiveness.

The medical panels were established and commenced in April this year and, in the six months they have been operational, I am told that only a minimal number of injured workers have appeared before the medical panels. I understand that the medical panels are running at a cost of about $9 million a year. Given this fact, my questions are:

1. How many cases were projected to be referred to the medical panels each year?

2. How many cases have they seen since their commencement?

3. How much was involved in establishing the medical panels, including advertising for interested members?

4. What is the actual ongoing cost of maintaining the medical panels?

5. Does the minister consider that the legislation is effective in regard to this aspect of the act?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:56): I thank the honourable member for his questions. I will refer them to the Minister for Industrial Relations in another place and bring back a reply.

ADELAIDE FESTIVAL

The Hon. T.J. STEPHENS (14:56): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations, representing the Minister for Tourism, a question about sponsorship of the Adelaide Festival.

Leave granted.

The Hon. T.J. STEPHENS: Members might be aware that recently the Adelaide City Council voted to withhold its sponsorship of the Adelaide Festival until it received an answer to why it does not have a representative on the board. Until now, the council has always had a representative on the board to oversee the large sums of money it provides to the festival, which was some $600,000 at the last festival. This large sum of money would, no doubt, be an integral part of the successful running of one of our most important tourism and arts events. My question is: what action is the Minister for Tourism and the Minister for the City of Adelaide taking to ensure that this vital sponsorship is forthcoming?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (14:57): I thank the honourable member for his most important question. I will refer it to the Minister for Tourism in another place and bring back a reply.

DISABILITY SERVICES

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises,

Minister Assisting the Minister for Transport, Infrastructure and Energy) (14:57): I table a copy of a ministerial statement relating to individual choice for people with disabilities made earlier today in another place by my colleague the Hon. Jennifer Rankine.

QUESTION TIME

SECOND-HAND VEHICLE DEALERS

The Hon. B.V. FINNIGAN (14:57): I seek leave to make a brief explanation before asking the Minister for Consumer Affairs a question about recent orders of the District Court banning a former second-hand motorcycle dealer from the industry.

Leave granted.

Members interjecting:

The Hon. B.V. FINNIGAN: At least it is about second-hand dealers, not second-hand candidates like all yours. The selling of second-hand motorcycles is regulated under the Second-Hand Vehicle Dealers Act 1995. Individuals and companies who are licensed to operate as second-hand vehicle dealers are required to contribute to the Second-hand Vehicles Compensation Fund. The fund is designed to compensate consumers who have no other prospect of recovering losses as a result of a transaction with a second-hand vehicle dealer. Will the minister inform the council about the recent decision of the District Court in relation to former second-hand vehicle dealer, Brenton Evan Hounslow?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (14:58): I thank the honourable member for his most important question. Mr Brenton Hounslow was formerly the sole director of a second-hand motorcycle sales company, Docteur Desmo Australia. In 2007, Mr Hounslow was declared bankrupt and his company placed in liquidation.

Before Mr Hounslow's financial problems, his conduct as a second-hand motorcycle dealer led to serious losses for a number of most unfortunate consumers. In 2006 and 2007, Mr Hounslow undertook to sell nine second-hand motorcycles on consignment but failed to pass the proceeds of the sales on to the appropriate consumers. Many times, cheques were issued to the unlucky owners but they were all dishonoured.

Fortunately for the affected consumers, there is the compensation fund for those who lose out to dishonest second-hand vehicle dealers, such as Mr Hounslow. The Second-hand Vehicles Compensation Fund, established under the Second-hand Vehicle Dealers Act, is funded through the licensing of second-hand vehicle dealers by the Office of Consumer and Business Affairs.

All the affected consumers were able to make claims against the fund and were together awarded compensation totalling $109,151. This is not a trivial amount, and it shows the need for continued rigorous consumer protection in relation to the second-hand vehicle industry. OCBA recently took action in the District Court to ensure that Brenton Evan Hounslow be banned from any participation in the second-hand vehicle industry. OCBA's action was successful and on 23 October Her Honour Judge McIntyre made orders that disqualified Mr Hounslow from being licensed as a second-hand vehicle dealer until further order. Mr Hounslow was also prohibited from being a director or employed or engaged in the second-hand vehicle dealer business until further order.

Should Mr Hounslow breach these orders, he faces a $35,000 fine and up to six months in gaol. OCBA's action in the District Court follows a successful South Australia Police prosecution in the Magistrates Court, where Mr Hounslow was sentenced to 10 months gaol for dishonesty offences, which sentence was suspended on the condition he enter into a three year good behaviour bond.

This government will continue to be active in disciplining and prosecuting dishonest second-hand vehicle dealers like Brenton Hounslow to protect the car buying public. The message to dodgy car dealers is clear: if they make it their habit to defraud consumers, not only do they face the prospect of a total ban from having a business in the second-hand vehicle industry but they could also face imprisonment.

SEA LEVEL

The Hon. M. PARNELL (15:02): I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning a question about South Australia's response to sea level rise.

Leave granted.

The Hon. M. PARNELL: On Monday evening the House of Representatives Standing Committee on Climate Change, Water, Environment and the Arts released its report entitled 'Managing our coastal zone in a changing climate: the time to act is now'. This report resulted in the headline in *The Advertiser* yesterday '60,000 homes under the sea'. The first two paragraphs of that report read:

> An estimated 60,000 homes and businesses along the South Australian coastline are threatened by storm surges and erosion as climate change worsens, a new Federal Parliamentary report has found.
>
> Even more concerning is many property owners may not be covered by insurance as a warming globe causes polar ice-caps to melt and bring severe storms with accompanying king tides.

When it comes to the approval of new developments, our planning schemes do provide for some anticipated sea level rise. However, these planning schemes do not apply to existing developments. My questions are:

1. Is the South Australian government actively planning for a managed retreat for vulnerable households and communities along the coast?

2. If not, what is the strategy for dealing with established communities under threat of sea level rise?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:03): I do note that a managed retreat policy has been used by the Greens-controlled council at Byron Bay in New South Wales, and that is basically to prevent householders from taking any action to stabilise their properties. Apparently it has also stopped them from renting out their properties, which is another interesting variation. That appears to be the Greens' approach to coastal communities.

In relation to rising sea levels, the honourable member is quite correct, and it is something that this government has been addressing for some time in relation to new development. Of course, some significant work has been done, which is still in progress, along most of the coast of this state, and in rural areas in particular, to try to ensure that communities or dwellings are not built too close to sea level.

In terms of dealing with existing areas, that is another challenge entirely. Obviously, the report that the commonwealth government has put out will just be another addition to the debate that we need to have in dealing with these issues.

In relation to existing developments, there is the Coast Protection Board which comes under the portfolio of my colleague the Minister for Environment and Conservation who has, of course, had a key role in relation to that. The board has been responsible for much of the coastal protection works that are necessary to deal with this issue.

I have not yet had a chance to look at the federal report. The honourable member referred to a figure of some 60,000. Whether that is an estimate or whether it is based on some more detailed mapping I am not sure. I have asked my department to have a look at the report to see whether that adds to the work that we are already doing in relation to dealing with the problem of rising sea levels.

A combination of work will need to be done to protect existing properties along the shore, where it is feasible to do so. In relation to new areas, we clearly need to set standards and re-examine what is the appropriate minimum height above sea level—the AHD levels, as they are referred to—for development. We will have to give further consideration to existing developments—and I am sure the federal report will be a useful contribution to that debate—where properties are already exposed to the sea. I think we have seen some pictures in certain places around the state, including a house near Wallaroo that, during one of these storm surge periods, was almost under water.

Members interjecting:

The Hon. P. HOLLOWAY: I am not sure of his, but there have been some places already where storm surges affect them. In some cases it may be possible to take the sort of action the Coast Protection Board does to at least shore up those properties, given their expected life times, but that is dependent upon the extent and the rapidity of any sea level rise and then, obviously, things need to be done more urgently.

I noticed at the weekend, when I was at Hindmarsh Island having a look at the impact of some of the river work down there, a sign installed at the Murray Mouth stating that 17,000 years ago during a previous ice age sea levels were 150 metres below what they are now. As I said, that was 17,000 years ago and, through ice ages and global warming, we have throughout history seen the rise and retreat of the sea.

The issue now is with anthropogenic climate change and to what extent that will impact upon us. Of course, no-one really knows the exact answer to that; we can only go on models and predictions. How quickly we have to respond to that is something that we will have to deal with in the future. At the present time, a range of strategies is in place, and the most important one is to ensure that we do not put any more properties at risk. For those already at risk, we will have to simply work through them as best we can. I look forward to absorbing the work of that parliamentary committee and to informing the government's attitude on that.

FRASER, MR G.B.

The Hon. R.D. LAWSON (15:09): I seek leave to make a brief explanation before asking the Minister for Police a question about Graham Bennett Fraser.

Leave granted.

The Hon. R.D. LAWSON: The case of former senior inspector Graham Bennett Fraser received some publicity earlier this month. It was revealed that Fraser had led a double life, pursuing what someone described as an illustrious police career whilst engaging in criminal sexual offences with teenage girls. He confessed his offences to police authorities, but they could not prosecute. The SAPOL disciplinary process saw him merely reduced in the ranks from senior inspector to inspector.

The criminal behaviour of Fraser was probably a breach of trust. More certainly, the actions of the police and its International Investigations Unit were clearly a breach of public trust. At the time of this deplorable affair, we had the Ombudsman, the Auditor-General, the Police Complaints Authority and a special police unit—all organisations the Rann government claims make it unnecessary to have an independent commission against corruption in this state. Many would disagree with the government. I should mention also that the present police commissioner has indicated that he has asked the Police Complaints Authority to review disciplinary decisions, and the matter has been referred to Mr Tony Wainwright. My questions are:

1. Why has the minister himself not commissioned an independent inquiry, rather than leaving this matter to the police commissioner to have it dealt with through police channels, so that, in effect—and certainly in the public perception—this will be a case of the police investigating the police?

2. My question relates to the chair of the Police Complaints Authority, Mr Tony Wainwright, who has retired but is presently in an acting capacity because the government has not appointed a successor. When will a replacement be appointed?

3. Is it true that former auditor-general Ken MacPherson was approached to fill the position of acting chair of the Police Complaints Authority prior to his taking up the position in relation to the Burnside council?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:13): I will refer the question to the police minister, but let me say that Mr Fraser, as I understand it, has now been convicted and is serving time—and that was as a result of action taken by the police. I would have thought that the pertinent issue here is that the legislation Mr Evans introduced some time ago removed the statute of limitation in relation to those offences. However, that action being taken, I believe this matter was appropriately investigated by the police and action was taken.

An honourable member interjecting:

The Hon. P. HOLLOWAY: Well, the fact is he has been dealt with because the legislation has been changed. However, it would not matter whether or not we had an ICAC if there was a

statute of limitations against bringing charges against a person, and I am sure the Hon. Mr Lawson of all people would understand that. That act having been changed, and appropriately with the full support of the government, I understand that the appropriate action has been taken by the police and the prosecution, and the courts have delivered the appropriate penalty. So, I do not really concede the point the Hon. Mr Lawson is trying to make. However, in relation to the specifics of the question, I will refer that to the Minister for Police. In relation to the replacement for Mr Wainwright, I understand that cabinet has already made that decision, and it is really up to the Attorney-General when that announcement is made.

THINKER IN RESIDENCE

The Hon. CARMEL ZOLLO (15:14): My question is to the Minister for Urban Development and Planning. Laura Lee recently concluded her term as Thinker in Residence. Is the minister aware of any implications for the future of urban development and planning in this state arising from her residency?

The Hon. J.S.L. Dawkins interjecting:

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:14): I can listen to the honourable member and deal with interjections as well—

Members interjecting:

The PRESIDENT: Order! We all know that the minister is capable of doing three or four things at once.

The Hon. P. HOLLOWAY: Thank you, Mr President. Laura Lee is Professor of Architecture at the Carnegie Mellon University in Pittsburgh, USA, and is highly regarded internationally as a leader in integrated design education practice and research in architecture. Carnegie Mellon University is one of the leading universities in the United States for architecture, and its peers have rated Professor Lee's faculty number one in the United States for its work on sustainable design.

Professor Lee has extensive experience working across a range of disciplines. In addition to her teaching experience at Carnegie Mellon University, Professor Lee has taught at the Higher Institute of Architecture in Antwerp, the Royal Danish Academy of Fine Arts in Copenhagen, and the Swiss Federal Institute of Technology in Zürich. She has won numerous prizes for teaching excellence and for the development of intercultural and interdisciplinary programs, including Carnegie Mellon University's highest teaching honour, the Ryan Award. In 2008 Professor Lee was elected senior fellow of the Design Futures Council in recognition of significant contributions towards the understanding of changing trends, new research and applied knowledge in design and architecture.

I had the great pleasure of meeting Professor Lee on several occasions during her term as Thinker In Residence, and attended her final public address in Adelaide earlier this month. Professor Lee's residency focused on the value of design and the impact of the built environment on the quality of life for South Australians. As Minister for Urban Development and Planning, I am extremely aware of the growing importance of urban design, particularly as this government pursues the objectives of the 30-Year Plan for Greater Adelaide.

That forward-looking document, and the roll-out of the state government's $11 billion infrastructure spending program, particularly electrification of our metropolitan rail lines, provides an opportunity to showcase modern urban design in areas such as transit-oriented developments. The way urban design is applied will be a key element in the implementation of that 30-Year Plan for Greater Adelaide, which is the spatial expression of the state government's Strategic Plan, aiming to make Adelaide a competitive, liveable and sustainable place in which to live and work. It is a vital piece of planning for South Australia, with the state's population growing faster than earlier projections.

Much of the new metropolitan housing, commercial and industrial development will be concentrated along our major transport corridors, leaving the majority of Adelaide's suburbs unchanged. It is not a case of starting from scratch: the backbone of the public transport network is already there. It is a question of investing to upgrade and modernise infrastructure that is already there and then make the best use of that investment through greenways and transit-oriented developments, allowing them to become a strong magnet to attract even more investment, both public and private. This creates an opportunity to harness the best features of urban design to

create developments that provide a renewed sense of community in Adelaide. We are talking about walkable neighbourhoods, close to shops and transport, and design will help us integrate these elements into a new built form.

Professor Lee is yet to provide a final report on her residency, but I know that she has given some thought to the issue of intelligent investment in design, planning and development in our state, and why it is so important to give design a central focus in plans for Adelaide. I look forward to Professor Lee's final report; I am sure it will make a very significant contribution to the future design of our city.

THINKER IN RESIDENCE

The Hon. D.W. RIDGWAY (Leader of the Opposition) (15:18): I have a supplementary question. Did the government seek any advice from Professor Lee in relation to the location of the new Royal Adelaide Hospital and the suitability of that parcel of land for such a development?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:19): Those decisions had been made well before Professor Lee's residency, I understand. However, Professor Lee—

Members interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: As I said, the decisions relating to the Royal Adelaide Hospital predated Professor Lee's visit. I look forward to her report. What I think is a tragedy for this state is that the Liberal opposition has decided to end the Thinkers in Residence program. The tragedy is that the Liberal Party has decided that it can do without the views of these international experts and the views of someone who is recognised as having the finest architecture school in the United States, who has devoted a lot of time to improving our knowledge and giving us guidance as to how the city might go forward. They think they have all the expertise opposite.

The Hon. T.J. Stephens interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: It's pathetic. These are the people who think they have all the answers for Adelaide. The fact that—

Members interjecting:

The Hon. P. HOLLOWAY: While we are on the subject of urban design, I think it was very refreshing to hear this morning that the Prime Minister has announced that the commonwealth government will again be re-engaged in the question of the future of our cities. If one looks at when Perth electrified its railway system, and the Subiaco development, one will see that it was funding under the Better Cities program of the Keating government. When did Brisbane have its rail electrification? It was during the Whitlam government. Liberal governments have totally neglected urban development in this country. They have totally neglected our cities. I am delighted that we now have a federal government that will support the higher quality of our cities.

As I have said, we have had this very significant investment. In particular, the electrification of our railway system is something that is long overdue in this city; it is absolutely necessary for the future development of our city. It is very refreshing that we now have a federal government that is interested in urban design. It just shows by contrast how members opposite and their party totally neglected this area during their years in government.

As I have said, the fact that we had someone of the calibre of Professor Lee here to provide advice to our community in relation to urban design and improving the built form in this city was terrific. I think the fact that it should be so dismissed by members opposite is a sad reflection on where their priorities lie.

THINKER IN RESIDENCE

The Hon. T.J. STEPHENS (15:22): When does the minister expect Professor Lee to actually submit her report? What sort of time frame does a Thinker in Residence normally have before they give their report to the government?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:22): We usually find that it

is very quickly after their final visit to the city. I expect that Professor Lee would have her report lodged within the next couple of months.

ANSWERS TO QUESTIONS

AUDITOR-GENERAL'S SUPPLEMENTARY REPORT

In reply to the **Hon. D.W. RIDGWAY (Leader of the Opposition)** (2 July 2009).

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy): The Treasurer has advised:

The $72.795 million of appropriation provided to the Community Road Safety Fund in 2007-08 represented the funding required to meet expenditure requirements of the fund. Of this amount, $58.5 million was met through speed related traffic infringements revenue collected by SAPOL and the Court Administration Authority with the balance being met by an additional government contribution.

DISABILITY SA

In reply to the **Hon. J.A. DARLEY** (17 July 2009).

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy): The Minister for Families and Communities has provided the following information:

Disability SA has 24 full-time equivalent (FTE) Psychologist positions, which are filled by 27 practising psychologists covering children's and adult services.

They provide specialist, disability-specific assessment and intervention for clients, ranging from undertaking assessment of intellectual functioning for determining service eligibility, to intensive in-home positive behaviour support programs for clients with challenging behaviours.

There has been no reduction in the number of Psychologist positions in Disability SA during or since the reform of disability services that occurred during 2006-07. Disability SA psychologists work on a prioritised, as-needs basis with any client needing psychology support and therefore, individual caseloads vary according to the type of work and the intensity and complexity of involvement.

All positions are filled or about to be filled, except for a 0.2 FTE vacancy where one psychologist had reduced their hours temporarily under the Department for Families and Communities' Flexible Workplace Policy.

Given that Disability SA has 24 FTE Psychologist positions, the basis of the question is incorrect.

In addition to the services provided by Disability SA psychologists, people with disabilities are entitled to use the services that are available to the wider community, including the services of psychologists. Alternative access to psychologists is available through South Australian Mental Health Services, as well as Medicare's 'Better Access to Mental Health Care' initiative and the 'Better Outcomes in Mental Health' program, both of which can be accessed through general practitioners.

MATTERS OF INTEREST

MERCY MINISTRIES

The Hon. I.K. HUNTER (15:23): I am pleased to rise today to inform the chamber that Mercy Ministries, an organisation about which I have spoken before in this place, has announced that it will be closing its Sydney group home at the end of the month. Additionally, following ongoing controversy surrounding the organisation and an ACCC investigation, Hillsong Church has announced that it is cutting all ties with Mercy Ministries around the world. I cannot help but think that the announcement of the Sydney closure, due to extreme financial challenges and a steady drop in support base, is directly linked to the drying up of this deep well of funds that the ministry has enjoyed in the past.

Furthermore, according to an online article in the *Daily Telegraph* (which I think is a Sydney newspaper), Gloria Jean's, once a prominent supporter of the ministries, has also severed all ties with Mercy. I quote from that paper as follows:

> A spokesperson for Gloria Jean's said that the company has since severed all ties with Mercy Ministries. There is now the Gloria Jean's International foundation, which is primarily focused on humanitarian and community programs. The foundation does not support Mercy Ministries.

It seems that the brainwashing, the exorcisms and the denial of proper medical and professional attention—plus, undoubtedly, the ongoing negative attention that seems to follow Mercy Ministries around the world—were just a bit too much for these corporate donors. Last year when I spoke about the work of Mercy Ministries I read the story of one young woman who turned to Mercy in her moment of need, only to find that the positive experience she was hoping for was nothing like the reality. She was removed from the care of her doctors, separated from the support of her qualified counsellor, isolated from her family, friends and church, and disconnected from study and work opportunities. As I recounted, this young woman spoke of being reprogrammed by Mercy.

In 2008 *Sydney Morning Herald* journalist Ruth Pollard investigated the claims of victims of Mercy Ministries, bringing much needed attention to the organisation. In today's *Sydney Morning Herald* she has a follow-up piece, outlining the news of the closure, in which she states:

> Allegations of widespread abuse at Mercy Ministries Group homes appear finally to have caught up with the fundamentalist Christian group, which has announced it will close its Sydney home on 31 October, citing 'extreme financial challenges and a steady drop in our supporter base'.

She goes on:

> Targeting girls and women aged 16 to 28, Mercy Ministries claimed—on its website and in promotional material distributed in Gloria Jean's cafes around the country—that its programs included support from 'psychologists, general practitioners, dieticians, social workers [and] career counsellors'. Instead the program prevented the residents gaining access to psychiatric care, choosing to focus on prayer, Christian counselling and exorcisms to 'expel demons' from the young women, many of whom had serious psychiatric conditions such as bipolar disorder, anxiety and anorexia.

A *Herald* investigation last year revealed that the women who entered the program were required to sign over their Centrelink benefits and were virtually cut off from the outside world, except for a weekly trip to the local Hillsong Church for worship. Pastor Brian Houston, of Hillsong Church, issued a press release confirming the severing of ties between the church and the ministry. In his media release he states:

> Hillsong Church has cut ties with Mercy Ministries around the world following an ACCC investigation into Mercy Ministries Inc. Pastor Houston informed thousands of Hillsong attendees at a leadership meeting on Tuesday that the church has severed any affiliation with Mercy Ministries internationally and would not be associated with any attempt by Mercy Ministries USA to recommence within Australia under that or any other name. Pastor Houston said he would encourage those who have been involved with Mercy Ministries Inc. in Australia to take responsibility by cooperating with ongoing investigations.

By that I think he means the ACCC investigation. In light of the announcement of the closure of the Sydney ministry, I have today written to the Minister for Mental Health, bringing the *Sydney Morning Herald* article and the press release distributed by Hillsong to her attention, and I have asked her to inquire, in light of this recent announcement, what relationship, if any, the department has with any of the Mercy Ministries houses that were opened here in Adelaide last year.

Mercy Ministries does not help young women who come to it in distress; instead, it manipulates the vulnerable, leaving those who do not conform fully to fall by the wayside. In doing all this Mercy Ministries cannot resist the temptation of making a quick buck out of these girls' misery. It makes them sign over their Centrelink payments and then apply to the commonwealth for carers benefits. Mercy Ministries has not only ripped off vulnerable young women but also ripped off the taxpayer. I am pleased to hear of the closure of Mercy Ministries in Sydney, and I hope we can expect similar announcements from around Australia and the world.

NIARCHOS, MR N.

The Hon. R.D. LAWSON (15:28): The Attorney-General recently said (on 15 October):

> Earlier this year I stumbled upon a disappointing example of the problems created by self-governance within the legal procession when I noticed in the daily cause list—and I try to read the cause list every day—the name of yet another former Law Society luminary and Criminal Law Committee guru.

He went on to name that person as Mr Nicholas Niarchos and said that his name was listed to appear before the Supreme Court in what he 'eventually discovered' was an application pursuant to

section 49 of the Legal Practitioners Act to continue to practise law despite entering into an insolvency agreement. The Attorney went on to say:

> It was only upon requesting that a staff member of mine attend the matter in court that I learnt the nature of Mr Niarchos's appearance.

He went on:

> At no point did the Law Society appear to have any intention to inform me as Attorney-General of Mr Niarchos's hearing. He was a Law Society mate; that is 'mate' spelt with three As. This is disappointing, as one would reasonably think that it would be prudent to ensure maximum transparency about such matters rather than to allow a situation where the Attorney-General finds out only by my assiduously reading the cause list that a lawyer is applying to continue to practise...

Finally, he said:

> The Law Society would have covered up for one of its nomenclature nicely. Mr Goldberg was quiet as a mouse.

Mr Goldberg, a past president of the Law Society, wrote to the Attorney-General a letter dated 19 October, which has been forwarded to all members of parliament. In that letter to the Attorney-General, he said:

> You said in parliament that: 'It was only upon requesting that a staff member of mine attend the matter in court that I learned the nature of Mr Niarchos's appearance.' That is not so. You learned the nature of Mr Niarchos's appearance in the Supreme Court from me prior to the hearing. We both attended a dinner...on 5 December 2008, and afterwards, at the bar, you asked me why the matter of Niarchos was in the cause list. I informed you that Mr Niarchos was making an application to the court to continue to practise while insolvent. In the circumstances I take objection to your characterisation of my conduct as: 'calculated silence'.

Mr Goldberg continued:

> You asked me what it was about; I told you.

Who is speaking the truth here: the former president of the Law Society or the Attorney-General? One explanation for the Attorney-General's apparent lapse of memory is that he was in that after dinner haze which sometimes affects members of the Labor caucus, the most recent outbreak of which occurred at last year's 'Kevin for Premier' dinner. However, given the Attorney-General's form, that innocent explanation is not credible. I only have to mention the long series of cases where the Attorney-General has made personal attacks on others to make that point clear.

We all remember—and so does the public—his attacks upon the Deputy Chief Magistrate, Dr Cannon, which cost the South Australian taxpayer dearly. We remember his attacks on the former head of his own department, Kate Lennon, and his explanations concerning the Crown Solicitor's Trust Account. We remember his attacks upon the Director of Public Prosecutions, Stephen Pallaras; his attack upon the pathologist Professor Tony Thomas; and his bungled appointment of Don Farrell's sister, Leonie Farrell, to the bench of the industrial court.

This is the Attorney-General who reads the racing form guide during a formal conference with the Chief Justice. It is the person who promised that the very first act of a Rann Labor government would be the re-opening of Barton Terrace. The number of occasions in which the Attorney-General has been caught short are legend. It is a matter of regret that he continues to hold the office of first law officer in this state.

ALP STATE CONVENTION

The Hon. B.V. FINNIGAN (15:33): Poor old Robert Lawson. Come February the writs will be issued and his career will be finished, while Michael Atkinson will still be Attorney-General whether or not he likes it.

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): The honourable member will refer to the Attorney-General by his proper title.

The Hon. B.V. FINNIGAN: I just referred to him as the Attorney-General.

The ACTING PRESIDENT: It is the Hon. Michael Atkinson.

The Hon. B.V. FINNIGAN: On the weekend, the Labor Party held its annual state convention at which we finalised our platform for the next election. The platform will ensure Labor's commitment to continued fiscal and economic responsibility and to providing the best health care/education system, a safe community and ensuring that our infrastructure needs are met into the future. Preselection also happened at that state convention, and at the next election I will have

the honour to represent Labor for the Legislative Council. I congratulate the other nominees who were also preselected: the Hon. Paul Holloway, the Hon. John Gazzola and the Hon. Gail Gago.

I particularly congratulate Mr Tung Ngo, who has been preselected as a Labor candidate, and he is indeed my assistant of relatively recent months. I think it is a matter of great pride that Mr Ngo will be one of the first Vietnamese-born Australian candidates—I think probably the first—to be a candidate for a major political party and, if successful, certainly the first Vietnamese-born Australian to be elected to a parliament in Australia.

He has a long history of involvement with local government in the City of Port Adelaide Enfield, including a term as deputy mayor, and he continues to be a councillor today. He is also involved in the community in other ways, including in the St Vincent de Paul Society. Certainly, I take pride in the fact that the Labor Party has selected for the first time a Vietnamese-born Australian as a candidate for office in parliament, and I look forward to working with Mr Ngo, although I think Mr Tung is the proper order.

The Hon. T.J. Stephens interjecting:

The Hon. B.V. FINNIGAN: I look forward to working with him to try to secure an election victory in March.

Members interjecting:

The ACTING PRESIDENT: Order!

The Hon. B.V. FINNIGAN: The Hon. Mr Stephens shows his ignorance—

The Hon. T.J. Stephens interjecting:

The ACTING PRESIDENT: Order!

The Hon. B.V. FINNIGAN: As with Mr Ban Ki-moon and the names of some people from South-East Asia, the first name actually goes last, so it would be Mr Tung and not Mr Ngo, technically speaking.

I put on the record today that, following the events at the weekend, the Hon. Mr Lucas has egg all over his face because he has been continually making reference to what is happening in the Labor Party. Apparently, he has had nothing better to talk about over recent months. On Wednesday 17 June, he spent some time talking about me, saying that I wanted to become President of the upper house, on the basis that I had a copy of standing orders I had borrowed from the Secretary of the Budget and Finance Committee. Apparently, that was his proof on that occasion.

Not a month later, on 15 July, he said that I was trying to unseat the Leader of the Government, the Hon. Mr Holloway, when, of course, the Hon. Mr Holloway is a Labor candidate at the next election. I am very pleased to be a candidate with him, and I hope to serve with him after the election if we win the support of the South Australian people. On 22 October, the Hon. Mr Lucas was wrong again when he said that the Hon. Gail Gago would be relegated on the ticket. He also made reference to Tung Ngo being preselected and said that, if successful, it might help 'Finnigan'—that is, me—with future caucus votes.

It is very interesting that the only thing the Hon. Mr Lucas—the shadow minister for finance, the man who is supposed to make all the figures add up—has to talk about is which Labor members will hold which government positions after the election and who will be No. 5 on the Legislative Council ticket for the ALP on the basis that Labor will, in fact, win five positions. The Hon. Mr Lucas has such confidence in his new leader, Mrs Redmond, that he has nothing better to talk about than which Labor members will hold which government positions and speculate that Labor will win five positions at the next election. These are the honourable members who are relying on the Hon. Mr Lucas to get them over the line come March, and here he is publicly talking about the Labor Party being victorious.

Time expired.

FINE FOOD EXHIBITION

The Hon. C.V. SCHAEFER (15:38): Last night, I attended the launch of the Fine Food Exhibition, which is to be held in October next year in Adelaide. Adelaide is the last major city in Australia to have the exhibition. It began in Sydney and then went to Melbourne, Brisbane and Perth.

An honourable member: Next to last.

The Hon. C.V. SCHAEFER: Yes, next to last—without perhaps Darwin. It was a lovely evening for me because I caught up with a number of people from the industry whom I have known for some time. In September, I also went to the launch of the report of a former thinker in residence, Professor Fearne, entitled 'Sustainable food and wine value chains'. I commend the government for bringing Professor Fearne out from England to make some observations on our industry in South Australia. Amongst other things, he said:

> There is no reason why South Australia could or should not position itself as the innovator in Australian food and wine...However, to develop a sustainable competitive advantage, South Australian food and wine businesses must devote more resources to penetrating high value markets and avoid the 'race to the bottom', competing purely on price, which they are ill-equipped to win.

Another quote states:

> It's clear that we have some huge opportunities and challenges in the next century and already we can see the processing/value-adding part of certain sectors making a growing impact on our industry and its import profile...The...team is now putting the plan into action—using the partnership between government and industry.

That quote was from the Food for the Future team in 1999. I then have a quote from the minister, Hon. Paul Caica, who launched Professor Fearne's report with the following press release, stating:

> The food and wine industries together contribute $14 billion to the State's revenue and employ almost 20 per cent of the State's workforce...'businesses need to work together to meet those demands,' Professor Fearne said...'enormous potential...exists, and the key steps needed to position South Australia as the leading innovator in Australian food and wine [are collaboration]', he said.

Interestingly, I have another quote, from the then premier John Olsen, who in 2001 said that one in every five jobs in our state was accounted for by the food industry—and, in fact, we now have 20 per cent, which adds up to the same—and that in 2000-01 the food industry alone accounted for $8.3 billion. It does not take a great economist to work out that we have not made any advance since then. The Hon. John Olsen went on to say:

> ...Industry is on track to achieve its goal of growing to $15 billion by 2010, as set out in the Food for the Future plan launched in 1997...However, the pace of change in the global Food Industry continues...There are many opportunities for individuals to pursue, but real success will come through collaboration.

So, in fact, in 7½ years there has been so little progress in the food industry in South Australia that essentially the same reports have been quoted in all that time.

I commend Professor Fearne, but it saddens me deeply to think that this government has been so narrow minded, so lacking in innovation and so silo oriented that it was unable to grasp the foundations that were laid to a very successful program since 1997 and in fact launched in 1998, so 11 years later we are revisiting where we were when the program was launched.

Time expired.

DEAF AUSTRALIA

The Hon. D.G.E. HOOD (15:43): Deaf Australia, then called the Australian Association of the Deaf, was established in 1986 to work at the national level in collaboration with its state branches. Deaf Australia is the leading national peak body managed by deaf people, and it represents, promotes, preserves and informs the development of the Australian deaf community, its language and cultural heritage. It provides an information and advocacy service for deaf people who use Auslan, which is Australian sign language.

The vision of Deaf Australia is to have a society in which deaf people are accepted, respected and included in the Australian community. Deaf Australia provides information and advice to government, industry, service organisations and the community on a range of issues and conducts information and development activities for the deaf community.

The Shut Out report, as it was called, produced by the National People with Disabilities and Carer Council and released in August, paints a depressing picture of discrimination against those suffering from deafness and other disabilities. The central conclusion of the report is a powerful indictment of our system of dealing with disability in this country. I will read a portion of the report into the *Hansard* record, if I may, because of the important points it makes. It states:

> Many of the large institutions that housed generations of people with disabilities—out of sight and out of mind—are now closed. Australians with disabilities are now largely free to live in the community. Once shut in, many people with disabilities now find themselves shut out. People with disabilities may be present in our community but too few are actually part of it. Many live desperate and lonely lives of exclusion and isolation. The institutions that

once housed them may be closed but the inequity remains. Where once they were physically segregated, many Australians with disabilities now find themselves socially, culturally and politically isolated. They are ignored, invisible and silent. They struggle to be noticed, they struggle to be seen, they struggle to have their voices heard.

This is particularly true in the deaf community. I note that Deaf Australia President, Kyle Miers, has responded to the report by calling for extensive changes to disability policy across the nation. In particular, the association has called for recognition of deaf people's right to use the Auslan system and to be recognised as being bilingual in English and Auslan.

Family First agrees with Deaf Australia that it is time to stop this nonsense (as the association calls it) about Auslan being bad for deaf people, and to start listening to the advice from within the deaf community on what is needed to give deaf people a fair go and to ensure that those in the deaf community are included more fully as valued workers and citizens, and are provided with appropriate resources.

Deaf Australia's second national conference is being held in Hobart tomorrow. I want to express my best and, on behalf of Family First, assure them that they will continue to have the support of our party in parliament on any issues or legislation that concerns them.

MOTORSPORT FACILITY

The Hon. T.J. STEPHENS (15:46): I will use my time today to talk about plans to deliver a motorsport facility for Adelaide at Gillman. The state Liberals support such a facility as we think it will be of great benefit to the community.

Adelaide Motorplex is a private consortium that has been working on a proposal for the past two years to develop a $25 million multicode motorsport complex at Gillman near Port Adelaide, at the extension of Hanson Road. The area is owned by the LMC and is an unused parcel of land containing a stormwater retention area, protected flora and a small area of wetlands.

South Australia and Victoria are the only states that do not have such a facility. Calls have intensified in recent months for a motorsport complex to be developed that provides for the various codes of the sport. The Adelaide Motorplex consortium is not seeking any government funding; rather, it wishes to purchase or lease land at commercial rates. It has met with ministers Wright and Foley and the federal member for Port Adelaide, Mark Butler, who all expressed interest in the project. However, the government's enthusiasm has waned following an horrific crash on Magill Road which the media and the then road safety minister (Tom Koutsantonis) tried to link to the legitimate sport of drag racing.

The national body for drag racing, the Australian National Drag Racing Association Incorporated (ANDRA), is very enthusiastic about the Adelaide Motorplex proposal and, in particular, the prospect of using such a complex as an off-street drag racing venue, allowing young amateur drivers to race in a safe and controlled environment. The merits of this as a road safety measure would have to be explored further, but certainly the interstate experience has indicated a positive impact on reducing illegal street racing.

The other codes of motorsport would also be stakeholders in such a facility. Examples include motorbikes, jet boats (given that currency Creek is closed at present), go-karts and circuit racing. The proposal being put forward also outlines an adjacent industrial park to foster related cluster industries such as the automotive industry, much like Blacktown in Sydney. The apprenticeship opportunities and flow-on economic benefits would also be explored, and the consortium is including this in its business case.

Teen Challenge has also expressed an interest in working with Adelaide Motorplex in developing youth mentoring programs for troubled and disadvantaged youth. Overall, the whole concept is exciting.

I was sent to Perth recently by Liberal leader Isobel Redmond to visit the Perth Motorplex at Kwinana, upon which the New South Wales facility is modelled. It is a magnificent facility and could be used as a model for the Adelaide Motorplex. Adelaide has shown itself to be a motorsport mad town, as evidenced by the enormous success of the Clipsal 500. However, the city has lacked a drag racing venue since 2000, when the venue near Virginia ceased operating.

ANDRA has spruiked the economic and tourism benefits that such a complex could bring to Adelaide and South Australia, with events in Sydney and Brisbane attracting up to 30,000 spectators.

Last Sunday I represented the state Liberals on the steps of Parliament House at the Adelaide Motorplex public rally which attracted over 1,000 people. The amount of effort these people have put in to demonstrate how much they believe in their cause is to be commended. The state Liberals are big supporters of motorsport, and I remind honourable members that the Clipsal 500 was an initiative of the formal Liberal government. The turnout of supporters on Sunday was outstanding, and this rally demonstrated how much these people want a motorsport facility in Adelaide.

During the rally, I addressed the crowd and assured those present that the state Liberals support their cause. The Hon. Rob Brokenshire also joined me at this rally, and he spoke with some passion about the need for such a facility. I announced to the crowd that a state Liberal government would make available the land required for lease or purchase for a multicode motorsport complex. The announcement was warmly welcomed, and it was pleasing to be able to deliver that message.

The Rann government is unfairly playing politics by stating that facilities such as this would encourage further hoon driving. Something needs to be done about safety on our roads, and the fact that the government is not willing to back a facility that will give young drivers a place to race off our streets in a controlled environment is disappointing to say the least. Why should we miss out on the facilities other states enjoy, and why should we be left behind? A Liberal government would certainly assist a project that would host racing off the streets in a controlled environment while educating young drivers and creating jobs in the local community.

Time expired.

COMMUNITY FOOD SA

The Hon. J.A. DARLEY (15:51): I rise today to speak about a very important and worthwhile charity, Community Food SA, an operation that provides low-cost groceries to high-need members of the community on low incomes. This simple concept has provided benefits not only to those who are assisted by savings to their grocery bill but also to the wider community.

The organisation was established in 1989 by a small group of residents in Blair Athol who recognised that there was a need for such a service in the community. The organisation has now grown from operating out of a room in Gepps Cross Primary School into a small supermarket at Kilburn. Over nearly 20 years, the centre has provided over $9 million in groceries, at an estimated $2.8 million in savings, to people from over 54 different countries.

Community Food SA not only benefits the people in the community who receive sometimes significant savings but also provides a sense of community spirit for approximately 90 volunteers, who generously contribute approximately 400 hours of work per week. The centre's volunteers have included students on work experience, the long-term unemployed, mentally and physically impaired persons and people with drug and alcohol abuse problems, as well as many others who continue to support the organisation by generously donating their time.

The centre was recently visited by representatives of Disability SA. They were astounded to find that one-third of the volunteers had either physical or mental disability, and they were encouraged by the positive personal growth those people have gained from being involved. By working at the centre, people have often experienced an increase in self-confidence, gained a better understanding of the community and been given a platform to progress to employment within relevant industries.

Furthermore, the centre has worked with a number of dieticians from Enfield Primary Health to develop an initiative to promote healthy eating. Pre-bundled meals, which include all the ingredients required to cook a quick, simple and nutritious meal, help educate patrons and their families about the importance of a balanced diet. This is especially important at a time when the nutrition of those in lower socioeconomic groups is rapidly declining and diet-related diseases such as diabetes, obesity and cardiac disease are increasing. Monthly cooking demonstrations are also held to promote healthy eating on a budget.

Community Food SA obtains the majority of its stock by monitoring the weekly supermarket specials and buying in bulk to achieve the lowest prices possible. A selected number of wholesalers and manufacturers support the organisation, and it is heartening to see that some local businesses encourage the centre by donating food products. The centre is always looking for additional support from wholesalers and manufacturers.

In 2005, the centre's rent increased by 700 per cent, and the centre faced closure as it was unable to sustain such a dramatic increase. A number of assistance packages meant that the centre was able to remain open. However, to overcome this and other similar problems, the centre is now attempting to raise $500,000 to purchase the property it currently occupies. Recent plans to purchase the property are now uncertain due to a number of complicating factors, and the situation is now critical. Community Food SA must now find another site or face closure.

It is all it too easy to give a donation to charity, but I believe it is important to recognise the contributions of those in our community who selflessly and tirelessly give their time and effort to causes such as these. So, I would like to give special mention to the centre's manager, Mr Neville Mibus. Neville has devoted countless hours to this cause over the past 20 years and has only recently begun to receive a very modest salary. I hope that by speaking about Community Food SA people will recognise how necessary this service is, and support it in whatever way they can.

Time expired.

NATURAL RESOURCES COMMITTEE: KANGAROO ISLAND NATURAL RESOURCES MANAGEMENT BOARD

The Hon. R.P. WORTLEY (15:55): I move:

That the 34th report of the committee, on Kangaroo Island Natural Resources Management Board levy proposal 2009-10, be noted.

The Kangaroo Island Natural Resources Management Board levy proposal took several months longer to reach the committee than usual, arriving on 4 September 2009. This delay occurred because of the vigorous community debate surrounding the new water policy proposed by the natural resources management board for the island.

Committee members met with the Kangaroo Island community and natural resources management board members on a trip to the island on 21 July 2009. After the levy proposal was received, the committee also met with the board's presiding member Janice Kelly and general manager Jeanette Gellard at Parliament House on 10 September 2009.

The committee was again impressed by the consultation efforts undertaken by the Kangaroo Island NRM board. Although the effectiveness of the consultation process can be difficult to gauge, there did not appear to be any concerns with the proposed 6 per cent levy increase, which is slightly above CPI. The committee considers that increases to levies should generally be restricted to CPI so as not to impose an unreasonable burden on the community. However, in this instance the proposed division 1 levy was only marginally above the 5.1 per cent CPI figure, with the increase resulting from additional assessments rather than increases to the average levy.

As previously mentioned, by far the most contentious issue was the new water policy for the island, which prompted two verbal presentations and two written submissions to the committee. It was clear that a policy needed to be put in place, and developing a policy had previously been recommended by this committee. It was also easy for us as committee members to understand why landholders would be concerned about the policy, which was developed based on Mount Lofty Ranges catchment data rather than local data, which unfortunately was absent. In addition, and of particular concern to landholders, was the fact that the new policy had the potential to severely curtail landholder dam-building activities on parts of the island where the DWLBC considers water resources to be over-allocated.

It is inevitable that recalibration of the water policy will have to occur as accurate local data becomes available. The committee is strongly of the view that the process of data collection should be made a priority by the board, so that accurate and sustainable water use planning can be undertaken on the island. This will give some degree of certainty to landholders and other interested parties and enable a more stable investment and planning environment to develop.

Members heard from a number of witnesses that there remained a significant duplication of resources, with potential efficiency gains to be made from rationalising or improved sharing of administrative resources on the island. Members trust that in due course these issues will be given proper consideration by the relevant departments.

All in all, members were again impressed by the performance of the Kangaroo Island NRM board, especially its considered and thorough approach to community consultation. I wish to thank those who gave their time to assist the committee during its consideration of the 2009-10 levy proposed by the Kangaroo Island Natural Resources Management Board. Discussions

between members of the committee, board members and staff, together with local landholders and other interested parties, took place during the committee's visit to Kangaroo Island on 21 July 2009.

Finally, I take the opportunity to acknowledge the members of the committee: Mr John Rau, Presiding Member, the Hon. Graham Gunn MP, the Hon. Stephanie Key MP, the Hon. Caroline Schaefer MLC, the Hon. Lea Stevens MP, and the Hon. David Winderlich MLC. They have worked cooperatively throughout the process. I also thank the staff of the committee for their professional work. I commend the report to the council.

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

NATURAL RESOURCES COMMITTEE: WATER RESOURCE MANAGEMENT IN THE MURRAY-DARLING BASIN

The Hon. R.P. WORTLEY (16:00): I move:

That the report of the committee, on Water Resources Management in the Murray-Darling Basin Volume 2 'The Two Rivers', be noted.

This is the second major report of the Natural Resources Committee relating to this inquiry. The first report follows on from Volume 1 'The Fellowship of the River' and a separate issues paper regarding critical water allocations. The title of this report is 'The Two Rivers', which is a reference to the vastly different personalities of the Darling and Murray Rivers. As members would be aware, the Darling is an ephemeral river, pulsing with great surges after irregular torrential downpours while in between times it remains a sleepy, ambling stream often ceasing to flow altogether.

The Darling is separated from the Murray by vast expanses of arid inland Australia, extensive floodplains and the Menindee Lakes near Broken Hill which, when full, evaporate 750 gigalitres of water per annum. The Murray on the other hand has, up until recently, been fed by regular winter rains falling in the South-East of the continent. It has generally been dependable and, over the decades, has been a source of considerable prosperity. The Darling is much less important to South Australia than the Murray, with the Darling under natural conditions contributing an average of 16 per cent to the total flows of the Murray.

The argument that Cubbie Station or any other large northern water licence holder should be purchased in order to return the water to the system to benefit South Australia's Coorong and Lower Lakes is unfortunately misguided and flawed. Such a purchase would unfortunately assist the South Australian reaches of the basin very little, if at all.

A combination of transmission losses, evaporation and allowable extractions would return just a tiny fraction of any water bought for South Australia. Such an expenditure would be very difficult to justify. As part of its April 2009 South Australian Riverland fact-finding tour, the committee inspected the Yatco Wetland Water Savings project overseen by the Yatco Wetland Landcare group, comprising local irrigators, with support from state government departments, the South Australian Murray-Darling Basin NRM board and local businesses.

Since construction of Lock 3 in 1925, Yatco Lagoon had been permanently inundated, creating a shallow and highly effective evaporation pan over its 346 hectares. In November 2007, in an effort to reduce evaporation and save River Murray water, a permanent rock wall and regulator were constructed to isolate the lagoon from the main river channel, drying it out completely.

In March 2009, the regulator was opened allowing three gigalitres of water through to slowly refill the wetland. As a result of the extended drying period, approximately three gigalitres of water was prevented from evaporating. A new management plan has now been developed with wetting and drying cycles more closely mimicking a natural system.

This new management regime is expected to improve the ecology and water quality which were suffering under permanent inundation and reduced evaporation from this wetland by approximately two gigalitres every three years. The committee was impressed with the apparently successful efforts to reduce evaporation from Yatco Lagoon while also improving its ecology by establishing a pattern of wetting and drying. Members would like to see consideration given to a similar project for nearby Wachtels Lagoon in order to achieve similar outcomes.

I thank all those who gave their time to assist the committee with this inquiry. I also commend the members of the committee: Presiding Member, Mr John Rau MP; the Hon. Graham Gunn MP; the Hon. Stephanie Key MP; the Hon. Caroline Schaefer MLC; the Hon. Lea Stevens

MP; and the Hon. David Winderlich MLC, for their contribution and support. They have worked cooperatively throughout this inquiry. Finally, I would like to thank the staff of the committee for their assistance. I commend this report to the council.

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

BUDGET AND FINANCE COMMITTEE

The Hon. R.I. LUCAS (16:04): I move:

That the report on the operations of the committee, 2008-09, be noted.

In moving this motion, I intend to speak relatively briefly. At the outset, I thank the members of the committee for what has been a rigorous work program over the past 12 months, and I thank the staff members who assisted the committee. I know that I speak on behalf of all members of the committee when I indicate our concern for our part-time research officer who, for much of this year, has suffered significant health problems. I know that all committee members wish her the best in terms of tackling and managing the implications of her health issues.

The committee's annual report is a brief summary of the workload of the past 12 months. I am sure that, whilst some members of the committee may not be prepared to concede this publicly, when they see some of the evidence given by some of the chief executives and senior finance officers in relation to their stewardship of the taxpayer' dollar, and some of the examples we have seen over the two year period of this committee, even in their most private moments I am sure they shake their heads as to how the many examples of waste of taxpayers' money could have been allowed to continue in the way they did.

We have had evidence of IT schemes, like maintenance works in the housing development, in the families and communities department, which is strapped for money, and up to $5 million being wasted on a new software program, which in the end had to be scrapped and nothing could be salvaged at all—a tragic waste of resources in an area where all of us would support improvements in services. We have seen similar examples—I know that the IT area is a difficult one—of extraordinary blow-outs in terms of the costs of programs in the Treasurer's own Department of Treasury and Finance, and I refer to the Ristech scheme. Since the original conception, the delay has been some seven or eight years and still will not be concluded for another couple of years. The cost has more than doubled from around $20 million to now well over $40 million in terms of total cost. The committee has taken evidence of a significant number of examples.

Whilst I would not expect government members to join in the public criticism of their own ministers, I would hope that in their private moments they are prepared to look at the evidence and take up these issues with their ministers and, should they be re-elected, hopefully pressure some of those ministers to take much closer control of what is going on within their departments and try to prevent some of the gross waste of taxpayers' money that we have seen in terms of a range of projects.

I will not spend my time this afternoon going through all the examples, because clearly there are too many to address. In a couple of general themes, I refer to the committee's early attention to the significant waste going on within the Shared Services project, and we are delighted to see that in the past two annual reports of the Auditor-General his officers have started to report on this issue. I remind members that it was the early work of the Budget and Finance Committee that shed public light on the scandal emerging within Shared Services in South Australia. Essentially the claimed savings of $60 million a year have not materialised at all and the Treasurer has had to recast his budget to acknowledge the fact that the savings that were claimed will not be achieved.

The embarrassment of the Treasurer in this regard is exacerbated by the fact that his own department investigated the Shared Services concept back in 2003-04 and spent hundreds of thousands of dollars on consultants to look at it, and in the end Treasury, his own department, recommended strongly against proceeding. The government at that stage accepted that advice. But in 2006 the treasury white knight from interstate, Mr Smith, arrived to look at this area. He recommended that Shared Services would save hundreds of millions of dollars, and the Treasurer ignored the advice and the investigation that was being conducted locally by Treasury. I think that the Treasurer is probably rueing the fact that he has accepted Mr Smith's advice, because it has been a source of major embarrassment to him in relation to his management of his own department now that Shared Services is within his portfolio area.

The second broad area that I canvass is the issue of savings. The government in each budget since 2006-07 has listed in bold numbers the aggregate amount of savings that will be achieved by all the departments. The government continues to maintain that 93 per cent of the savings outlined in 2006-07 over the next four-year period have been achieved. Again, when the Budget and Finance Committee has gone to the departments and said, 'Okay, you were going to save this amount of money in this particular area; have you achieved it?', in a significant number of areas departments such as Health and Families and Communities have had to answer that, no, they have not achieved either any of the savings or all of the savings that the Treasurer has been claiming.

The Under Treasurer at the last meeting was unable to dispute the evidence of the CEOs of Health and Families and Communities when they had admitted that they had not achieved the savings. The 2006-07 budget claimed that there was going to be a reduction of 1,571 full-time equivalent persons in the public sector in South Australia. When we asked the Under Treasurer whether he had evidence to prove that that had occurred, he indicated that, no, they did not have any evidence that that particular reduction in full-time Public Service numbers had been achieved.

In fact, the Under Treasurer conceded in recent evidence that Health did not know how many people it employed, and neither did Treasury. This is a portfolio area where more than 30 per cent of the total budget is being expended, and that department and Treasury had to give evidence to the Budget and Finance Committee to indicate that they did not know how many people were employed. It was so bad that in last year's budget papers they had to upgrade the estimated number of health employees by around 800. That was how far they were out in terms of the estimate of the number of people they had employed.

One would have thought that it is not beyond the wit and wisdom of the Treasurer and ministers if you ask the simple question, 'Well, how many people are you currently employing,' that at least at some point they could indicate how many people the taxpayers are paying for. The Treasurer is incapable of providing a response, the Minister for Health is incapable of providing a response and, indeed, a number of ministers and CEOs also are unable to provide responses.

I think that savings is an area, again, where we should have higher expectations on our Auditor-General and his staff. I have to say that, in recent years, I have been disappointed at the quality of the overall audit reports that we receive when one compares them with, for example, the quality of reports in other states. I think that is a challenge for our new Auditor-General and his staff if the government continues to make claims about savings—for example, the claims about savings on future ICT.

We have flagged in the Budget and Finance Committee on a number of occasions that those claims were spurious, and evidence from departments such as Health indicates that the claims were spurious. I would have thought that, as most other audit officers in other states are doing, our audit office here should consider those sorts of claims being made by government and, in the end, it may well be that the audit office agrees with the government; and, if that is the case, so be it.

We can have a healthy debate about what evidence is brought to bear but, at the very least I would have thought, the government should not be allowed to get away with making claims that it is delivering savings, whether it be cuts in Public Service numbers or budget savings in total, or making claims that the Future ICT Program is saving $30 million a year, when one health finance officer told us that, instead of saving money, it would actually cost $51 million extra over four years.

Surely, that is something an audit office ought to look at of its own volition and provide information to us on as members of parliament. All members of parliament rely to a significant degree on the quality of the audit reports we receive in the parliament. All members of parliament are not expert on matters of public finance and budget, and members rely on the advice of the audit staff.

In some of these areas, I think that the audit staff could do worse than look at some of the issues that have been raised in the evidence to the Budget and Finance Committee and, of course, collect their own evidence and make their own judgment in relation to those issues. However, I think the issues are too important just to be ignored.

Through the year, I was delighted to see the interest in the operations of the committee from other members of the Legislative Council. In particular, I acknowledge the almost 100 per cent attendance of the Hon. Mr Darley. Although not a member of the committee, he attended most meetings.

Whilst I do not propose to speak on his behalf, as a former chief executive officer with some experience in public administration, I would be very surprised if he does not shake his head at some of the evidence he hears from chief executives these days who are earning certainly significantly more than he did in his time and, I note, significantly more than members of parliament and even ministers and the Premier. Clearly, one hopes that there would be higher expectations in terms of the quality of their performance.

In addition to the Hon. Mr Darley, a number of other members of the Legislative Council also attended on occasions in areas of interest to them. I know that the committee welcomes their attendance and interest and that it will welcome, over the next 12 month period, or however long this committee continues to operate, their continued involvement in and attendance at the meetings.

My final point is one I have made a couple of times over the past 12 months. Again, I indicate to the council that I believe the Budget and Finance Committee has demonstrated the importance of such a committee in our Legislative Council. Now that we have saved the council from the damage proposed to be wrought upon it by the Rann Labor government, long may the work of the upper house committees continue.

As I have said, and I will say again because we have an election coming up in March: I hope that future governments, whether they be Labor or Liberal, will have to confront the operations of a budget and finance committee operating in the Legislative Council. It is my wish that the Budget and Finance Committee will move to be a standing committee of the Legislative Council.

It is certainly my very strong view that, for it to be effective, it should continue to be constituted in such a way that it reflects the numbers on the floor of the chamber. It also ought to continue to be chaired by a member of a non-government party in the Legislative Council. Even if the committee does not become a standing committee, it is my strong view that, if it is established again as a sessional committee in the new session, it ought to be supported by the Legislative Council with the provision of permanent and ongoing staffing.

I repeat something I have said before: we cannot expect that all members of the Legislative Council in the future will be expert in the area of public finance. However, if this committee is to be effective, it should have permanent and ongoing staff who can provide not only detailed analysis of the budget of the government of the day and but also advice to members on possible questions that should be asked. It is then obviously up to the individual members of the committee whether or not they want to ask those questions.

However, there should be a permanent and ongoing resource available to the members of the Budget and Finance Committee, through its staffing, to assist them in keeping the executive arm of government to account by monitoring the expenditure of taxpayers' money. With those words, I ask other members of the chamber to support the motion noting the report of the committee.

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

NATURAL RESOURCES COMMITTEE: UPPER SOUTH EAST DRYLAND SALINITY AND FLOOD MANAGEMENT ACT

The Hon. R.P. WORTLEY (16:21): I move:

That the 36th report of the committee, on the Upper South East Dryland Salinity and Flood Management Act 2002, be noted.

Since December 2006, the Natural Resources Committee has been responsibility onsible for the oversight of the Upper South East Dryland Salinity and Flood Management Act 2002. This report relates to the committee's responsibilities under that act for the reporting period July 2008 to June 2009.

Our report summarises the Minister for Environment and Conservation's quarterly reporting to the committee and two reports commissioned by the Department of Water Land and Biodiversity Conservation, which provide more information on the benefits and risks of proceeding with construction of the final drain components of the Upper South East Program.

In our previous Upper South-East report, tabled 12 months ago, we also dealt with issues drawn to our attention in the October and November 2008 public hearings, at a site visit in July 2008 and in written submissions from members of the public. We would not normally report outside

the scope of the reporting period, but such was the significance of the matter brought to our attention that we resolved to bring it to the attention of the minister in that report.

This committee declined to make a recommendation regarding the proposed construction of the Bald Hill drain but, rather, suggested that the decision should be made on the strength of the independent environmental impact assessment. Members have since received a copy of 'Recent benefits to environmental values of the West Avenue watercourse and Bald Hill Flat associated with hydrological manipulation and drainage' drafted by Department of Water, Land and Biodiversity Conservation consultants GHD. The GHD risk assessment report noted that the current level of understanding regarding the West Avenue wetlands, the Bald Hill drain and reflows proposals was insufficient to accurately quantify the risks of the various options being considered.

The committee remains strongly supportive of the reflows concept of supplying additional water to wetlands, provided this can be undertaken without undue risk of further environmental damage. For example, the issue highlighted by GHD of introducing the pest species of fish, *Gambusia*, to the West Avenue wetlands needs to be worked through in order to protect vulnerable and endangered indigenous species. Without more water, many Upper South-East wetlands and their resident species do not have a future.

The committee notes that the construction of the proposed Bald Hill drain and reflows project is to go ahead. The decision by the minister will please some, but not everyone, however, in this instance. Pleasing everyone would appear to be impossible.

I wish to thank all those who gave their time to assist the committee with its inquiry. I also commend the members of the committee: the Presiding Member (Mr John Rau MP), the Hon. Graham Gunn MP, the Hon. Stephanie Key MP, the Hon. Caroline Schaefer MLC, the Hon. Lea Stevens MP and the Hon. David Winderlich MLC, for their contribution and support. All members have worked cooperatively throughout this inquiry. Finally, I thank the staff of the committee for their assistance. I commend this report to the council.

Debate adjourned on motion of Hon. C.V. Schaefer.

STATUTORY AUTHORITIES REVIEW COMMITTEE: LAND MANAGEMENT CORPORATION

The Hon. CARMEL ZOLLO (16:24): I move:

That the report of the committee, on an inquiry into the Land Management Corporation, be noted.

The final report is now before us to be noted. The Land Management Corporation, or LMC, as it is generally referred to, is a state government corporation and is responsible for managing South Australia's portfolio of land assets. Its main functions are to acquire, hold, manage, lease and dispose of surplus land. It also manages the sale of surplus government land on behalf of agencies or instrumentalities of the crown. One area on which the committee spent time deliberating, which I will refer to shortly, is the LMC's ability to act as the developer on government land releases.

The Statutory Authorities Review Committee resolved on 26 October 2006 to inquire into and report on the operations of the LMC. From the outset, the committee was clear that it would not examine individual land management cases. Rather, the committee's main focus, in accordance with the terms of reference, was to examine the effectiveness of the LMC as the principal land management agency in South Australia. In examining the LMC, the committee heard from interested stakeholders, who shared their experiences with the LMC.

Since this inquiry commenced some three years ago, the LMC has taken upon itself to implement new strategies to become more efficient at performing its functions. It is also important to note that sections of its charter have been amended since this inquiry commenced. The committee commends the LMC on its initiatives and, as such, finds that only a small number of recommendations are to be made to the minister.

Before proceeding further, I would like to place on the record that I was elected and appointed Presiding Member of this committee some 2½ years into the LMC inquiry. In fact, I was not a member whilst any verbal evidence was provided to the committee. I would therefore like to take this opportunity to thank the other members of the committee, including previous members, for their contribution. First, I thank the previous presiding member, the Hon. Bernard Finnigan. Other former members of this committee who contributed to this inquiry include the Hons Michelle Lensink and Nick Xenophon. I also thank our current members of this committee: the Hons Ian Hunter, Terry Stephens, Rob Lucas and Ann Bressington. I also acknowledge and thank the staff of the Statutory Authorities Review Committee for their contribution and ongoing support.

On behalf of the committee I would also like to take this opportunity to acknowledge and thank the organisations, agencies and individuals who submitted evidence to the committee during this inquiry. The committee heard evidence from a variety of sources and received both written submissions and oral evidence. The committee also wrote to a number of government departments and ministers in order to receive updated information. Through the information provided to it and through its own research, the committee was able to gain a clear understanding of the key issues.

The inquiry into the LMC received 20 written submissions from interested stakeholders. These included developers, industry associations, local businesses, local councils and even the Heart Foundation. Importantly, the inquiry heard from parties who had experienced direct dealings with the LMC. Many witnesses provided the committee with their own suggestions for improving the LMC. Others noted the important role that the LMC has in South Australian land management.

Not surprisingly, a number of private developers who gave evidence before the committee were critical of the LMC's involvement in acting as developer on projects. These private developers believed that in all cases the private sector should be given the opportunity to apply to act as developer via a tender process. However, the committee also heard evidence that the LMC is best placed to develop projects when there is a perceived or actual market failure and where the project is too complex and risky for the private market to deliver the desired outcomes.

Examples of potential market value described by the Urban Development Industry Association include affordability, demonstrating innovative product and fragmented ownership of growth areas. A major part of the evidence focused on a section of the LMC charter which has since been amended. This related to one of the LMC's previous functions to seek to maximise returns for government. A number of developers and industry association representatives stated that this promoted financial benefits for the government over and above providing equity of access to its land programs. The committee would have recommended that this wording be deleted from the LMC charter if it had not already been amended in this way before the completion of the inquiry.

The committee received evidence from a number of local businesses situated at Port Adelaide which were either adjacent to or located on land incorporating the Newport Quays development. The LMC released land on the Port Adelaide waterfront and contracted with the Newport Quays Consortium for its development. Known as the Port Adelaide Waterfront Redevelopment, it is the largest urban project of its kind in South Australia and includes a total of seven precincts to be established over 10 to 15 years.

The committee also conducted a site visit of this development, albeit before my time as Presiding Member. A number of the local Port Adelaide businesses that had dealt with the LMC in relation to this development explained to the committee the problems they had encountered. However, the committee is pleased to note that, by the end of this inquiry, most of those businesses had resolved any outstanding issues concerning the LMC.

Through correspondence received from minister Paul Caica in the other place, the committee is aware that negotiations with Adelaide Ship Construction International in relation to rent for its 50-year lease has been ongoing and the matter is still currently before the court.

The urban growth boundary was another hot topic for the committee to consider. The urban growth boundary is aimed at controlling urban sprawl and distinguishes between land that is designated to be used for housing, industry and commerce from that which is non-urban. Arguments were put to the committee both for and against the use of an urban growth boundary.

One argument put forward was that the boundary inhibits land affordability. The committee considered growth schemes used in other states, particularly the Victorian model, where rolling land supply is maintained. This comprises up to 25 years of land supplied for future urban growth. The committee was to recommend such a model to be introduced in South Australia. However, as recently noted, the state government's draft 30-Year Plan for Greater Adelaide will ensure a 25 year rolling supply of land if implemented as drafted. It also outlines growth expansion areas that are outside the current urban growth boundary.

The committee's recommendation accords with the proposed scheme outlined in the draft 30-Year Plan for Greater Adelaide. Housing and land affordability were key things that emerged throughout the inquiry and were particularly relevant to the evidence received on South Australia's urban growth boundary, and on LMC land releases.

The committee heard evidence that, on the one hand, if the LMC released more land and sold down its landholdings, housing affordability would significantly benefit. On the other hand, the committee heard that the LMC land releases do not affect housing or land affordability in any way. I note that the LMC accelerated its land release program in 2007 in order to accommodate the demand from unprecedented population growth.

The committee also received evidence that the recent release of the government-owned land by the LMC has been quicker than was the case two years ago. Other conflicted evidence received by the committee included references to, on the one hand, Adelaide being one of the most affordable cities in Australia and, on the other hand, according to a developer, Adelaide being one of the most unaffordable cities in the Western world. It was put to the committee that it would be unfair to blame the LMC and urban growth boundary alone for the increase seen in Adelaide land prices in recent years. The statistical information provided to the committee certainly led me to see that Adelaide is still one of the most affordable cities in Australia to live in.

Other matters raised during this inquiry included the following: the viability of identifying and incorporating heritage icons into new developments; tender processes conducted by the LMC and the criteria that it assesses applications on; LMC involvement in rural development; the LMC's relationship with other agencies; and the connection between the LMC and promoting active living in the community.

Having examined the evidence before it, the Statutory Authorities Review Committee has concluded that the LMC should remain the sole South Australian government land management agency. Arising out of the Port Adelaide Waterfront Redevelopment evidence, the inquiry heard that the LMC is currently only required to identify heritage-listed properties when looking at strategies to preserve such properties into new developments. However, the committee recommends that properties with possible heritage significance be identified and investigated at the initial planning stages of new developments.

Whilst the LMC believes that it works very closely with local government, the committee also recommends that a consultation committee comprising the LMC, Planning SA and the relevant local council meet when a new residential development is formed. This is to aid in greater communication and consultation between agencies, local councils and the LMC, and is vital when the LMC releases residential land in areas that may not have sufficient services already in place. This consultation committee would also be in a position to provide combined comprehensive advice to the local community. Again, I have to say that the LMC believed that it worked very closely with local government in this regard and, no doubt, on the matter of steering committees being formed. I suspect that it is really a matter of communication above all else.

As mentioned earlier, a number of witnesses raised concerns in relation to the LMC acting as sole developer on projects. After careful consideration of the evidence, the committee recommends that the LMC be the sole or major developer in projects where there is a perceived market failure or where it is deemed to be in the interests of the South Australian community.

The committee also recommends that greater transparency exist in the sale of LMC land. This can be achieved by the LMC providing clear reasons detailing its choice of selling land to one private enterprise over another. Again, this recommendation arose from evidence received from businesses in relation to the Port Adelaide waterfront redevelopment.

In conclusion, the committee is thankful for the opportunity to inquire into and report on the operations of the Land Management Corporation. The committee found that the LMC should remain as the government land management agency and continue to function according to its charter. With only a small number of recommendations, we hope that the government will look closely at the evidence received by the committee and take on board the committee's recommendations.

The Hon. R.I. LUCAS (16:39): I rise to support the noting of the Statutory Authorities Review Committee report into the Land Management Corporation. In doing so, I congratulate all current and past members of the committee who have soldiered away over the past three years or so in the production of the final report. I also thank, on behalf of all members, I am sure, the staff, who have worked very hard to assist the committee in reaching a conclusion and tabling a report.

The majority of the report has been agreed by all members, and I am not going to repeat many of the comments made by the Hon. Mrs Zollo, the current chair of the committee. The only one I will make reference to is recommendation five, which states:

That the LMC charter be amended to exclude a reference to 'seek to maximise returns from government'.

As the Hon. Mrs Zollo noted, the government did take action on that during the three year period of this review. I think all the evidence that was being taken was leading inevitably to this recommendation. I know the government could see that that was going to be the end result and proceeded to make that decision during the passage of the committee's deliberations, and we certainly support the government's change in that respect.

As I have said, the majority of the recommendations were supported by all members, but there were a number of areas where the Hon. Mr Stephens and I took a strongly divergent view to the other members of the Statutory Authorities Review Committee, and I want to address those issues in my contribution this afternoon.

The first related to the way in which the government treated Adelaide Shipbuilding Construction Industry (ASCI) in South Australia. In the first instance, I want to pay credit to the Hon. Terry Stephens who, within the committee, led the charge to try to get justice for this company, the Glamocak family and their investment in this company and the appalling way in which we believed they had been treated by the government. In speaking to that, I acknowledge that other members of parliament—that is, a former member of this chamber, the Hon. Mr Xenophon (now Senator Xenophon) and, in latter days, the Hon. Mr Darley—have taken up the battle to try to get some justice for the Glamocak family and for ASCI. We note that the majority committee recommendation does not really refer to the problems faced by the company. I guess that recommendation two obliquely refers to it when it states:

That greater transparency exists in the sale of LMC land to private business interests by the LMC providing clear reasons detailing its choice of selling land to one private enterprise over another.

That is an entirely unexceptional recommendation, and we do not have a problem agreeing with it, but we do not believe that it addresses the issue that ASCI was being confronted with. The two recommendations—as I said, led by the Hon. Mr Stephens, and again I pay tribute to him—from the Hon. Mr Stephens and myself state:

We have noted the appalling way in which ASCI have been treated over many years. We believe that ASCI's current deal is unfair and that a new deal should be negotiated at significantly lower annual costs than the last government offer. A new deal should recognise all the improvements ASCI have made to the site. We have been advised that ASCI have spent around $5 million improving the site since 2002.

That is essentially the issue of complaint from ASCI; that is, the deal and the negotiations that have gone on for years and years in relation to its position. We acknowledge that other members of parliament have sought to assist the Glamocak family but, within the committee, it was really left to the Hon. Mr Stephens and myself to continue to try to recognise the plight of this family and the unfair way in which they had been treated by the government. As we speak, the position has still not be resolved, as we understand it.

However, there is a second most unsatisfactory part of the government's treatment of ASCI, and that is mentioned in the second recommendation from the Hon. Mr Stephens and me, as follows:

There was no satisfactory explanation as to why the LMC and other government agencies were prepared to sell government land at the Grand Trunkway to the Samaras engineering business and Calabrese stonemasonry business but were not prepared to sell land to ASCI in the same area. It is noted that the Calabrese business was given preference on the basis that it would increase direct employment in the business from six full-time equivalents to 32. However, as at August 2009, direct employment had actually dropped to three full-time equivalents.

The committee was told that this was an important business that needed precedence over ASCI and others and that it was going to increase employment from six to 32, a five-fold increase in terms of direct employment. Instead of a five-fold increase, the company actually halved the number of full-time equivalent employees, according to the evidence given by the minister's department to the committee. As I said, we were never given a satisfactory explanation.

I can only speak on behalf of the Hon. Mr Stephens and myself, but we found the Glamocaks to have given truthful evidence to the committee. They were honest in their approach to the committee, and the Hon. Mr Stephens and I accepted their argument that they had been trying to get an answer for many years in terms of whether or not they could purchase some of the land on the Grand Trunkway.

They were continually told that there was no land for sale. However, and without going through all the gory detail of their evidence, they subsequently found out that a couple of other businesses—Samaras Engineering and Calabrese Stonemasonry—were, for some strange

reason, deemed to be more important or more significant, and were allowed to purchase land in that particular area when they had not been so allowed.

Again, speaking on behalf only of the Hon. Mr Stephens and myself—because this is obviously a minority report, and we accept that it is a minority report of just the two members—we believe there are many other examples where the Glamocak family and ASCI have been treated in an appalling fashion by the government and its agencies. We have not detailed all the information we could have to demonstrate that, but we hope that this minority report at least acknowledges that there are members of parliament who are prepared to continue to support the Glamocak family and ASCI in their ongoing battle with the government for fairness and justice in relation to their particular circumstances.

The second area with which we significantly disagreed was in terms of the whole role of the LMC. Our recommendations were that we believed the involvement of a government-owned entity in the high-risk world of land development was fraught with potential risks for taxpayers. Whilst there has not yet been any large scale financial calamity involving the LMC, there have been warning signs with some of the developments it has undertaken. For example, LMC's much publicised Lochiel Park development still has 34 per cent of total allotments unsold, and the LMC joint venture at Naracoorte has 53 per cent of total allotments unsold. We believe that the primary role of the LMC should remain that of a land bank, and that any possible development role should be considered only in very limited circumstances, such as where there is demonstrated market failure.

Whilst the Lochiel Park and Naracoorte developments are modest in size and scope, the LMC is currently involved in Playford Alive, one of the biggest land developments the state has seen, in the Playford North region. We are talking here about a very significant land development, in the South Australian context. An enormous amount of evidence has been presented to the committee—admittedly, from people within the development industry—expressing concern about the role of LMC as a government-owned entity in the high-risk area of land development.

In the past we have seen a number of land developers lose tens of millions of dollars of their investors' money. Whilst that is sad, in those cases it was the conscious decision of private investors through a private company. What we are talking about here is what was formerly a land bank aggregator now believing that it can carry out developments better than the private sector, and becoming increasingly emboldened to take more and more risks.

As I said, just look at some of their small developments. Many years later 53 per cent of allotments at Naracoorte remain unsold, and the whizz-bang, super eco-friendly Lochiel Park development, about which we hear so much, still has over one-third of allotments unsold. Surely that is a warning sign for the future.

The third area about which we had some significant concerns was the Newport Quays development, and I will read the relevant recommendations from the Hon. Mr Stephens and myself:

6. In November 2007, minister Conlon made the claim in parliament that his legal advice stated that the LMC, under the terms of the project development agreement [PDA], 'owed an obligation' or 'were obliged' to give the disputed contract (remediation project manager) to Newport Quays. In fact, the Auditor-General makes it clear the government legal advice did not state that, but rather that the PDA was 'silent' on the issue.

7. It is clear that minister Conlon's statement to parliament was wrong and that, on this important issue, he misled the house.

8. LMC executives admitted not getting written legal advice on this issue and they claimed they had not taken any notice of the oral advice they received from their lawyers.

I would like to comment on that. Our recommendation is that in the future the LMC should, on all major issues, obtain and retain written legal advice. If oral advice is ever provided, then notes should be made and retained of that advice. I would like to further comment on that. We believe it is just extraordinary that a major organisation such as this, with a major contract to develop Newport Quays, should tell us that, on the critical issue of whether or not someone should get a contract, it did not get any written legal advice. That is one thing, but the LMC also told us that it received oral legal advice over the telephone but that no-one within the LMC actually made any notes of that legal advice. That is a deplorable way to run any business, let alone one on behalf of taxpayers; for executives to stand up before a committee and say, 'No, we didn't get any written legal advice. We got something on the telephone, but we didn't make any notes of that oral advice so we can't provide that to the standing committee.' Our recommendations continue:

The LMC confirmed in evidence that they had been breaching Treasurer's Instructions relating to approval and delegations for at least an 18-month period up to December 2007. They also confirm that minister Conlon had known of 'non-compliance' issues since June 2007 and hadn't fixed the problem until December 2007.

11. It is noted that the Premier, Treasurer and former Auditor-General in statements made on the 'Stashed Cash' affair have made it clear that breaches of Treasurer's Instructions were 'unlawful' and had to be treated seriously by the government.

Our final conclusion in this area is:

12. Ultimately, political responsibility for these breaches of Treasurer's Instructions by the LMC rests with minister Conlon.

This area of breaches of Treasurer's Instructions is obviously viewed differently, and conveniently, by this government, depending on whether or not it wants to actually stitch up a particular public servant or employee. In the case of the stashed cash affair, breaches of Treasurer's Instructions were, as I said, claimed by the government and the former auditor-general as being unlawful—I think the description of 'criminal' was used at one stage—and people were pursued, to the extent that disciplinary inquiries into the activities of certain public servants were held. Of course, we still have the flow-on impact before the courts at the moment, where the former CEO, Kate Benton, has taken action against her disengagement from the Public Service—if I can use that phrase—over this particular issue.

In those circumstances, the government believes that breaches of Treasurer's Instructions are unlawful and criminal. However, in this case, it was demonstrated that the LMC had been breaching Treasurer's Instructions for 18 months—and it acknowledged that it had been breaching Treasurer's Instructions in the evidence; this is not a claim. They also confirmed, as I said, that minister Conlon had known of these non-compliance issues for at least six months (from June 2007 to December 2007) and did not do anything about it until December, and that was only after evidence had been taken at the Statutory Authorities Review Committee where these particular issues were raised. Finally, minister Conlon got off his backside and actually did something to resolve the issues.

In this particular set of circumstances—because the buck stops on the desk of minister Conlon—these breaches of Treasurer's Instructions are conveniently ignored and forgotten, and certainly their previous descriptions of being unlawful or criminal are conveniently overlooked by this government, because it does not suit its political purposes.

The final area where our recommendations are significantly different to the majority of the recommendations are in relation to the urban growth boundary and the issue of affordability, which was addressed by the Hon. Mrs Zollo. I will read our recommendations in this area, as follows:

Evidence provided to the committee demonstrated there had been a significant increase in land prices in South Australia over the last 10 years whilst at the same time the cost of constructing a house has not risen appreciably.

Even the LMC has now acknowledged mistakes it has made in the release of land to the market.

The LMC website states:

...in 2007, it became apparent that LMC's land release program of past years had underestimated demand from unprecedented population growth and had also been delayed because of difficulties with the rezoning of the land.

That came from the LMC's own website. So, here is the LMC acknowledging that it had made mistakes in relation to the land release program. It had underestimated the demand from the community and there had been significant delays because of difficulties with the rezoning of land. Indeed, this was part of the argument of many of the developers that came before the committee: that the operations and actions of the LMC had had a deleterious effect on affordability in South Australia. My recommendations and those of the Hon. Mr Stephens continue:

14. Whilst we support the government's recent decision of a rolling program of 25 years of land supply, with 15 years zone ready, we believe the success of this program on restraining land prices should be monitored regularly and reported.

We believe there should be an annual report which is released publicly which reports on this target and also on the impact on land prices and affordability.

15. We also recommend that an independent probity auditor be appointed whenever the government and government agencies conduct discussions about potential changes to the UGB.

While these last two recommendations are by a minority (the Hon. Mr Stephens and me), we would hope that the minister is prepared to consider these particular recommendations. As I have said, we did have evidence that sought to remove the urban growth boundary completely. We had evidence from some people who wanted to have the Land Management Corporation sell up all its land, and we obviously considered that, as did the other members of the committee. At this stage, our position is that we are prepared to at least see how the government's recent decision about the 25 year rolling program of land supply with 15 years zone ready will operate and to see whether or not that will have a downward impact in terms of land prices in South Australia.

However, the critical part—and this is what we hope the minister might at least be prepared to consider—is that there ought to be an annual report released publicly which reports on the progress towards this target and the impact on land prices and affordability. There ought to be a record every year that we can all go to to see whether or not this particular target has been met and, more importantly, whether it is having some sort of impact on land prices and affordability, because, obviously, that is the reason for the government's recently announced change.

Our final recommendation that we hoped the minister would consider was an independent probity auditor. I must admit that, as a member of the Statutory Authorities Review Committee, I was not entirely comfortable with the current arrangements and processes engaged by government officers in terms of the discussions regarding current changes to the urban growth boundary. I have no evidence to make any criticism of particular officers and therefore do not do so, and I hasten to point out that fact. When you have a situation where confidential discussions are being undertaken, either with consultants, developers or other people with potential interest in changes to an urban growth boundary, there ought to be some independent probity oversight of that process.

It should not just be a decision of public servants within a department as to who and how they consult. It ought to be monitored in some way so that we can be given, as a parliament and a community, some satisfaction that there has been probity oversight of those particular discussions, and that through those discussions either consultants, developers or interests associated with consultants and developers do not become aware of, through insider knowledge, a potential change or move in the urban growth boundary. Clearly, information that might lead developers who have the financial wherewithal to buy land in particular areas, because they know that is likely to be the next area of the extension of the urban growth boundary, is a significant piece of information for those particular developers or associated interests and could give a financial benefit or advantage to those developers.

As some members in this chamber would know, developers are prepared to bank and invest long term. They are taking decisions now on the basis of long-term land holdings that might eventually be part of an urban growth boundary in 10 or 15 years. The bigger ones are prepared to invest in the future and such information can be a financial benefit to them. We would hope that, even though it is a minority recommendation of the two members of the committee, nevertheless the minister, in his response to the committee's report, as he is required to do (and I guess that he is only required to respond to the majority members' report), would give due consideration to the recommendations included in this minority report from the Hon. Mr Stephens and myself.

The Hon. T.J. STEPHENS (17:03): I wish to make a small contribution about ASCI. I was pleased with the way the Hon. Mr Lucas described our position most eloquently, but I use this opportunity to briefly speak about a situation that has disturbed me greatly. The Glamocak family have been treated appallingly for many years. I have visited their site with the committee, given that I sat through the whole inquiry, and from what I can see they are just a family who have spent their life building a business and have ploughed an enormous amount of money back into their business and their site. They have employed and trained many South Australians on the way through, and all they want is a fair go. Before anyone says that this is just about politics, I say that it is not. We have had some really unusual allies with regard to the Glamocak case. Senator Nick Xenophon was appalled by the treatment he could see. I notice that the Hon. John Darley, who in a previous life was impeccably credentialled to comment on this type of situation, has voiced very publicly his dismay at the way these people have been treated.

I beg and implore the government to stand over the bureaucrats who are getting in the way of what I think is common sense. These people need to have their land valued at unimproved value because, ultimately, they have ploughed in millions of dollars. They have had no grants or government assistance and not put out their hand. They are a hard-working migrant family, having come to this country and done an incredible job. Lesser people would have given up by now and ceased their business and ceased employing people. I simply put those few words on the record

and plead with the government not to listen to bureaucrats but to step in and deal with this situation and get a reasonable resolution for these people.

The Hon. CARMEL ZOLLO (17:05): Before noting this report, I place on the record that certainly the committee was not provided with any evidence or information that any losses had occurred in relation to projects run by the Land Management Corporation. Indeed, the two examples the Hon. Rob Lucas gave in relation to Lochiel Park and Playford Alive certainly were very good examples of projects in which the Land Management Corporation should be involved in relation to affordability and the fragmented ownership of growth areas, and Lochiel Park, with the green village, demonstrated innovative product.

Both the Hons Rob Lucas and Terry Stephens referred to Adelaide Ship Construction International. In my contribution a few minutes ago I placed on record that ASCI is currently before the court with the state government in relation to its 50-year lease and it would not be appropriate for me or any of us to say anything further. There was some accusation that we had not really dealt with that issue, but the committee did not make any other recommendation because, on the one hand, it had received information from ASCI that it had approached LMC in relation to the purchase of land while, on the other hand, LMC gave evidence to the committee that there was no evidence or recollection of that at all. That is going by my recollection of the evidence that was provided to the committee.

Also, I should place on the record that ASCI is located at Moorhouse Road, Gillman which, obviously, is waterfront land. The land mentioned related to other companies, namely, Samaras and the Calabrese group—I am not certain whether it is known as 'the group'. The land that was sold to those two firms is on the Grand Trunkway, which, of course, is not waterfront land. It would be my understanding, just reading between the lines, that ASCI may well have become caught up in a change in government policy in relation to the sale of land in the Port of Adelaide, that is, that the government was no longer selling land on the waterfront, in particular within 200 metres of the high waterfront extending from Outer Harbor to Gillman.

Also, and I think the Hon. Rob Lucas would agree, there has been a longstanding unwritten policy of both his government (the former Liberal government) and the Labor government not to sell waterfront land in the Port of Adelaide. Indeed, I understand that, when it sold Ports Corp to Flinders Ports in 2001, the Liberal government did not sell freehold land to Flinders Ports in the Port of Adelaide nor, I understand, in the regional ports, either. Instead, it opted for long-term leases, and it would be my understanding that ASCI has a long-term lease as well.

Therefore, the approach taken in relation to the sale of land by the LMC, and now Defence SA, has been consistent with the policy of the former Liberal government, as well as a more formal decision taken some time in July 2003, that no disposal of government-owned waterfront land in Port Adelaide would occur. The Hon. Rob Lucas raised quite a few issues, but, of course, it is protocol for the chair to table the minority report attached to our own report, and I have done that. I did read the minority report, one recommendation of which related to the Treasurer's Instructions.

I understand that the previous Treasurer's Instruction under which the LMC was working had been superseded by a new one, and obviously it took some time before the due processes took place prior to that information being provided to minister Conlon. Again, from the evidence that was provided to the committee in relation to the remediation of land and the evidence that minister Conlon is purported to have provided to his chamber, I understand that evidence from the LMC in November 2007 does apparently accord with what minister Conlon is alleged to have said in the chamber.

The committee then went on to receive further evidence from the LMC in December 2007, which explained exactly the advice that was received by the LMC; and, based on that legal advice, the LMC interpreted the project development agreement as entitling Newport Quays to be appointed as the remediation manager. In that regard, the Crown Solicitor's Office advice does support the LMC's interpretation. The LMC's interpretation of the remediation clause in the PDA, based upon the legal advice the LMC obtained from Thomson Playford, was specifically confirmed by the legal advice provided by the Crown Solicitor's Office in writing on 20 November 2007. In his evidence to the committee, Mr Gibbons said:

> In summary, based on the legal advice that LMC has obtained from Thomson Playford and LMC's interpretation of the definition of 'remediation works contractor' contained within the PDA, LMC came to the conclusion that the appointment of the remediation project manager was a class of remediation works contractor for the purposes of the PDA. I note that the Auditor-General in his report has arrived at a different interpretation of the remediation clauses of the PDA. In this regard, the Crown Solicitor's Office advice supports LMC's interpretation.

Other issues were also raised by the Hon. Rob Lucas, but, as is protocol, I will leave that to the minister in the other place to provide a formal response.

Motion carried.

VICTIMS OF CRIME (ABUSE IN STATE CARE) AMENDMENT BILL

The Hon. A. BRESSINGTON (17:14): Obtained leave and introduced a bill for an act to amend the Victims of Crime Act 2001. Read a first time.

The Hon. A. BRESSINGTON (17:14): I move:

That this bill be now read a second time.

First, I will note the facts in relation to the victims of abuse in state care. Children were abused in state care at the hands of the state. The Mullighan inquiry was extensive in support of the claim that parents and their children were ignored for many years while they complained about what was going on with children in state care. Victims' needs are not being met. We apologised. The Premier made a shallow promise on the day of that apology, and victims of abuse in state care are struggling to overcome the trauma set upon them by the state.

Another fact is that this is still happening, and there is enough evidence to show that the department that was originally responsible for inflicting this abuse and putting kids at risk is still left unaccountable and not reined in at all. Unlike the previous bill passed by this place, which established a separate statutory scheme, this measure seeks to assist the Attorney-General in using his discretion under section 31(2) of the Victims of Crime Act when compensating victims of abuse in state care.

As the Attorney announced in the *Sunday Mail* of 18 October 2009, he plans to utilise this section to establish such a scheme. While the Attorney-General talks in flowery words of a generous and compassionate scheme, this bill attempts to ensure that in giving with one hand the Attorney-General does not take with the other.

Currently, one can only predict what restrictions upon access might apply, as the Attorney-General is yet to release the eligibility guidelines. That he went public with his intention to establish a compensation scheme prior to the eligibility detail being finalised, and hence ready for release, typifies the government's approach to providing redress for victims of abuse in state care.

I have received literally dozens of calls from former state wards since the Attorney-General made public his intentions in the *Sunday Mail* and all expressed utter confusion about their legal entitlements. While my officers have endeavoured to clarify this where possible, in the absence of eligibility guidelines this has been understandably difficult. However, the Attorney-General's premature announcement created not a fraction of the confusion of the deceitful promise made by the Premier on 2 April 2008, when he stated:

'Any person who was sexually abused while in care, is eligible to immediately seek compensation through the Victims of Crime Fund that has $22 million available for victim compensation,' Premier Mike Rann said.

'Victims of sexual abuse while children in State care are eligible for a payment of up to $50,000 without having to suffer again by being dragged through the court process.

'And this fund is available to survivors now.'

Part 4 of the Victims of Crime Act 2001 is subject to several limitations that apply to statutory compensation under the act, the most obvious being the requirement of section 18(2) that a victim must apply for compensation within three years of the commission of the offence. However, it is my understanding that, even if this limitation were set aside (as has occurred in some circumstances), any compensation awarded could not exceed the statutory compensation available at the time of the offence.

The present maximum of $50,000 has been available only since 1990, meaning that any former state ward who was seeking redress for abuse prior to this would access the $50,000 promised to victims by the Premier. For those abused between 1988 and 1990, $20,000 is the maximum sum payable. From here, it tapers dramatically, with $10,000 available between 1978 to 1987, $2,000 between 1975 and 1977 and, finally, $1,000 between 1969 and 1974.

For those wards who were abused prior to 1969, no compensation would be paid. As such, compensation was not available to the great majority of victims on the Premier's promise and, 18 months on, it is still not available. While the Attorney-General yesterday in the other place made a great attempt to excuse the Premier's wilful deceit, stating that the act always has granted him

the broad discretion under section 31(2) to make payments to victims (and this is technically the case), to argue this in the context of the Premier's announcements is questionable.

It is my knowledge that, in the 18 months since the Premier's promise, not a single payment has been made under section 31(2) to a victim of abuse in state care. In addition, until Sunday 18 October, this government has made no indication that it would establish a scheme reliant upon section 31(2). In fact, I have been informed that the Attorney-General's office did not even start to prepare the eligibility guidelines for access to compensation under section 31(2) until early this year.

So, to argue that the Premier in early 2008 was referring to the possibility of a payment under this section is, as I said, a desperate attempt to excuse that the Premier would have known full well that the Victims of Crime Fund was not accessible to the majority of victims of abuse in state care.

It seems that he has intentionally deceived these victims to get positive media on the day and to appease public anger over the horrific abuse perpetrated against these children as revealed by Commissioner Mullighan. Yet, by his deception, the Premier has re-abused these victims, and for this I call upon him to apologise yet again.

For some time, I have been aware that the Attorney-General was planning to utilise section 31(2) of the Victims of Crime Act 2001 to establish a scheme to provide compensation to victims of abuse while in state care. Currently, subsection 31(2) provides the Attorney-General with an absolute discretion to make a payment from the Victims of Crime Fund to a victim if, in the Attorney-General's opinion, it will help them to recover from the effects of crime or advance their interests.

It is my understanding that section 31(2) is preferable to other provisions of the Victims of Crime Act, as these previous limitations on access to the fund do not apply. From my understanding, there are currently no statutory limitations to a payment by the Attorney-General under the this section.

While this could allow the Attorney-General to provide compensation more generous than that permitted by other provisions, it would also allow him to impose harsh conditions upon the recipient of a payment—something that this bill in part attempts to prevent.

Members will be familiar with much of the language of the bill from the Victims of Abuse in State Care (Compensation) Bill 2009, which was passed in this place recently. However, unlike that bill, the bill I am introducing has at its essence the protection of these victims' rights. As an example, it has long been a concern of mine that the state government could use a form of ex gratia payment to abuse sufferers, similar to that foreshadowed by the Attorney-General, as a device to abrogate its broader liability to state wards. This would be done by making receipt of a payment conditional upon the claimant forgoing other legal entitlements, more specifically, the right to pursue the state in the civil jurisdiction for breach of a duty of care. That is, in effect, coercing a victim into relinquishing their legal entitlements.

The state, under the existing compensation provisions in the Victims of Crime Act, is unable to compel a victim to forgo another form of redress for the injury they have suffered. However, as stated, section 31(2) is not subject to such limitations, and hence it would be in the Attorney-General's power to do so. For those who fear double dipping, section 29(2) of the Victims of Crime Act would allow the state to partly or wholly recover any payment made under the Attorney-General's scheme if a state ward were to subsequently receive payment for a breach of duty of care or other form of compensation.

Current form suggests that this is unlikely, with no judgment presently recorded against the state for such a breach and out of court settlements being few and far between. This is in part due to the reluctance of the judiciary to find the state in breach on policy grounds. Other explanations lie in the difficulties of satisfying the requisite standard of proof, whether this be due to the destruction of documents or the fallibility of memory. However, given that section 29(2) provides for reimbursement to the Victims of Crime Fund, I ask: why we would deny victims the opportunity to later pursue the state for a breach of duty of care if these circumstances change?

For example, a victim may be fortunate enough to have released to them crucial documentation showing that the institution in which they were housed knew that it had a paedophile in its employment. Again, it is more likely that such documentation would be headed for the shredder, but again I ask: why deny a victim the right to pursue action at a later date if they

were to be so fortunate? As I stated, coercing victims into forgoing their full legal entitlement is blackmail and totally unnecessary, and it must be prevented.

While not as likely but just as possible, there is the potential for the Attorney-General to use the ex gratia payments as a means of silencing these victims by imposing a gag order on victims as a condition of payment. While there has been no suggestion that this will occur, there is also nothing to prevent it. It is my fear that, due to the politically sensitive nature of the abuse and any payments made, attempts will be made to silence victims.

As members may recall, Ki Meekins, who was instrumental in working with the Hon. Andrew Evans in abolishing the statute of limitations and the establishment of the Mullighan inquiry, was subject for some time to a confidentiality agreement as part of an out of court settlement for his civil action against the state. Until this government committed to not initiating proceedings against him, Mr Meekins was severely limited in the advocacy he could undertake on behalf of other victims. In this bill we have the opportunity to prevent this from occurring again.

Quite simply, this part of the bill makes clear that the Attorney-General must not use ex gratia payments as an opportunity to advance the interests of the state. To do so would be to further disfranchise these victims. Receipt of a compensation payment must not be conditional upon a victim entering into a confidentiality agreement or forgoing other legal entitlements.

Like the bill introduced by the Hon. Robert Brokenshire, this bill also provides for an individualised apology to victims that must refer to the circumstances of abuse or neglect suffered and must acknowledge that such abuse was allowed to occur because of the state's breach of duty of care. However, it is made clear that such an apology cannot be used against the state in later civil proceedings.

While such an immunity may at first seem repugnant to the notion of protecting the rights of these victims, logical thought suggests otherwise. Given that this bill makes clear that a victim cannot be compelled to forgo the right to later pursue the state for a breach of duty of care and then makes clear that the Attorney-General must acknowledge this breach, one can be sure that, if this bill were to pass without such an immunity, no compensation would be forthcoming.

Additionally, one could guarantee that the Attorney-General, if he were to subsequently utilise section 31(2), would be guarded in any apology given, with nothing more than the bare minimum required by the act resulting. For all the victims to whom I have spoken, a meaningful individual apology is their highest priority, and without such an immunity we would be preventing that from occurring.

The bill also provides that, in addition to any compensation paid, the Attorney-General is to provide payment for any legal costs reasonably incurred as a result of victims' application for compensation under the fund. This is most appropriate, and I note that the council voted for a similar provision in the Victims of Abuse in State Care (Compensation) Bill 2009. However, the bill I introduce also compels the Attorney-General to provide payment for reasonable legal costs arising from litigation abandoned to access the Attorney-General's compensation scheme.

Many victims are presently pursuing the state in the civil jurisdiction because at the time of commencing their action no alternative compensation was available. While the majority of victims with active claims will most likely continue to pursue settlement through the courts, I am aware of some for whom it will be more advantageous, due to the aforementioned reasons, to withdraw their civil claim and apply under the Attorney-General's scheme.

From talking to those victims it is clear that, if compensation were available in 2008, as was promised by the Premier, they would not have initiated civil action claims. These victims should not be liable for expenses incurred through this government's deceit and prevarication. Finally, this bill compels the Attorney-General to raise the maximum amount payable from the $50,000 foreshadowed in the aforementioned *Sunday Mail* article to $80,000. We can simply do better than the $50,000 proposed, and the victims deserve so much more.

In determining this figure I looked to Western Australia which had originally proposed $80,000 in a similar redress scheme. However, I now believe that under the guise of the global financial crisis the Liberal government has reduced this to $45,000. It is of interest to note that this has sparked outcry, including by the Labor opposition who has accused the Liberal government of being callous and putting the coffers before compensation. Things certainly change across borders!

As an aside, this is the value of introducing the redress scheme via legislation as opposed to policy, as was the case in Western Australia. Legislation provides the certainty that victims need to move forward. Policy is a promise that can so easily be broken.

Whilst some may see $80,000 as extravagant, it must be remembered that the payment is an alternative to compensation for a breach of the state's duty of care to wards who are unable to gain redress through the courts. We know from recent media reporting that a successful settlement in proceedings against the state can and does result in a large payout—one recently received in excess of $500,000. This is not the state compensating the victim of a crime in which it played no part; this is the state making amends for failing to protect our most vulnerable people. Any payment made needs to reflect just that.

I move this amendment knowing full well that the opposition in this place took advantage of a drafting error in the Hon. Robert Brokenshire's bill that reduced the $50,000 intended by the mover to $43,000. Despite the Hon. Robert Brokenshire moving an amendment to correct this error, the opposition denied its support. As a result, the opposition's credibility on redress to victims of abuse in state care will subsequently never recover, with the Liberal name (and, in particular, some particular members) now being mud amongst many victims. However, I am hopeful that the Liberals will endeavour to redeem themselves by now voting to increase the $50,000 foreshadowed by the Attorney-General to $80,000.

This is a sensible bill that both protects the rights of victims of abuse in state care and provides them with the level of compensation they deserve. I commend the bill to honourable members and indicate that I will be calling it on for a vote before the end of this sitting session.

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

AUSTRALIAN BUILDING AND CONSTRUCTION COMMISSION

The Hon. M. PARNELL (17:45): I move:

That this council—

1. Notes with concern the continued operation of the Australian Building and Construction Commission (ABCC);

2. Notes that the ABCC has far-reaching and draconian powers that infringe on the rights of workers to collectively organise as well as coercive powers that abolish the right to silence in the investigation of alleged breaches of industrial law; and

3. Calls on the federal government to abolish the ABCC as a matter of urgency.

On Friday at midday outside the Adelaide Magistrates Court there will be a rally of workers and unions in support of Mr Ark Tribe who will be appearing before that court in relation to charges arising from his refusal to appear before the Australian Building and Construction Commission. Along with the rally in Adelaide, there will be rallies in other major cities around Australia in support of Mr Tribe and against the draconian regime established by the ABCC.

According to the website that has been created to support Ark Tribe's case and to support the abolition of the ABCC, the situation faced by Mr Tribe arises from the problems at a building site at Flinders University where, according to the workers on that site, the conditions were so bad that they needed to draw up a petition calling for safety improvements. I understand they drew up their petition on a hand towel. Eventually, following intervention by the union and by state government safety regulators, many improvements were made, most of the problems were fixed and, after a few days, work on the site went back to normal.

However, following that series of incidents the workers were, one by one, called before the ABCC. In case members do not know, the penalties for those who do not cooperate with the ABCC investigators are really quite frightening. First of all, there are fines of up to $22,000 for things like stopping work, even if the reason is to make sure that workers are safe but, also, there is gaol for up to six months if a worker will not answer the questions posed by investigators from the ABCC.

The Greens have supported the union fight to have the Australian Building and Construction Commission abolished ever since it was established by the Howard government. In our view, there is no justification for discrimination against workers by denying them their democratic rights, including the right to silence and the right to collectively organise. The ABCC has powers that few organisations in Australia have ever had. The experience of this organisation is that it is bullying and harassing ordinary workers and their families.

The Greens bill in the Senate to abolish the ABCC was sent to a Senate committee. The minority report from the Greens senators makes very worthwhile reading for anyone who is interested in workplace rights. One of the most impressive submissions to that Senate inquiry was by Professor George Williams and Ms Nicola McGarrity. Professor Williams, as members might know, is the Anthony Mason Professor of Law at the University of New South Wales.

The conclusion that Professor Williams and Ms McGarrity reached in their submission was that the law that was created by the Howard government has provisions that, in their words, would 'elevate the ABCC, and its objective of eliminating of unlawful conduct in the building and construction industry, above even the protection of national security'. There is no genuine justification for a body regulating workplaces to have powers that exceed those of even our national security agencies. The act that allows the ABCC to continue in existence is one that singles people out on the basis of their work and not just on the basis of their action.

Submissions to the senate committee from the Combined Construction Union and the ACTU detail how the federal legislation breaches the International Labour Organisation Convention on Freedom of Association, including the right to organise and collectively bargain. Freedom of association is a fundamental right, and an integral part of that right is the right to take industrial action.

A key means by which the federal legislation (the Building and Construction Industry Improvement Act) prohibits industrial action is the provision for financial penalties of up to $110,000 for unions and $22,000 for individuals who engage in unprotected strike action. So, the Building and Construction Industry Improvement Act all but abolishes the right to take industrial action for workers in the building and construction industry. The rally on the steps of the Adelaide Magistrates Court will be the third time that workers and unions have gathered outside a court to protest the use of these draconian laws. I will conclude my contribution to this motion today by offering again the conclusions that Professor Williams reached in his submission, as follows:

> The ABCC's investigatory powers simply have no place in a modern, fair system of industrial relations, let alone one of a nation that prides itself on political and industrial freedoms.

The Greens believe that these laws are an affront to our democracy and that this state parliament, as well as the federal parliament, must ensure that the building industry is regulated just like any other industry, that is, in a fair and just manner that balances the needs of productivity and the economy with the health, safety and democratic rights of workers. I urge all members to support the motion.

Debate adjourned on motion of Hon. B.V. Finnigan.

WATER ACTION COALITION

The Hon. M. PARNELL (17:47): I move:

That this council—

1. Notes the formation in South Australia of a Water Action Coalition of community groups and individuals calling for ecologically sustainable water management in this state;

2. Notes the proclamation issued by the Water Action Coalition in a rally on the steps of this parliament on 10 October 2009; and

3. Agrees with the request made in the proclamation for an urgent public inquiry into water management in South Australia and calls on the government to implement this inquiry without delay.

On 10 October 2009, concerned South Australians from Adelaide and from regional communities staged a peaceful protest on the steps of Parliament House, under the banner 'Our Water, Our Rights'. This rally brought together a large group of people from all areas of our state who had in common one particular concern, and that is that the water resources, be they fresh or marine, in this state are not being managed adequately and that something needs to be done. I will read shortly to the chamber the proclamation that was passed by that rally but, first of all, I will put on the record the groups and individuals who are supporting the Water Action Coalition.

All members would be aware of Professor Diane Bell and her tireless work campaigning for the Lower Lakes and the Coorong. Members would also be aware of Mr Trevor White of the Cheltenham Park Residents Association, which has been campaigning for the use of the old Cheltenham Racecourse as a stormwater flood control and open space area, rather than the current proposal to cover it with houses.

There was an incredible line-up of probably 20 or so people who spoke during the course of an hour or so. They included Marcus Beresford from Brownhill Creek Association; Julie Pettett, the Chief Executive of the Conservation Council of South Australia; Janet Giles, representing SA Unions; Mr David Noonan from the Australian Conservation Foundation; and Pat Harbison from the Friends of Gulf St Vincent. Mr Harbison is a scientist who has done more than many others in drawing attention to the impact of stormwater and effluent on our seagrasses.

The rally also heard from Ngarrindjeri Elder Mr Tom Trevorrow, whose country is very much at the end of the failing Murray-Darling system. The rally heard from Hallett Shueard, who is an author and poet; and Corrie Vanderhoek from the Save Our Gulf Coalition. Two people from Whyalla spoke—in fact, a busload of people came from Whyalla to be part of the rally. There was also Greg Curnow from the Cuttlefish Coast Coalition and Andrew Melville-Smith from the group Save Point Lowly. We heard also from Peter Burdon from Friends of the Earth; he is a young lawyer who has done a lot of work on the impact of mining industries on groundwater in this state. Also at the rally was John Schumann, who is a singer, songwriter and environmental activist and someone who is known to most members in this place. Mr John Caldecott from the Water Action Coalition was one of the organisers, along with Jim Douglas, who was the rally's convenor.

Members of parliament were there in good numbers as well. As well as myself, there was the Hon. David Winderlich; Mr Mitch Williams, representing the Liberal Party; the Hon. Rob Brokenshire; and Senator Sarah Hanson-Young. If that is not enough, a number of other distinguished experts on water added their names to an open letter to the Premier. They included: Ms Maude Barlow, a United Nations adviser on water; Mr Colin Pitman, whose name is known to everyone as the champion of the Salisbury wetlands and of aquifer storage and recovery; Dr Scoresby Shepherd AO, again, a long-time campaigner with a solid scientific background; and Professor Fran Baum of Flinders University. So there is a large group of people who are happy to lend their names, voices and support to the Water Action Coalition.

The proclamation that was passed at that meeting, and which I was very happy to be invited to read to this council, is as follows:

> This rally of concerned South Australians rejects the State Government's Water Security Plan. Our river systems and iconic wetlands are collapsing. Interdependent ecosystems are dying and our fragile gulfs are being destroyed.
>
> This Water Action Coalition rally rejects the need for desalination, diversions, dams and weirs in the Lower Lakes. This rally demands sustainable solutions from its legislators. Our waters, both freshwater and marine, must be conserved and protected by laws.
>
> We demand comprehensive stormwater and waste water recycling. We demand that the River Murray and its rivers and creeks flow freely again to the Lower Lakes and to the sea. The Coorong must be reconnected to its freshwater sources in the South East.
>
> Our plea to parliament is to think again. Our right and that of generations to come is for a sustainable water future not only for ourselves but for our environment. WAC calls on the legislators in this parliament to conduct a public enquiry, with the authority of a Royal Commission, to address the urgent social, environmental and economic disaster that has been brought about by mismanagement and hasty interventions.
>
> A sustainable water future without compromising our environment is the only acceptable outcome.

In relation to that call for a public inquiry, members might note that we have a select committee of this council looking into SA Water; however, clearly the problem of water management is far greater than just that relating to our main water utility. So I think this is a valid and legitimate call; a public inquiry with the authority of a royal commission is what we need.

To conclude, the Water Action Coalition movement is a demonstration of deep concern across the community. The coalition has urged the government to abandon the damaging strategies that have been implemented to date, and urges this parliament to take action for this and future generations. The Water Action Coalition concludes its open letter to the Premier with the following statement:

> A sustainable water future without compromising our environment is the only acceptable outcome.

I commend the motion to the council.

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

LAND VALUATION

The Hon. J.A. DARLEY (17:49): I move:

That the regulations under the Valuation of Land Act 1971 concerning fees and allowances, made on 27 August 2009 and laid on the table of this council on 8 September 2009, be disallowed.

Pursuant to the Valuation of Land Act, the Valuer-General is responsible for providing valuations for the purpose of levying rates and taxes. Where a landowner disagrees with the valuation as determined by the Valuer-General, the act also provides certain rights of objection, review and appeal.

In accordance with the Valuation of Land Act, a landowner who objects to the evaluation, and who is still dissatisfied with the decision of the Valuer-General upon an objection, is able to apply for a review of the valuation. Reviews are undertaken by independent review valuers with experience in valuing land, who are appointed to a panel after being nominated by the Real Estate Institute of South Australia Incorporated or the Australian Property Institute Incorporated. A landowner who applies for a review is able to select a review valuer from the panel in order to conduct the review.

As stipulated in section 25B of the act, in conducting a review the review valuer is required to take into account matters set out in the application for review, any representations of the applicant and the Valuer-General, and any other matter that the review valuer considers relevant to the review of the valuation. Matters considered upon review must also be confined to questions of fact and must not involve questions of law. A person who is still dissatisfied with the decision of a review valuer may appeal to the Supreme Court.

The regulations which are the subject of this disallowance motion relate to the fees and allowances available to review valuers for the purposes of conducting a review. Prior to the changes, review valuers were paid $187 for a review of residential premises and $229 for a review of any other land, which includes commercial premises. The new regulations replace those amounts with various base allowances, depending on the value of the property which is the subject of review. For instance, the base allowance for a residential property valued at less than $1 million is $400; where the value exceeds $1 million the amount jumps to $600. Other land, which includes commercial properties, starts at $800 for land valued at less than $5 million and goes as high as $2,400 for land that exceeds $90 million in value.

In addition to the base allowance, the regulations also contain complexity categories. If a complexity category is assigned to a review by the Valuer-General, the allowance increases from anywhere between $200 and $1,000. So, at the top end of the scale, a review valuer could potentially receive an allowance as high as $3,400. That is approximately a 15-fold or 1,500 per cent increase under the changes.

Lastly, the regulations also provide for travel allowance, whether it be by vehicle, sea or air, as well as accommodation for up to two nights. The reasoning behind the changes in the prescribed fees and allowances was to bring the figure in line with current market rates and attract more review valuers to the role of conducting reviews.

I am advised that consultation with respect to the changes took place with the Real Estate Institute of South Australia Incorporated and the Australian Property Institute Incorporated, and certainly not the taxpayer. I am the first to agree that the allowances were due for review but, as a former valuer-general, I can assure members that these new rates are nothing but a drain on taxpayers' money. They are a gross overestimation of what is reasonable when considered in light of what is actually required or expected from a review valuer in conducting a review.

This brings me to my next point regarding complexity categories. I would have thought that, if we are going to have a series of categories which can be assigned to a review, we would also have some sort of guidelines to determine when they would apply. I also would have thought it reasonable to have a clear understanding of what was actually expected from a review valuer and in the form of some sort of guidelines. In this case we had neither. The regulations were re-drafted and the fees were prescribed even before considering what a review valuer was required to do. It is a classic example of putting the cart well and truly before the horse.

Over the past few weeks, I have been consulting with the Valuer-General through the minister's office with regard to both the regulations and the guidelines. In an attempt to highlight the gross overestimation of what is reasonable with respect to valuers' fees, my office picked a handful of valuers from the Yellow Pages and called to inquire about how much it would cost to have a proper valuation made on a residential property. All of the quotes included an inspection and a valuation report and ranged from $220 for an inspection and a three-page valuation report to $660 for a comprehensive inspection (including the interior) and a 15 to 25 page valuation report.

I might also add that at least one of the valuers that my office called is already a member of the panel. I am also advised by one well-known property group that it offers a valuation inspection service in relation to valuations of commercial premises for a fee of $500. Again, this includes a site inspection and a written report with regard to the valuation.

When considering this information, honourable members will bear in mind that a valuation is a more exhaustive process than a review. As already mentioned, it involves a property inspection, collation and inspection of sales evidence and the preparation of a valuation report. A review, on the other hand, involves making a decision based on material facts already provided, that is, the matters set out in the application itself, any submission made by the landowner and the report of the Valuer-General—and in light of the valuer's own understanding and experience of the market; in other words, a desktop review.

Review valuers are not required to provide written reports with respect to how they arrive at their decision. A further example of the disparity between what has been proposed and the actual work required becomes apparent when you consider the fees applicable to other land. In the context of some cases where you may have a review valuer making a decision on vacant land zoned as commercial and measuring, say, three metres by 10 metres, you will have review valuers being paid an exorbitant amount of money to value a block that is 30 square metres.

Another inconsistency arises where you have two identical properties in terms of character, land size and the like, but one of those properties is situated in, say, Burnside and the other in Brompton. The review valuer in both these scenarios will be required to undertake exactly the same amount of work but, where the property in Burnside exceeds $1 million in value and the property in Brompton is valued less than $1 million, the review valuer will be remunerated at a higher rate. There is no rhyme or reason to this.

I will conclude my remarks by saying that review valuers' fees need to be sensible and commensurate to the work required of a review valuer in conducting a review. They need to be realistic. I urge honourable members to support this motion and to disallow these regulations.

Debate adjourned on motion of Hon. J.M. Gazzola.

MEMBERS' CONTRIBUTION

The Hon. D.W. RIDGWAY (Leader of the Opposition) (17:58): I move:

That this council recognises the contribution of the Hon. Caroline Schaefer and the Hon. Robert Lawson to the parliament and the community of South Australia.

It is with a great deal of pleasure and some sadness that I move this motion. On a personal level, I have certainly enjoyed working with Caroline and Robert here in the parliament for almost eight years. I knew both of them prior to that, and I probably knew Caroline a little better than Robert in the Liberal Party circles. I have certainly enjoyed the time I have had with them.

My intention in moving this motion today is to allow members—after I have made my contribution—to add their thoughts and best wishes for the future of both members so that we do not end up with a long drawn-out valedictory on the last day of sitting. It will also give Caroline and Robert an opportunity to respond. I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

[Sitting suspended from 18:01 to 19:48]

CONSTITUTION (FIXED SESSION PRECEDING ELECTION) AMENDMENT BILL

The Hon. R.L. BROKENSHIRE (19:50): Obtained leave and introduced a bill for an act to amend the Constitution Act 1934. Read a first time.

The Hon. R.L. BROKENSHIRE (19:50): I move:

That this bill be now read a second time.

I will be brief, given the workload tonight, but this is an important bill, and I want to give colleagues a chance to be advised on the purpose of it. It is about bringing parliament back in the February before a state election, the soonest of which would be February 2010. It is a short bill, because it does not need a lot of detail. It is simple: either we will sit in the weeks prior to an election or we will go to a situation where we end up every four years getting up by the first week in December and

not having this parliament accountable to the South Australian community until late April or early May the following year, which is an enormous amount of time to have the parliament out of session.

The bill would bring back the parliament for the first Tuesday of February, which would be 2 February 2010. Parliament cannot then be prorogued until the issuing of writs, a matter that is largely in the hands of the government, but one would expect will provide at least one if not two weeks of parliament, given that writs would not be expected until about one month out from the election (approximately 19 February 2010). That gives us three calendar weeks, which could easily be two sitting weeks of parliament, with a break in between, but at the very least one week of sitting. It could also include a Monday and/or a Friday, if need be.

This bill does not require a special vote. Even though it is a fixed session preceding election amendment bill, under the Constitution Act it can be carried by a normal vote on a bill. I have had some research done and it begins with the points I made in my most recent question on this issue in question time. Further to that research, it is very useful to note the average number of sitting hours in a sitting day, which I suggest is the only reliable measure of how often any government has sat, given the unequal lengths of a government's term. On our calculation, for the Bannon/Arnold Labor government of 1982 to 1993 it was six hours and 28 minutes. Under the Liberals, from 1993 to 2002, the average number of sitting hours per sitting day was six hours and 44 minutes, which might sound like only 16 minutes more per sitting day, but had the Liberal government run the exact length of the previous government the total hours sat would have been much higher.

It is true that this government has had more sitting days, but the Liberals sat for longer hours, which is understandable particularly, I think, since they would have wanted to be more accommodating to country MPs. So, let us compare six hours 28 minutes under the 1982-93 Labor government, and six hours 44 minutes under the 1993-2002 Liberal government, to this current government. To date, it is just six hours and six minutes. So, we have sat more days but we have seen less of the parliament under this government than under the previous two governments.

The other point I make is that we rank very low. We had a look at other states and territories, and we actually ranked twelfth out of 15 upper and lower houses in state and territory parliaments in terms of sitting days; by our calculations, about two sitting weeks short. This bill seeks to give back to the South Australian people their missing two sitting weeks but also, importantly, this bill, irrespective of who is in government, Liberal or Labor, ensures that the democratic parliament can come back after the Christmas break and finish business, and here I include important select committees that often do not get the consideration they deserve, particularly with respect to opportunities involving witnesses and broadening that aspect of the parliament's operation, which can then continue during the ensuing period.

I think that probably when the terms came to be fixed—whilst I do not disagree with fixed terms—there was a problem and a mistake made. Parliament may not have considered the ramifications, and we probably should have provided for fixed year terms with an election occurring in November. That would have been much better for the governance of South Australia.

As I said, we should not forget important select committees; some at the moment could continue, including the Budget and Finance Committee. Often the Mid-Year Budget Review does not come out until after parliament gets up when there is an election year looming. The Select Committee on Certain Matters Relating to Horse Racing in South Australia is a pretty involved committee and time for hearing all witnesses would be much better. Many other select committees, including the Select Committee on the Taxi Industry in South Australia, could have received much more evidence and conclude its findings.

Let us not forget that, as of now, with only nine sitting days left in this parliament and the disallowance period of 14 sitting days, any regulations introduced by the government can be disallowed some time in May or June 2010 even though they have been introduced earlier this month. As to regulations that are being put up by the government right now, departments can work on those regulations and it is possible that they could be overturned by the new government after the election even though they had been introduced in early October.

It is a simple bill, so I give notice that I will be looking for a vote on it, unless the government gives an absolute guarantee to sit for two weeks early next year, which is another option for the government. The Premier could come out with a press release tomorrow and say that he is happy to sit in late January-early February. We can have more time for this, but it is a simple,

straightforward bill. I believe the South Australian community wants to see us sit in that period and I believe it would be good for accountable government, so I commend the bill to the council.

Debate adjourned on motion of Hon. J.M. Gazzola.

BURNSIDE CITY COUNCIL

The Hon. DAVID WINDERLICH (19:57): I move:

That this council—

1. Notes that—

   (a) Since being placed under investigation, numerous witnesses report that the Burnside city council has continued to breach provisions of the Local Government Act;

   (b) The legal status of the Chief Executive Officer of the Burnside city council under section 97(2)(a) of the Local Government Act has been questioned by councillors and by local businessmen on the basis of legal advice;

   (c) The extension of the final date of the investigator's report until February 2010 creates a situation whereby Burnside council is able to make major decisions about a wide range of matters, including the control of bushfire hazards; and

   (d) There is scope under section 273(1)(a) and section 273(2)(b) of the Local Government Act for the Minister for State/Local Government Relations to give directions to council upon the receipt of a report by the investigator.

2. Hereby calls on the Minister for State/Local Government Relations to request a report from the investigator under section 273(1)(a) of the Local Government Act on whether there are any matters of concern that require consideration prior to the receipt of the final report.

3. Urges the minister to give such directions to the Burnside city council under section 273(2)(b) of the Local Government Act as are necessary on the receipt of such a report.

In essence, this motion poses the questions: is there a reason for serious concern about ongoing decision-making of the Burnside city council? In fact, is it capable of being a responsible decision-maker and local government for the people of Burnside? If so, what can be done?

The context, as members are aware, is that the council is under investigation for serious breaches and irregularities —and, in some cases, already well documented breaches—of the Local Government Act, and in other cases for serious but as yet unproven allegations. The Burnside council could even face being declared a defaulting council—in effect, being sacked. So, in that period when you would think it would be under probation and on its best behaviour, it is continuing to breach the Local Government Act and continuing to demonstrate irregularities in its decision-making, and that is of some concern.

Since the minister announced, on 22 July, that the Burnside council was under investigation, councillors and members of the public have continued to allege that there have been serious breaches of the Local Government Act and irregularities in decision-making. I will give just a small sample. They include issues such as the refusal of questions on notice. At the meeting of 15 September 2009, Councillor Rob Gilbert presented a number of questions on notice. They are:

1. Would the CEO please advise what, if any, evidence, from any person including elected members of staff, has been presented to Council, its lawyers or its insurers that Cr Jacobsen has acted dishonestly with regard to seeking Section 39 protection against legal claims being made against him?

2. If he has received evidence from any source, would he please provide that information to elected members at Tuesday's meeting?

3. If he has received evidence, would he please advise why he has not forwarded that evidence to elected members as a matter of priority already?

4. Given implicit in Council's decision, to deny the protection afforded to elected members under section 39, that is Councillor Jacobsen's statutory right, is the allegation that Cr Jacobsen has acted dishonestly, and as such Council and its elected members may be liable for a range of civil and criminal offences as a consequence of this allegation? What steps does the CEO propose to take to resolve the impasse, given he is refusing to discuss the issue with Council insurers and the Local Government Association's Mutual Liability Scheme?

5. Is it the intention of the CEO to continue to distribute all information, provided by Cr Jacobsen to Council's insurers in confidence to assist them with minimising their exposure, to the elected members or member of the public who are currently taking or threatening to take legal action against Cr Jacobsen?

6. Is the CEO concerned, given that he has already potentially compromised Cr Jacobsen's case by forwarding a detailed outline of Cr Jacobsen's case to the elected members taking action against him, that when

Council is eventually co-joined to the action, it will cost this community even more than would otherwise be the case in both legal expenses and possible subsequent damages?

Four of those six questions were refused by the mayor, and the following email exchange then took place. The CEO sent an email advising that the mayor ruled questions one to four and six as being 'improper in the entirety of the circumstances as making unfounded assertions and the risk exposure for the Council'. Councillor Gilbert responded:

These questions are hardly improper, if Council has acquired a risk in relation to this matter it already exists. Questions may not always be palatable, but they need to be answered. I request that you reinstate my questions for tomorrow night's meeting.

And on it went. The questions themselves exposed the level of conflict and dysfunction at the council, but the key point is that questions were being denied. The ability to ask questions is fundamental to the governance of council. When large numbers of questions are denied, that creates serious concerns about whether debate and the flow of information is in fact being suppressed.

In the case of Councillor Jacobsen, he posed four motions in relation to the Chelsea Cinema, which would have had the effect of declaring previous motions passed by the council as invalid or null, because they had not had the proper required period of notice (five days) under the act. Those motions were left off the agenda. A motion by Councillor Jacobsen—and this also relates to the meeting of 15 September—to declare the position of the chief executive officer vacant was also refused. As I said, this is a small sample of the number of times questions or motions are refused.

A Burnside resident contacted me with concerns about the Council Review Committee. The Council Review Committee was formed, and it excluded councillors Jacobsen and Gilbert. Its first meeting on 14 September was called off because the proper period of notice had not been given. On the 22nd when it met, the three members of council who were not on the committee attended the council. They were ordered to leave, and when they refused the chief executive officer threatened to call the police to evict the councillors. So, following two occasions of the Burnside council's calling the police to evict residents, the threat was then made to have the police evict councillors. I would say the prospect of councillors calling police on to other councillors is, at least, irregular and, again, a sign of the conflict, and raises questions about the extent to which responsible decision-making can be going on.

Following that debate, the Burnside council then sought to clarify whether it could exclude other members of council from committee meetings of that review committee. It based it on an interpretation of section 96 of the Local Government Act. My layperson's reading of the act is that that is a dubious interpretation but, in any case, that interpretation was provided without the benefit of legal advice being provided to all members of council. That motion was then passed by virtue of the fact that it had the support of the dominant faction.

As I said, there are numerous examples but the general trend is: questions being refused; motions being refused; and deliberate attempts to exclude specific councillors. I think these go to the heart of some of the terms of reference for the investigation into the City of Burnside which refer to such things as dealing with conflict between elected members and between elected members and staff. Critically, the general term of reference that applies to many of these issues is whether the council's meeting practices, since the 2006 election, have fulfilled the council's obligation to act as a representative, informed and responsible decision-maker in the interests of the community.

To briefly sum up, to date: the council is under investigation. It is under investigation as the result of some serious unproved allegations and some serious, well documented breaches of the Local Government Act. At a time like this it is very important to have a good chief executive officer in place to ensure that good advice is provided to the elected members, and to ensure stability and good decision-making.

If we look at the role of the CEO under the act, it is clear how critical is the role this person plays. The chief executive officer must: ensure that the polices and lawful decisions of the council are implemented in a timely and efficient manner; undertake responsibility for the day-to-day operations and affairs of the council; provide advice and reports to the council on the exercise and performance of its powers and functions; coordinate proposals for consideration by the council; provide information to the council to assist the council to assess performance against its strategic management plans; ensure that the assets and resources of the council are properly managed;

ensure that records required under this act or another act are properly kept and maintained; give effect to principles of human resource management; and exercise, perform or discharge other powers, functions or duties conferred on the chief executive officer by or under this or other acts and to perform other functions lawfully directed by the council.

Some of those powers, functions and duties confirmed under other acts include the ability to order the destruction of a dog; the ability to order the demolition of a house; the ability to order the sale of property to reclaim unpaid rates; the ability to order a landowner to address bushfire hazards on their property; the ability to carry out roadwork to allow water from a road to drain into an adjoining property if there is a risk of flood. There is a wide range of powers exercised by the position of the chief executive officer.

The question arises: what if that person's appointment was not legal, had not been carried out in accordance with the act and, therefore, what if that person and their decisions could be challenged? Given the importance of the role and the importance of some of the decisions made by such a person, that would seem to be a matter of some concern.

Earlier on in the year, in my earlier speech on Burnside, I read out legal advice in relation to the position of the chief executive officer at Burnside. Just to remind members: Neil Jacobs resigned on 11 September 2009. He then withdrew his resignation and was, effectively, reappointed as chief executive officer by the Burnside council. Under section 97(2) of the Local Government Act, a CEO's employment is terminated if the CEO, amongst other things, resigns by notice in writing to the principal member of the council. Once that happens, there is a four stage appointment procedure, which has the effect of the council appointing a person to be acting CEO until the vacancy is filled, inviting applications by advertisement, appointing a selection panel and then making the appointment.

As I outlined earlier in the year, that legal advice took the view that council should follow the legislative procedure for filling the vacancy created by that resignation. However, as I said, Neil Jacobs effectively went straight back into his position without there being an acting chief executive officer and without any of that process of appointment going on. That is the theory of the status of Chief Executive Officer Neil Jacobs, or the illegal chief executive officer, as many Burnside residents now call him.

Earlier this month, Mr Murray Willis, Director of Foothills Water Company, was in the media stating that he refused to recognise any decisions made by Neil Jacobs. A letter to the council from Mr Willis reads:

> Your Worship,
>
> Attached is a letter from our lawyers to your lawyers about the illegality of the man doing the CEO's job. I advise you that neither the Foothills Water Company, Mrs Willis or myself accept that the CEO is working at Burnside council in an official capacity. We say he is there illegally and, as a result, we three ratepayers will not accept any directions, legal notices or advice under the hand of the man doing the CEO's job (Mr Neil Jacobs) or any of his delegated officers. We have no confidence in your alleged CEO and say under the Act he has no right to be doing the work of the CEO.
>
> I request that you hand both this email and its attachment from Mr J Danvers to each of your council members and discuss both of these documents in a full council meeting as a matter of urgency.

And on it goes. So, the theory has already become reality in that a local businessman will challenge decisions made by Mr Neil Jacobs. As I said before, if you look at some of the roles performed by Mr Jacobs and the powers he exercises, that seems to be a matter of concern.

So, to recap the situation, the council is under investigation but, despite that, it is continuing to make decisions which a number of different quarters are alleging are breaches of the Local Government Act and which, according to my reading at least, are highly questionable, and the council continues to demonstrate a level of conflict and dysfunction that raises questions about its ability to provide good governance. Should that be allowed to continue, and would you expect in a responsible minister to act to address that if she could? Well, in fact, it has been allowed to continue by the extension until February 2010 of the investigation by Mr Ken MacPherson.

The extension is quite reasonable; it is a complicated matter. All the information I have is that the investigation has been extremely thorough, and that is all to the good. However, it does mean that, in the meantime, the council could effectively sign contracts, build a new hall, employ or dismiss staff, destroy a dog—all those other functions and powers I listed earlier. It could make very significant decisions.

As the Minister for State/Local Government Relations has said, there are not clear caretaker provisions in the Local Government Act. She has pointed out that I voted against caretaker provisions in the Local Government Elections Act, and that is true. That was, I guess, a lineball decision. In the end, I decided to vote against it, and I make no apology for that. I think the matter of a council that is operating normally and about to face the voters is quite different from a council that is under a serious cloud and under investigation. So, I believe that that does raise some sort of need for the exercise of caretaker-style powers.

These are not clear in the act at the moment, but the minister is not powerless by any means. If we look at the action the minister can take on receiving a report from the investigator, we see that section 273 of the Local Government Act provides:

> (1) The minister may, on the basis of—
>
> (a) a report of an investigator or investigators under this division...
>
> take a range of actions.

I have not read it all, but that is part of subsection (1). The section goes on to provide:

> (2) The action that the minister may take is any of the following:
>
> (a) the minister may make recommendations to a council;
>
> (b) if the minister considers—
>
> (i) that a council has contravened or failed to comply with a provision of this or another act; or
>
> (ii) that a council has failed to discharge a responsibility under this or another act; or
>
> (iii) that an irregularity has occurred in the conduct of the affairs of a council (in relation to matters arising under this or another act)
>
> the minister may give directions to the council to rectify the matter, or to prevent a recurrence of the act, failure or irregularity.

So there are no limitations on the directions that the minister give to the council; it just says that the minister may give directions to the council to rectify the matter or to prevent a recurrence of the act, failure or irregularity.

There is certainly a very strong question as to whether the Burnside council is consistently breaching regulations of the act that relate to the provision of information and the accepting of motions and questions. Those appear to be regular matters of concern. There are also matters of concern regarding whether it is going into confidence too many times, and there are provisions under the Local Government Act regarding the Ombudsman acting on that. Section 94(1) of the act provides:

> The Ombudsman may, on receipt of a complaint, carry out an investigation under this section if it appears to the Ombudsman that a council may have unreasonably excluded members of the public from its meetings under Part 3 or unreasonably prevented access to documents under Part 4.

I think there are quite compelling questions that require answers regarding the regulations associated with those sorts of decisions by the council. I would have thought that the very act of refusing to fill the position of CEO—if it is determined that that is what has happened—raises a whole series of breaches of the Local Government Act—probably half a dozen. The council is required to have a chief executive officer, the council is required to appoint someone to act in the chief executive officer's place if the chief executive officer is unable to act, the council is required to follow a certain process if the chief executive officer resigns. These are all under sections 96, 97 and 98. There are at least half a dozen provisions in that act that the council would be breaching if, indeed, it were concluded that the chief executive officer had not been appointed in accordance with the act; that is, in fact, he should have been in an acting position and, at the conclusion of the acting position, the new chief executive officer should have been appointed.

So the minister appears to have broad powers to give directions if she receives a report from the investigator. Now, the essence of this motion is simply that the minister does just that: that she requests an interim report from the investigator, and that interim report would give information about particular issues of concern. It may say that there is no concern, but that would be up to the investigator. Once the minister had that report, if she did have concerns she could act and give directions to council. She could give specific directions around the handling of meeting procedures;

she could direct the council to appoint a chief executive officer in accordance with the act. I do not see how this would in any way compromise the remainder of the investigation.

Although an investigation is under way, it seems to me that the central issue is that, if there are serious concerns about the sorts of decisions being made, the minister has a couple of options. She could ignore those and wait until February 2010, by which time all sorts of other breaches of the act may have occurred and all sorts of flawed decisions may have been made, or she can seek to act. I have suggested to the minister that she get legal advice—I do not pretend to be qualified to make any sort of legal assessment of this—to clarify whether under section 273 she can ask for a report and, on the basis of that report, give broad directions. My reading of the act is that she can.

The minister has very forcefully said that that this is somehow a manipulation of the investigation process, that it somehow interferes with the integrity of the process. As I said, I do not see how it need do so. In essence, I am suggesting that the minister write to the investigator and outline the information she has been given that is causing her concern about Burnside city council. She would ask the investigator whether he shared those concerns and whether he thought action was warranted. If he did share those concerns, and if he did think action was warranted, that in itself would give the minister the power to take such action.

The investigator might say that he thought there was no need for a report, or he might provide an interim report that stated that, essentially, there was nothing that could not wait until February 2010. So be it: at least the minister would have taken the minimum steps necessary to make sure that she is looking after the welfare of the people of Burnside—and not just the people of Burnside.

As I outlined before, there are council powers over roads and properties in relation to bushfires. We are coming into bushfire season and, if some bushfire hazard has not been removed, or some action that council has ordered was not being responded to because of this controversy, I believe that there is a broader duty of care to the South Australian public and that the minister has to ensure that the council is carrying out its obligations under the act.

That is essentially my argument: there are reasons for concern; the council has important powers; the responsible exercise of those powers is of interest to all South Australians; and I believe the minister has a duty at least to make some further investigation into whether she needs to take short-term action before February 2010 to ensure that the council is capable, in a responsible way, of exercising some of those important powers. I commend the motion to the council, and I look forward to other members' contributions.

Debate adjourned on motion of Hon. R.P. Wortley.

NATURAL RESOURCES COMMITTEE: ANNUAL REPORT

Adjourned debate on motion of Hon. R.P. Wortley:

That the 32nd report of the committee, annual report 2008-09, be noted.

(Continued from 14 October 2009. Page 3519.)

The Hon. C.V. SCHAEFER (20:22): Given that I have looked at the program for the remainder of tonight, I will speak briefly to the Natural Resources Committee annual report 2008-09 and simply commend those members from both houses and all sides of parliament for their commitment to this committee. The members are: Mr John Rau, the Hon. Graham Gunn, the Hon. Sandra Kanck (until January this year), the Hon. Stephanie Key, the Hon. Lea Stevens, the Hon. David Winderlich and the Hon. Russell Wortley.

I again thank the executive officer, Mr Knut Cudarans, and the research officer, Mr Patrick Dupont, for their efforts in what has been a very active committee—one from which I think many committees of this parliament could take lessons. It has taken its functions very seriously and reported back to the parliament without fear or favour and without leaning towards either of the major parties. It is a committee I did not expect to enjoy as much as I did, and I think many of the achievements have been due to the very impartial and fair chairmanship of Mr John Rau.

Over the 12 months, we met in this place on 23 occasions, and we carried out site visits to the Upper South-East to look into the drainage system. We have an ongoing brief over the Murray-Darling Basin and, in August last year, we undertook a three day site visit to Menindee, Moree, Goondiwindi, St George, Cubbie Station and Bourke.

In September, we hosted a number of delegates from each of those areas back to visit the southern areas of the Murray-Darling Basin as it used to run into the sea and, indeed, no longer does. In March, a site visit was conducted to the Adelaide Mount Lofty Ranges in our natural resources management board area, and in April a two-day visit to our Riverland in South Australia was undertaken. I think that one of the great praises that our committee has received was from Professor Mike Young when he attended (as he has on numerous occasions) one of our meetings. He said that he believed that our reports on the River Murray and the River Darling were some of the most informed and least biased that he attends anywhere in Australia.

Again, this is simply an annual report which has been tabled and which can be read. I simply wanted to make a contribution from my side of the council to thank everyone who has been involved in what, as I say, is certainly the best standing committee I have served on in my 16 years here, and a committee that, in spite of much speculation when it was set up, I believe has done some valuable work and made a valuable contribution to the parliament and the parliamentary process.

Motion carried.

NATURAL RESOURCES COMMITTEE: ARID LANDS NATURAL RESOURCES MANAGEMENT BOARD

Adjourned debate on motion of Hon. R.P. Wortley:

That the 33rd report of the committee, on South Australian Arid Lands Natural Resources Management Board Levy Proposal 2009-10, be noted.

(Continued from 14 October 2009. Page 3521.)

Motion carried.

PASSENGER TRANSPORT ACT

Order of the Day, Private Business, No. 4: Hon. J.M. Gazzola to move:

That the general regulations under the Passenger Transport Act 1994 concerning fees, made on 4 June 2009 and laid on the table of this council on 16 June 2009, be disallowed.

The Hon. J.M. GAZZOLA (20:27): I move:

That this order of the day be discharged.

Motion carried.

STATUTORY AUTHORITIES REVIEW COMMITTEE: ANNUAL REPORT

Adjourned debate on motion of Hon. Carmel Zollo:

That the report of the committee, 2008-09, be noted.

(Continued from 14 October 2009. Page 3530.)

The Hon. T.J. STEPHENS (20:27): I rise to support the motion of the Hon. Carmel Zollo that the report of the Statutory Authorities Review Committee 2008-09 be noted. The Statutory Authorities Review Committee has certainly had a busy year. We have completed an inquiry into the Independent Gambling Authority and we are currently wrapping up inquiries into the Land Management Corporation, the WorkCover Corporation and the Office of the Public Trustee. In fact, we spoke on the Land Management Corporation today.

Certainly, I agree with the words of the Hon. Carmel Zollo and thank her for her work as the Presiding Member. I would also like to commend the Hon. Bernard Finnigan for his time in the chair. It was quite enjoyable working with Bernard on this committee. I would also like to acknowledge the good work of the Hon. Ian Hunter, the Hon. Rob Lucas and the Hon. Ann Bressington. It is an interesting committee. We get to the nub of most issues and generally work in a pretty cooperative manner.

We are fortunate to be well served by Mr Gareth Hickery as our secretary, our newly appointed research officer, Lisa Baxter, and, of course, Cynthia Gray has been our long-term admin assistant. I take the opportunity to acknowledge Jenny Cassidy, who unfortunately had to leave our committee; her tenure was up. She was an incredibly competent and hard-working research officer. With those few words, I commend the motion to the council.

Motion carried.

The Hon. R.D. LAWSON: Mr President, I draw your attention to the state of the council.

A quorum having been formed:

SELECT COMMITTEE ON THE ATKINSON/ASHBOURNE/CLARKE AFFAIR

Adjourned debate on motion of Hon. R.D. Lawson:

That this council notes the evidence and documents tabled in relation to the Select Committee on the Atkinson/Ashbourne/Clarke Affair and expresses its concerns with the actions of the Premier, the Attorney-General, members of their staff and other members of the Rann government in connection with the affair.

The Hon. R.I. LUCAS (20:33): I rise to support the motion originally moved by the Hon. Robert Lawson. In speaking to this motion I am mindful of the comments made by my colleague the Hon. Mr Lawson when he originally moved the motion and, to the extent it is possible, I do not want to repeat those statements but, rather, concentrate on some particular aspects of the evidence presented to the select committee and tabled as part of the large package of documents that the Legislative Council received at the outset of discussion on this motion.

I remind members that one of the documents tabled (which was referred to by the Hon. Mr Finnigan as the minority report) was a statement on behalf of a majority of the members of that select committee: the Hon. Robert Lawson, the Hon. Sandra Kanck and me. As you would be aware, Mr Acting President, there were five members of that committee, so the statement tabled by those three members certainly does not constitute, in any sense of the word, a minority report, unless the Hon. Mr Finnigan counts in a different way from the rest of the members in this chamber.

That particular statement—which, as I said, came from a majority of the members of the select committee, having listened to all the evidence—was tabled in the way it was because a decision had been taken by this chamber, which we understand and accept, that the committee would not be reconstituted to allow it to finalise and vote on its report. Clearly, had it been able to do so, it would have shown that the majority of members agreed with the statements that have been included in this statement that has been tabled in the council.

The crucial findings in that statement were based on the evidence presented to the committee and were in three areas, as follows:

- The claim made by Attorney-General Atkinson that he was not aware that Ralph Clarke was offered government board positions in connection with the finalisation of the defamation case is not credible. The Attorney-General's claim is directly contradicted by his own staff and is inconsistent with the evidence of numerous witnesses.
- Premier Rann severely compromised the criminal proceedings against Ashbourne. The Premier and other ministers acted improperly by not promptly reporting matters to police and by ordering an in-house inquiry (the McCann inquiry) into allegations that Ashbourne and Atkinson had abused their public office.
- The McCann inquiry was so grossly bungled that the jury in Ashbourne's trial was prevented from hearing the full facts of the matter. Moreover, the seven month delay between the time the Premier became aware of the issues and the time when they were reported to the SAPOL Anti-Corruption Branch (the ACB) jeopardised and compromised both police investigations and the subsequent trial.

As we know, the select committee had the advantage of hearing evidence from Ralph Clarke, a vital witness whose testimony was central to the affair but who, prior to the establishment of this select committee, had not had an opportunity to tell his side of the story.

In summary, they were the major findings of the select committee, but I want to concentrate to a degree on the critical issue of the credibility of Attorney-General Atkinson's position and his denial of any knowledge of discussions about board positions. One of the crucial questions examined by the select committee was the issue of whether Attorney-General Atkinson was aware of discussions involving Clarke being offered positions on government boards and/or committees as part of a deal to abandon his legal action against Atkinson. In particular, the critical question is whether this issue was discussed in early November 2002 at a meeting between Atkinson, Ashbourne and Karzis (Atkinson's trusted former political adviser, George Karzis).

Atkinson's position has been that he was not aware, and that when he met with Ashbourne there had been no mention of the question of board appointments. Atkinson's evidence at the

Ashbourne trial was unequivocal. This is his evidence at the trial. The question was put to the Attorney-General:

> There was never any mention during any discussions you had with Randall Ashbourne about the litigation that suggested that as part of the resolution of litigation Ralph Clarke was to be offered some government board or position?

Attorney-General Atkinson's response was: 'Yes, that's correct.'

Significantly, Atkinson's evidence is in conflict with the position of his own adviser, George Karzis, and also Randall Ashbourne's evidence to the original McCann inquiry (which was later changed at trial). Karzis in his statement to the Anti-Corruption Branch confirmed he attended the meeting (this is the meeting with Atkinson and Ashbourne) and he heard Ashbourne state that Clarke wanted positions on government boards and/or committees as part of the settlement deal. The record of interview shows Karzis as saying:

> ...what he said was, Ralph wants Boards and Committees to withdraw his action, Ralph wants a couple of Boards and Committees.
>
> Question: Okay, and you're fairly certain of the events of that?
>
> Answer: Yes.
>
> Question: What was Mick's response [Mick Atkinson] to that?
>
> Answer: Am flabbergasted. I mean...

It is clear that, far from Atkinson being unaware of the fact, as he claimed, Karzis, his own trusted political adviser, who was in the meeting, confirms that Atkinson was aware of and was flabbergasted by the request. In sworn evidence at the Ashbourne trial, Karzis confirmed his earlier statements. He said: Randall (that is, Randall Ashbourne) said that Ralph was willing to withdraw the defamation action but that he wanted some boards and committees.' Karzis said: 'Well, that's got nothing to do with us. [Atkinson] looked at me with a "what the hell" sort of expression on his face.'

Ashbourne told the McCann inquiry he attended the meeting and that he told Atkinson about Clarke's request for board appointments. In fact, the record of interview describes Ashbourne's recollections of Atkinson's response to the request for board appointments:

> Ashbourne: Mick made it clear that he wouldn't have Ralph anywhere near him but he would speak with others about areas where he could use Ralph's talents—not in legal—in areas of IR and jobs.
>
> Question: Did the Attorney-General use his best endeavours?
>
> Answer: Mick said he would chat with others. Mick said, 'I won't have him anywhere near me.'

So, this evidence from Atkinson's own trusted adviser and Ashbourne, the two other people who attended these critical meetings in November 2002 with Attorney-General Atkinson, directly contradicts the claim by Atkinson that there was no discussion about board appointments at the meeting.

Evidence given in a statement to the Anti-Corruption Branch by Cressida Wall, Chief of Staff, to Treasurer Foley also does not support the position of Atkinson on the issue of board appointments. Her statement makes it clear that Ashbourne told her at a meeting with him about the settlement deal involving board positions and that Atkinson was aware of this:

> Ashbourne: As part of the settlement we had agreed to offer him some board memberships.
>
> Wall: Does Mick know about this?
>
> Ashbourne: Yes. Obviously the boards couldn't come from within the Attorney-General's portfolio so they'll have to be found elsewhere in government. The Attorney-General is going to speak to his colleagues but as you know, he's a bit vague—

we all know that—

> so we need to [offer him] something about it as well—can you get onto it and see what Kevin [Kevin Foley] can offer—he would be suited to something in the jobs area given his background. Ralph would expect at least one—

that is, board appointment—

> sooner rather than later.

That was the end of the evidence in relation to what Ashbourne had said to Cressida Wall, the Chief of Staff to Treasurer Foley. As the statement from the majority of members of the committee outlined, the evidence given by Ralph Clarke to the committee also does not support the position of

Attorney-General Atkinson on the issue of board appointments. In addition, the evidence given to the committee by former Labor senator Chris Schacht, former Labor MP Murray De Laine, former Labor Party activist Gary Lockwood and Edith Pringle does not provide any support to Attorney-General Atkinson's position.

The statement of the majority of members summarises all the evidence of some seven individual witnesses where in detail their evidence contradicts the evidence of Attorney-General Atkinson. I have highlighted Mr Ashbourne's and Mr Clarke's but, for example, Senator Schacht's evidence, if I can summarise it, supported Ralph Clarke's evidence. He said, amongst other things, that in November 2002 Ralph Clarke had rung him on a number of occasions outlining the details of his discussions with Atkinson about a possible deal with Atkinson.

Murray De Laine, a former Labor MP, again supported Ralph Clarke's evidence and said, in general terms, in November 2002, Ralph Clarke had rung on three occasions outlining details of his discussions with Ashbourne about a possible deal with Atkinson. Gary Lockwood, who was a staff member for Labor member Robyn Geraghty and also a staff member for Labor member Frances Bedford, supported Ralph Clarke's evidence. In summary, he said that, in October and November 2002, he was present when Ralph Clarke took a number of phone calls from Randall Ashbourne. Ralph Clarke told him that Ashbourne was acting as a go-between for Atkinson and Clarke over the deal involving Clarke withdrawing his legal action and Clarke receiving board appointments in return.

Then, finally, Edith Pringle, a former Labor Party member, staff member for Frances Bedford MP and de facto partner of Ralph Clarke, in her evidence said she had agreed to a request from Atkinson (and I will return to this later) to be a witness in his court case with Ralph Clarke. That is, Attorney-General Atkinson had asked Edith Pringle to be a witness for him in the defamation proceedings and she had agreed to that request. Her evidence was that, on 15 November 2002, she rang Attorney-General Atkinson at a number that he had given her in his ministerial office and that Atkinson told her she was no longer needed (that is, as a witness) as a deal had been done to stop the case, and that the deal involved Atkinson not paying any money to Clarke because Clarke would be given some board positions.

In summary, the only support for Attorney-General Atkinson's position materialised when Randall Ashbourne was able to change his evidence at trial; that is, the evidence that Randall Ashbourne had given to the earlier McCann inquiry and the police investigations. The reason he was able to change his evidence was that the secret inquiry, the McCann inquiry, that Premier Rann had instituted into this affair in November 2002 had been conducted in such a fashion that the evidence collected by Mr McCann was unable to be used at the subsequent trial of Mr Ashbourne, which, of course, meant that Mr Ashbourne was able to change completely the story he had earlier given to the McCann inquiry at the subsequent trial.

Just to remember the sequence of these things, these issues became known to the government in late 2002 and it was not until mid-2003 that, for the first time, questions from the opposition in parliament raised publicly what had been going on privately for some seven months. If it had not been for the questions raised by the Liberal Party in the parliament, we may well never have found out about the sordid details of this particular affair. It was only when the questions were raised in the parliament in mid-2003 that the police were subsequently brought in by then acting premier Foley (because the Premier was interstate or overseas at the time) and advice from the Crown Solicitor was sought. The Crown Solicitor said, 'It is an allegation of corruption. It must go to the Anti-Corruption Branch of police immediately.' It was only at that stage, after it had been publicly raised, that the police were subsequently involved.

And so, because of the way the Premier conducted this secret inquiry, this evidence—again I repeat: this critical evidence—from Mr Ashbourne was unable to be used at the subsequent trial, and therefore Mr Ashbourne's position at the trial could be changed to support the position of the Attorney-General; that is, there had not been any discussion at this particular meeting in November. As this statement indicates, all the evidence from all those other persons, including Randall Ashbourne in his earlier evidence, contradicts the statements of the Attorney-General. Let us call a spade a spade in relation to these issues. What this statement of the three members of parliament is saying is that in his, Atkinson's, evidence at the trial, where he denies that there was any discussion, that statement in our view, having listened to the evidence, is untrue and, certainly on the legal advice to me, would indicate that Attorney-General Atkinson stands accused of perjury in relation to the evidence he gave at the Ashbourne trial. That is the concluded view—and it can

be read no other way—of the majority of members of that select committee. His evidence did not accord with anyone else's evidence.

As I said earlier, anyone who knew the close relationship between Mr George Karzis and Attorney-General Atkinson would know that Mr Karzis was the most loyal of advisers to Attorney-General Atkinson for a significant period, and for Mr Karzis, his most trusted adviser, to actually contradict and disagree with the Attorney-General's evidence in relation to what was discussed would obviously have been a most significant step for Mr Karzis, who I note is no longer working for the Attorney-General—I think he is now in private practice. So, it is a significant issue when one looks at the evidence of all others who gave evidence to the select committee.

I referred earlier to the evidence of a number of people, but in particular I refer to some of the evidence given by Edith Pringle, who had a most unusual background to all of this. She was the former de facto partner of Ralph Clarke, had been asked by Attorney-General Atkinson to actually be a witness for him in the defamation trail and she had agreed. She had been a former staff member for two Labor members of parliament—Robyn Geraghty and Francis Bedford—and also a former member of the Australian Labor Party. In her evidence she said—and I will quote a number of aspects of it:

> Michael Atkinson asked me whether I would be willing to appear in court to give evidence as to what had transpired. I made it clear that if I were to be subpoenaed I would have very little choice in the matter. I undertook in those circumstances that I would do then as I do now and tell the truth. My role as a witness in the defamation action, as I understood it, was that Michael Atkinson was running the defence of truth on the domestic violence issue. I was willing to testify because this action would have brought into account not only the three original charges of assault against me that the police had laid against Ralph Clarke, but also other incidents, including my time in a domestic violence shelter in Broken Hill whilst on an official visit there with Ralph Clarke.
>
> Knowing both Ralph Clarke and Michael Atkinson, as I have done, it was no surprise to me to learn that others were more aware and concerned about the political fall-out from litigation than the main participants seemed to be themselves. When the issue of criminal action was first raised, Mike Rann had put me under considerable pressure to assist in the withdrawal of charges, and Michael Atkinson supported that process. It was therefore self-evident that there would be others who would wish to see a private resolution of this very public stoush over mutual litigation.

Edith Pringle was asked a series of questions by the then chairman of the select committee and myself in relation to her evidence about Mr Rann and Mr Atkinson, and she said:

> Mr Chairperson, what I said was, when the issue of criminal action was first raised Mike Rann put me under considerable pressure to assist in the withdrawal of the charges, and Michael Atkinson supported that process. When I said that Michael Atkinson supported that process—and I do not use the word pressure because I did not feel pressure from Michael Atkinson because I thought at the time that he was trying to help. On reflection when I look back, the assistance in that process was providing a vehicle and a staffer from his office to drive me down to the police station in order to withdraw the charges.

That was Edith Pringle saying that Michael Atkinson's assistance had been to provide a vehicle and a staffer from his office to drive Edith Pringle down to the police station in order to withdraw the charges in that particular case. Ms Pringle went on to say:

> It is exactly as I said in court, that when Mike Rann directly, and also indirectly through Frances Bedford, and others, talked about how I should withdraw the charges—that, if I said nothing, nothing would happen, and things to that effect. I had spoken to Michael on the phone and I had complained that I had felt under pressure from Mike Rann that I had to withdraw the charges in the morning. I felt under pressure, and Michael had said to me not to worry, that doing it by sundown would be fine.

Then further on in her evidence Ms Pringle said:

> There was a telephone call and conversation that I had with Mr Rann on the morning after the charges had been laid. It is some time ago so my memory is less fresh than it would have been back then, but there is a record of that conversation. I remember some of the things that were said that stuck in my mind. Without even inquiring how I was or whether I was okay or needed medical help, he said something to the effect that timing was important, that we could write this off as a lovers' tiff within the media, so the sooner the charges were dropped, effectively, they could do a spin on it. You have to remember that at that time my entire life was tied up with the Labor Party, and that was known.
>
> It was my career, my job, my income, my social life, my spare time, and also I was in that relationship with Ralph Clarke. It was a very difficult time for me and it was a time when I felt quite vulnerable. In addition to that, there were two meetings that I had, one with Frances Bedford at the Royal Oak in North Adelaide, where she expressed to me some things that Mike Rann had said to her. I took the gist of that being that, if I did not testify, nothing would happen.

That was the nature of Edith Pringle's evidence relating to this issue. That is why I say—when I listed earlier the seven or so people who gave evidence contradicting Attorney-General Atkinson's position on this—that Edith Pringle's position is quite interesting. As I said, she held those unusual

positions within the Labor Party. At a request from Atkinson she had agreed to be a witness for him in the case against Clarke. Her evidence is quite clear, that on 15 November she rang Atkinson, on a number in his ministerial office that he had provided to her, to ask about the case and he had told her that she was no longer needed as a deal had been done to stop the case, and that the deal involved Atkinson not paying any money to Clarke because Clarke would be given some board positions.

There is much more in relation to the evidence tabled in that statement of majority of members of that select committee, but it all, in varying degrees, supports the essential case that the majority of members of that committee just did not believe the evidence that Attorney-General Atkinson had given at varying stages, right through to the trial. As I said earlier, that was evidence not just from two Liberal members of this chamber, but also former Democrat member Sandra Kanck, who was the Independent member of the select committee.

The final general area that I want to touch on in the quick run-through of the evidence is that, clearly, one speech this evening cannot do justice to the length and breadth of the evidence that was presented, which damns not only Attorney-General Atkinson but the secret inquiry of Premier Rann and the manoeuvrings of Premier Rann right from the word go in relation to this particular issue.

As we see from the evidence of Edith Pringle from many years ago, to the evidence that we have received, the true nature of Premier Rann in relation to these issues is revealed. Where he can keep something secret, he will do so. If he can have a secret inquiry rather than an open inquiry, he will do so. Where he can get away with anything that he can, he will seek to do so. He was only flushed out on this issue, as I said, when he happened to be overseas and the issue got raised in the parliament by the Liberal Party and his government was forced into a position of having to refer the issue to the Anti-Corruption Branch of the police. Again, ultimately, the secret inquiry meant that evidence could be changed at that critical trial which was held subsequently.

Of course, the select committee was not just looking at issues of criminality: the select committee was looking at whether or not improper actions had been taken or actions which were inconsistent with the ministerial code of conduct and the code of conduct required of staffers working for ministers of the government. This seems to have been an issue that escaped many Labor members and the Labor members of the committee and, sadly, I have to say, also the former auditor-general in his evidence to the select committee.

That is, it was not just an issue of criminality, because ultimately that had been determined by the criminal trial that had been conducted. This committee was not there to revisit the issue of criminality: it was there to look at the issues of breaches of the ministerial code of conduct and whether or not improper actions and improper behaviour had been engaged in by the Premier, the Attorney-General and others within the executive arm of government. Clearly, when one looks at the evidence this committee collected, one cannot but conclude that from the top down this government was rotten to the core in terms of the way it handled the process of the Atkinson/Ashbourne/Clarke affair.

The last area I wanted to turn to was the evidence given by the former auditor-general Mr MacPherson, and there was a series of questions which sought to get from him an explanation as to why—and members will recall that this secret inquiry from Mr McCann that the Premier had conducted had been run past the former auditor-general, and the former auditor-general had evidently at the time given it the tick of approval to this effect: 'I think that is an appropriate process in terms of handling these issues.' This was despite the fact that, as soon as it became apparent to the Crown Solicitor in the middle of 2003, the Crown Solicitor said words to this effect: 'This is an issue of corruption. It should have been referred to the police back in November and, now that it is public, it must be referred to the police in June-July of 2003', which, of course, subsequently happened.

The former auditor-general was subjected to a series of questions in relation to the issue of why he had signed off on this process and why he had taken the view that something as serious as corruption allegations should not have been reported to the parliament at the conclusion of even the secret inquiry and the auditor-general's sign-off of that secret inquiry. Not that I am sure that any members will, but I want to read all the evidence of the former auditor-general. It is illuminating in relation to the former auditor-general's position in relation to defending the Premier and the government's handling of this issue.

A series of questions was put to the auditor-general saying, 'When you had a look at this, shouldn't you have raised the question that, if there are three people at a meeting—that is, the Attorney-General (Mr Atkinson), Randall Ashbourne (the Premier's key adviser) and George Karzis—shouldn't you or someone have spoken to all three people who attended that meeting? The auditor-general's evidence, which I found extraordinary, was that he believed that, no, the McCann inquiry was not deficient in that it had not spoken to Mr George Karzis and that the McCann inquiry was not deficient in that it had only looked at the statements from Attorney-General Atkinson and Mr Ashbourne.

I find that extraordinary because, as we find subsequently, Mr George Karzis gave evidence directly contradicting the position of the Attorney-General. Yet, we had the former auditor-general, in his evidence to the committee, defending the fact that there was no particular need for Mr McCann and others to have spoken to a critical third witness, a third member, who was present at these vital meetings in November 2002. The questions that were put to him were as simple as:

...Did you inquire when you received the documentation from Mr McCann as to whether there were other witnesses at the meeting between Mr Atkinson and Mr Ashbourne?

Mr MacPHERSON: No, I didn't.

The Hon. R.I. LUCAS: If you had known that there were other witnesses—Mr Karzis and whether or not there were others—would you have asked for a statement of their recollections of the meeting between Mr Atkinson and Mr Ashbourne?

Mr MacPHERSON: No, I wouldn't have...

There is further evidence and a question to Mr MacPherson:

...do you believe that a third party witness to the discussion between Ashbourne and Atkinson should have been interviewed and—

Mr MacPHERSON: By me?

The HON. R.I. LUCAS: No, by Mr McCann; you didn't conduct the inquiry.

Mr MacPHERSON: No.

As I said, there is a whole series of questions where Mr MacPherson indicates that he did not see the need for Mr Karzis to have been spoken to at that particular time. Further on in the former auditor-general's evidence, we asked the question:

...whether or not you believe that at the time it should have been advised to the parliament in any way at all.

That is, a question was asked of the former auditor-general:

Okay. You have serious allegations of corruption, the Premier conducts a secret inquiry through Mr McCann, you as auditor-general are asked whether or not that has been appropriate in terms of the way it was handled.

And the question was:

Do you believe that at that time it should have been advised to the parliament in any way at all?

Mr MacPherson's reply was:

Absolutely not. It is no different from any other disciplinary process that occurs anywhere in government involving ministers of the Crown down to the lowest public servant. Where it is characterised as a disciplinary matter, there is absolutely no basis whatsoever for publication of that.

He then later went on:

No, I think the Premier acted quite appropriately in the whole thing, to be quite blunt; he couldn't have done any more than he did. Can you tell me, if you were sitting in his position, what more would you have done? You can sit there as if you have a mortgage on righteousness. He couldn't have done any more than he did.

The Hon. Mr Lawson said:

The Crown Solicitor had a different view.

Mr MacPherson said.

And he was dead wrong.

Mr President, as you probably recall, the auditor-general was very defensive of the Premier and the Attorney-General in the evidence that he gave to the select committee. Ultimately, he is obviously answerable for the evidence he gave, but I have to say that, as a member, in all my time in this

parliament, and having worked with a number of auditors-general over the years, I found his evidence there and in another select committee some of the most extraordinary evidence that I have ever heard from an auditor-general.

I cannot even conceive of the circumstances where, in something as critical as a corruption allegation against a senior minister in a government, an auditor-general would so trenchantly oppose any disclosure at all; that is, the permanent secrecy of a serious corruption allegation against a senior minister in the government. How on earth can an auditor-general defend a position that there should not have been some public revelation? It did not have to be by the auditor-general: it could have been very strong advice from the auditor-general to the Premier, 'Hey, you believe you've acted appropriately. This ought to be the subject of some public disclosure in one form or another.'

As I said, they were the major issues that I wanted to address. I will just briefly respond. At the time of the Hon. Mr Lawson's initial speech on this issue, he and the Liberal Party were roundly attacked by the wholly owned subsidiaries of the Attorney-General. It will not surprise you, Mr President, that the Hon. Mr Finnigan was the first to his feet with a defence of his boss and colleague, the Attorney-General, and making accusations of extraordinary abuse of parliamentary privilege, etc.

This was a select committee. It took evidence and members reached a conclusion. It might not have been a conclusion with which the Hon. Mr Finnigan agreed, but tough! That was the evidence. If the Hon. Mr Finnigan, instead of fits of vitriol and spleen-venting and whatever else it is that gives him pleasure, would like to look at the evidence and stand up on some occasion and challenge the evidence, rather than just screaming vitriol across the chamber, then I challenge him to do so.

The only other thing of substance he did was challenge the Hon. Mr Lawson and the Hon. Sandra Kanck, who spoke at the time, to go outside and make those particular statements outside. These statements had been made as a result of a determination and conclusion of evidence received by members on a select committee. Of course, not every member of parliament has the advantage of having legal friends, as the Attorney-General has, who can provide pro bono assistance to him, as we have seen in relation to previous cases in which the Attorney-General has been involved.

As we know from his declaration of interests, Mr Chris Kourakis, who is now a judge appointed by the state government to the bench and, prior to that, appointed by the state government as solicitor-general, was generous in terms of his donation of time to the Attorney-General. We also know that another solicitor was generous in his donation of time and subsequently has been appointed to another senior position on the Parole Board. I am a very generous person and I would certainly never suggest that the two issues were connected. However, there are other less generous people in the community who certainly take a different and less charitable view than I take in relation to those particular issues.

It is easy for the Attorney-General who, as I said, is in a position through his legal connections to get pro bono advice to defend. We have seen a whole variety of cases: the defamation action in relation to Ralph Clarke; the defamation action in relation to Deputy Magistrate Mr Cannon; defamation actions in relation to Colin James, a senior journalist at *The Advertiser;* and we now have a court case involving the disengagement from the public sector of Kate Lennon, one of Mr Atkinson's former chief executives. There has been a whole series of legal actions and in a number of those, of course, across the board the Attorney-General has had his costs met by the taxpayers of South Australia.

On another occasion, I will be delighted to remind the Attorney-General, the Premier and others of their various statements over the years in relation to whether or not ministers, former ministers and current ministers (I would assume) should have their defamation actions met by the taxpayers of South Australia. They certainly made a number of very interesting statements over the years in relation to that issue. Of course, when it came to $200,000 (or whatever the number was) in relation to Mr Cannon's successful defamation action, their previous statements went straight out the window.

As I said, it is cute for the Hon. Mr Finnigan not to respond to the details of the evidence provided by the Hon. Mr Lawson and others, and to rely on the general spray principle and, as I said, vitriol and spleen-venting. However, the challenge remains there for the Hon. Mr Finnigan or,

indeed, the Attorney-General, because he has been unable to produce a defence to a number of the specific allegations that have been made in the evidence to the select committee.

He obviously did not want to present evidence to the select committee and did not want to subject himself to questioning in particular by my colleague the Hon. Mr Lawson QC. I am not surprised that the Attorney-General would not want to subject himself to the questioning of my colleague and others on that particular select committee.

In supporting the motion this evening, I say that, whilst I know that members will certainly not going back to the many hundreds of pages of evidence, I hope tonight I have been able to at least summarise the flavour and the importance of some of that evidence. Certainly, the key message I leave in my contribution this evening is that the evidence of Attorney-General Atkinson is not to be believed because the evidence that was produced by so many other witnesses directly contradicted his claims on this issue.

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

BUDGET AND FINANCE COMMITTEE

Adjourned debate on motion of Hon. R.I. Lucas:

That the report on the operations of the committee, 2007-08, be noted.

(Continued from 12 November 2008. Page 615.)

Motion carried.

CONSENT TO MEDICAL TREATMENT AND PALLIATIVE CARE (VOLUNTARY EUTHANASIA) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 14 October 2009. Page 3568.)

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (21:17): I rise to support this most important bill. I am aware of the hour and I am also aware that most members wish to speak this evening on the bill, which I know is contentious, so I will keep my comments brief.

My very strongly held views about supporting voluntary euthanasia are already well documented on the *Hansard* record, because I have spoken in support of this on a number of occasions in this place. In light of that, I will keep my comments brief. I have been a longstanding member of the South Australian Voluntary Euthanasia Society (SAVES) for many years. It is a fabulous organisation, and I admire and commend the society for its work organising and rallying public awareness and opinion around this important issue.

As we have seen, over the decades the general public's support for euthanasia has steadily increased. I understand that support for voluntary euthanasia is presently sitting at around 87 per cent. However, that is not the point. I think that, irrespective of public opinion, the purpose of parliament is to ensure that we provide leadership and are responsible for good legislation and good policy in terms of what is in the best interests of the public. In accordance with that view, I support this legislation.

I think it is most important that voluntary euthanasia be a matter of personal values and ideals and personal points of view, and I respect that. However, what I find very hard to understand is why those of a particular point of view or persuasion want to limit the freedom of choice of others, and that is what is occurring here. This legislation is not forcing voluntary euthanasia on anyone. It is leaving the ultimate choice of whether or not one believes it is appropriate for them up to the individual to choose. However, by not supporting this the few impose their view on others and we limit that freedom of choice.

I have not always held this view about voluntary euthanasia; in fact, when I was much younger I opposed it. It has taken a lifetime of experience, particularly the work I did as a healthcare professional, a nurse, to completely turn around my view, and I am now a strong supporter of and advocate for voluntary euthanasia.

Surveys quite clearly demonstrate that euthanasia is occurring, that our healthcare professionals are already involved in acts of euthanasia. In fact, I would hazard a guess that not

only is it occurring but that the surveys show only the tip of the iceberg. We know these acts are occurring, and they are occurring in an unregulated and unlawful way at great risk not only to patients but also to those healthcare professionals who feel that, in the name of humanity, they have no other choice but to support people who are in a hopeless, terminal and distressing condition.

The bill before us provides an abundance of safeguards and measures to protect the general public from any abuse in terms of voluntary euthanasia. I will not go through them all, because they have already been outlined and are on record, but there are a series of checks, measures and safeguards, hoops that people have to climb through, before they could have access to voluntary euthanasia treatment. So I believe there are adequate protections within the bill to ensure that abuse does not occur.

People are concerned that passing legislation to support voluntary euthanasia would lead to the slippery slope argument that families might begin to pressure relatives, accuse them of being burdens, and make them feel as if they have no other choice but to take up the option of voluntary euthanasia. The argument can be extended to say that we will then become hardened to that, and that the next step would be euthanasing people with disabilities, malformed children or handicapped people. The argument goes on and on. I believe it is a false argument, and I think it involves a fair bit of scaremongering. If you look at countries that have voluntary euthanasia and those that do not, you can see that acts of illegal euthanasia occur in both, so I do not see that the arguments necessarily stack up.

I will not go through the individual studies, but I challenge the interpretation of those studies. I think some of them include acts promoting a more rapid death as acts of voluntary euthanasia—for instance, administering an analgesic for the purpose of pain relief but, in administering it, it may shorten someone's life. In some studies, those sorts of incidents are recorded as acts of euthanasia, so there is a bit of argy-bargy that goes on in the interpretation of some of those surveys.

From a personal point of view, and from some of the work I did, it is quite clear that palliative care is not enough. I have put on the record before, and I will do so again because I think I need to, that this is not a criticism of our fabulous palliative care workers in this state. The work that is done here in South Australia is leading the nation in a number of respects. They do amazing work and provide fabulous care and treatment for many patients who are in incredibly tragic and difficult circumstances. They offer relief, care and hope to many patients and their family and friends; however, that is not the issue.

I worked as a healthcare professional for many years, and I worked in the area of health for much longer, so I think that my observations are legitimate. I know from those observations that palliative care does not always work, and it does not always offer relief to those suffering from terminal illness, which can be extremely painful and distressing and result in a very undignified end to their life they do not deserve.

I will not go into detail, but I have been in a position where patients have begged and pleaded with me to help end their life because of the horrendous state they were in, and those memories will remain with me until the day I die. Palliative care does not afford satisfactory management of pain and suffering in all cases for a number of reasons, some of which are related to an individual's response to medication—individual tolerance levels are different, etc.—and people's reactions vary, as well.

There is a great deal of variation in the response to the side-effects of different medications, and sometimes those side-effects—such as hallucinations and people being rendered into an unresponsive state, where they lose awareness and control and do not know what they are doing—are unbearable. Many people find that intolerable and a complete loss of dignity, and I believe that it is important we offer people alternatives to that.

I have been on the record before outlining in detail my support of voluntary euthanasia, and I continue with that support. I hope that honourable members support this very important piece of legislation.

The Hon. B.V. FINNIGAN (21:29): I rise tonight to contribute to this bill introduced by the Hon. Mr Parnell. This bill seeks, for the first time in a state in Australia, to establish a regime of active voluntary euthanasia and self-administered voluntary euthanasia, or physician-assisted suicide, as it is described in some places. I would like to discuss three general principles in relation to the debate and how we should approach it.

The first is that I think we need to try to be dispassionate and objective in considering the question of active voluntary euthanasia. We need to try to think about it as a health and public policy issue and not be too personal or emotional about it, and I acknowledge that this is an extremely difficult thing to do. Probably the most difficult thing most of us will face in our lives is losing someone we love very much; indeed, it is extremely difficult to deal with. It is very hard as human beings not to let our personal experience shadow how we think about any issue, but particularly one that is so necessarily emotive.

Nonetheless, as legislators I do believe that we have a responsibility to try to think about the issue dispassionately and objectively and think about whether it is a sound public policy. In my own instance, I have lost both my parents to cancer. They both received excellent palliative care and died at home with their family close to hand. They did have, I think, as peaceful a death as it is possible to have, but that should not be why I oppose active voluntary euthanasia. What has happened in my own personal circumstances or in my family cannot be the main guiding principle when it comes to making up my mind about an important piece of legislation such as this, which I acknowledge is a difficult thing to do.

We need to look at euthanasia not as a Christian or moral issue. It is certainly an ethical issue, and a very important one, but it is not one that is about whether or not you think that God exists, and if he or she does whether or not he or she decides when life ends. It is not a Christian or moral issue in that sense. It is not about who you think has the right to decide when you end your life, even though it is sometimes characterised in that way. Indeed, the debate is often characterised in the sense that all reasonable and rational people want active voluntary euthanasia and it is only a small group of religious zealots who try to stop it because they think it is playing God.

If people think that I am exaggerating that point, we have to look only at the article in today's *Advertiser* which says precisely that zealots are prolonging people's pain because they are opposing active voluntary euthanasia. Advocates for euthanasia indeed often advance this principle. The South Australian Voluntary Euthanasia Society (SAVES) website includes a quote from Jim Soorley, a former Catholic priest in Queensland, who I think became lord mayor of Brisbane, or ran for it. His quote states:

> It's about time all the moralisers, right to lifers and interferers got out of the way.

That is the attitude that I think a lot of euthanasia advocates take, that is, that this is a secular country, it is a secular issue, and so why do Christians try to tell other people what to do? Mary Gallnor, in her letter to legislators, which is on the SAVES website, says:

> I put it to you that it is also time for us to restate vigorously and often that there is no place for religious dogma in the parliament of a secular democratic country.

Very clearly an argument advanced by those who support euthanasia is that everyone really supports this; it is just a bunch of Christians who are trying to stop it. Yet we have seen, certainly in this debate, that people who are Christians advocate support for legal voluntary euthanasia. Indeed, the SAVES website includes documents from the group Christians Supporting Choice for Voluntary Euthanasia, as well as some articles by Christian theologians which oppose the official church teaching.

Whilst the leadership of most Christian churches is clearly opposed to euthanasia, some Christians do not agree. On Monday I was pleased to be able to meet with representatives of Christians Supporting Choice for Voluntary Euthanasia who believe that the church hierarchy is not in step with the faithful and that the principle of Christian compassion demands support for active voluntary euthanasia. We have different points of view within the Christian community, and there are those, such as the Christian Supporting Choice for Voluntary Euthanasia, who say that their own faith motivates them to support legal voluntary euthanasia.

This is an interesting theological and pastoral debate, but it is certainly not one for the parliament of South Australia. Different Christians will have a different perspective on active voluntary euthanasia. Some may disagree with their church leaders. I believe we should listen respectfully to church leaders and other Christians, and any organisation that wants to put forward their point of view. They are certainly entitled to participate in public debate, as I have said before on the record, but I do not believe that that should determine what we do as legislators. I think it is very important that we do not think of this as a Christian or moral issue in the sense that the only people who oppose it are doing so out of some sort of dogmatic reason.

This bill is about active voluntary euthanasia. It is about doctors being able to end human life by a lethal dose. It is not just about an assisted suicide measure, although the bill does allow that. This bill goes further than the situations in a lot of other jurisdictions which are often quoted as places where there is euthanasia. In many of those places, in fact, there is not active voluntary euthanasia where the doctor takes the physical step of ending someone's life.

Intent is very critical in how we do things. We often hear that euthanasia is happening because of the principle of double effect, which is simply that, when we relieve people's pain with doses of morphine or other drugs (which can be quite high), those doses will hasten a patient's death and that is the same as active voluntary euthanasia. Well, I suggest that is certainly not the case. Intent is absolutely important. There is a very clear difference between relieving pain and treating someone, giving them palliative care which may hasten death, and that is universally recognised as legitimate, appropriate and humane. It is a vastly different proposition from establishing a legal framework for doctors to administer lethal injections, overseen by a government board.

Voluntary euthanasia will inevitably mean some cases of involuntary euthanasia. I am not suggesting that that would involve all or even a majority, but certainly one is too many. If under this legislation anyone is subjected to involuntary euthanasia that is one death too many.

I turn now to the provisions of the bill. Even if I was a supporter of active voluntary euthanasia, I could not support this model. A lot of people will talk about the safeguards in it, but it is important to remember that they are, essentially, visiting a doctor or, under the amendments proposed by the mover, a specialist and then being signed off by a government appointed board.

I believe that the model that exists under this legislation is fundamentally flawed in a number of respects. First, and perhaps most critically, is the definition as to who can access active voluntary euthanasia. Under this legislation you do not have to have a terminal illness to obtain active voluntary euthanasia or a prescription for a lethal dose. Clause 19 provides:

> (1) This section applies to the following persons...
>
> (b) an adult person who has an illness, injury or other medical condition that...
>
> (ii) irreversibly impairs the person's quality of life so that life has become intolerable to that person.

That is not a definition that provides a tight restriction on who can access active voluntary euthanasia. That definition could apply to someone suffering from chronic depression or rheumatoid arthritis, or the early stages of multiple sclerosis or Alzheimer's. I am not suggesting that is the intent of the mover of the bill or those who support the bill, necessarily, but we cannot determine the application of a fundamental clause of the bill once it leaves the parliament.

The act is justiciable—and explicitly so—in relation to refusals by the board to approve voluntary euthanasia, so when cases go before the Supreme Court there is no doubt that one of the key issues it would consider is the application of clause 19 and the meaning of it. As we know, courts can take a different view from what the legislature may have intended and could apply a fairly wide interpretation of clause 19(1)(b)(ii). I am not suggesting it would become a matter of triviality that people would be able to access euthanasia for something minor but, nonetheless, they may well be able to access it for conditions considerably beyond the intent of those supporting this bill. All bills are subject to courts, of course, so we can never tell what is going to happen, but a definition such as this and a provision that allows appeals to the Supreme Court in relation to decisions of the board undoubtedly invites legal action, and the courts may interpret the statute much wider than those supporting it intend.

Secondly, I think the voluntary euthanasia board of South Australia is a seriously flawed idea. Having obtained the necessary medical consent from one physician—potentially from only one physician or specialist, with these proposed amendments—the patient is then in the position of waiting on board approval of their request. I understand that the mover intends this as a safeguard, but I submit that it is open to many pitfalls. The board has to be able to meet and, while a quorum of three is sufficient, I am sure we all know what it is like to coordinate schedules of busy people—even to do so with three of them may be difficult and would cause undue angst and anxiety to patients. I think when those who are supporting active voluntary euthanasia are saying that it is about relieving people's anxiety about pain and ensuring they have at least the option of euthanasia, if not to carry it out, I think this really places quite an intolerable burden on them.

The board must unanimously agree (or, at least, the three, four or five members sitting) on a request for active voluntary euthanasia or a request to get a lethal prescription. This could certainly lead to great heartbreak, I think, for the people who are requesting voluntary euthanasia because, if a person who is appointed to the board is not well disposed or even opposed to the practice, they may decide to veto a number or even half of the requests.

There is provision in the bill for them to be dismissed by the Governor, but I think that is a potential mine field and would open up the system to a lot of litigation. The potential opposite problem is that the board would become a rubber stamp and essentially safeguard a meaningless provision. I cannot quite see a way in which this board would effectively work. I think it is likely to be either too onerous or not sufficient in rigorously assessing requests for voluntary euthanasia. Because of the way it is set up, I do not believe it would be an effective safeguard.

I turn to arguments that are advanced in favour of active voluntary euthanasia on a regular basis and respond to them. The first is that it is working well in foreign jurisdictions. It is important to examine other places where active voluntary euthanasia is in place, mainly in Oregon and Washington in the United States, where they have physician-assisted suicide, and the Netherlands, where it is broader. It is important to remember that the law in Oregon and Washington is very different from this proposal. Both are only applicable to patients diagnosed as having less than six months to live. While that, too, has an element of subjectivity and there is obviously a judgment involved in classifying someone as having less than six months to live and it is a matter of medical opinion, the definition is not nearly as wide open, in my view, as that which applies in this bill.

Both Oregon and Washington have laws that provide for physician-assisted suicide. They provide for a prescription for a lethal dose to be given to the patient, not for the doctor to deliver it. Oregon is often held up (including, I think, by the Hon. Mr Parnell in his briefing note) as a good model of law in relation to this area, but there is certainly evidence of problems in the administration of the law in Oregon. I draw honourable members' attention to the *Michigan Law Review* Volume 106: 1613 of June 2008, and an article headed 'Physician-Assisted Suicide in Oregon: A Medical Perspective'. This goes through a number of various cases in Oregon and highlights some of the problems.

One of the issues that is raised is that people who are seeking euthanasia have to be given a thorough explanation of what the alternatives and options are, and I believe that is part of the Hon. Mr Parnell's bill, that the medical practitioner has to give them information about their prognosis and what treatments and so on are available. Here is an example of one of these in Oregon where a physician said this:

> There is, of course, all sorts of hospice support that is available to you. There is, of course, chemotherapy that is available that may or may not have any effect, not in curing your cancer but perhaps in lengthening your life to some extent. And there's also available a hormone which you were offered before by the oncologist—tamoxifen—which is not really chemotherapy, but would also have some possibility of slowing or stopping the course of the disease for some period of time.

The patient said: 'Yes, I didn't want to take that.' The doctor said: 'All right, okay, that's pretty much what you need to understand.'

I hardly think that any of us would judge that that is a sufficient means of going through the options with a patient. I am not suggesting that those who are supporting or advocating this bill would say that that is acceptable, but it is an example of what can happen under this sort of system.

The most comparable jurisdiction in relation to this bill is the Netherlands, which has practised euthanasia for some years under common law, and it is now covered by a statute. There is certainly clear evidence over many years of a high number of cases of involuntary euthanasia in the Netherlands from the Remmelink Report (which I am sure members would have come across) and onwards. In fact, there seems to be an extraordinary number of cases of euthanasia in the Netherlands, full stop, and certainly a large number of cases of involuntary euthanasia.

I draw the attention of honourable members to the *Journal of Medical Ethics* 1999:25, an article entitled 'Voluntary euthanasia under control? Further evidence from the Netherlands'. This was a study of 4,500 cases in the Netherlands. It indicated that 900 of the 4,500 (so, 20 per cent of the patients) had not had an explicit request. So, 900 patients—20 per cent of the 4,500 patients whose lives the doctors had said they had actively and intentionally helped to end by euthanasia or assisted suicide—had had their lives ended without their explicit request. In a third of the 900 cases, although there had been a previous discussion about possible termination of life and

although some 50 per cent of these patients were competent at the time of their death, their lives had been ended without their explicit request.

That study also indicated that, in 17 per cent of 3,600 cases of euthanasia or assisted suicide, doctors stated that alternative palliative treatment options existed, but in almost all these cases the patients did not want them. So, one could argue that that is because the patients were determining their own health care, but I think one would also have to wonder how well the patients were being informed and educated about what the options were.

There are also clinical problems with the administration of this law. I draw the attention of honourable members to an article in the *New England Journal of Medicine*, Volume 342, No. 8, 'Clinical problems with the performance of euthanasia and physician-assisted suicide in the Netherlands'. A study there of 649 cases found that in assisted suicide there were complications in 7 per cent of the cases and problems with completion in 18 per cent. The problems with completion included a longer than expected time to the death of the patient, a failure to induce coma or the induction of a coma, followed by the awakening of the patient. In 18 per cent of cases of assisted suicide the physician decided to administer the legal medication, thus it became euthanasia. So, in 18 per cent of cases of assisted suicide the patient had self-administered, but the physician determined that it was not working sufficiently or that there were problems, and so they actively then ended the life.

I think that gives the lie to the concept of a peaceful death with no problems, as euthanasia is often painted. Of course, people undergoing palliative care and coming towards the end of their life do have health problems. I am not suggesting that it is all smooth sailing. Of course, anyone at the end of their life (unless it is sudden) with a terminal illness will generally have some health problems as they go along. However, the picture is often painted that active voluntary euthanasia takes all that away; that it is a system where people can die peacefully and quickly with their loved ones around them and not have to endure any sort of suffering at all.

I do not think that is the experience that has been shown in the Netherlands—and it makes sense. As we know, when prisoners are being executed (which is obviously a different kettle of fish in that they are not people who are terminally ill or suffering from a particular condition), it is extraordinary the way the human body fights back, and there is no doubt that that will happen to some degree when euthanasia is being administered.

I would imagine it would be very traumatic for the patient and the family for someone to wake from a coma having thought that they were on their way to death and then the doctor having to administer a lethal dose on top. I think it is important to remember that euthanasia is not a panacea. It does not mean that you remove any potential medical problems and that the death is always smooth.

The second point I address is that public opinion is overwhelmingly in favour of active voluntary euthanasia. This is an extremely commonly advocated argument and, indeed, the people at the rally today were wearing T-shirts I think that said, 'I am one of the 87 per cent.' There are two questions here: first, is this measure of public opinion correct; and, secondly, if it is, are we obliged therefore to pass the bill? Firstly, in relation to whether it is correct, I believe it is hard to truly judge public opinion on important questions of social policy.

Polls are notoriously unreliable on these sorts of issues. It is quite easy to poll people about who you are going to vote for: X, Y or Z. When you poll them on questions about the end of life or other social policy questions, I believe that the responses are far more unreliable. Poll questions tend to invite a yes answer. If you look at the questions that are asked by Newspoll and Morgan, it is very much, in my view, structured to invite a yes answer. The Newspoll one which was distributed by the honourable mover today says:

> Thinking now about voluntary euthanasia. If a hopelessly ill patient experiencing unrelievable suffering with absolutely no chance of recovering asks for a lethal dose, should a doctor be allowed to provide a lethal dose or not?

Of course, that is a very loaded question, because it assumes a whole lot of things.

First, that is not in fact what this bill does. The question asks: should a doctor be allowed to provide a lethal dose? This bill allows doctors to provide a lethal dose. It also allows them to administer—that is, to physically inject or whatever—the lethal dose to the patient. In that question it is not clear that that is what is being asked, but it also sets up a very one-sided situation. All the poll questions are similar, where they say: 'Should someone in interminable pain who has consistently requested euthanasia and who is of sound mind be allowed to request euthanasia or

be euthanased by a doctor?' In my view, that does not provide a complete picture, because it does not address the question of safeguards and the question of consent and informed consent.

Indeed, I am aware of qualitative research which suggests opinion is more divided when people examine some of the complexities of the issue. The only real guide to public opinion, I think, that we can look at is in the United States, where there have been plebiscites in a number of states. In Oregon in 1994 (which led to the statute it has), 51.3 per cent voted in favour and 48.7 per cent against. But, again, it is important to remember this is for doctors to be able to provide a lethal dose only: it is not for active voluntary euthanasia. In Washington in 1991, an initiative to allow doctor administered voluntary euthanasia was defeated, with 46 per cent in favour and 54 per cent against. However, in Washington in 2008, physician-assisted suicide was voted for: 57.8 per cent in favour; 42.2 against, again, only to allow doctors to provide a lethal dose for self-administration, not active voluntary euthanasia.

In California in 1992, there was a ballot provision for physician-assisted suicide: 46 per cent voted in favour and 54 per cent against. In some of those cases, obviously in Oregon and Washington, the majority was in favour—narrow majorities—and I think that is probably the best indicator we have of public opinion. I think it is fair to say that most people would acknowledge them as liberal-minded states that tend to be considered on the centre or left of the political spectrum in the United States.

That is not to say that that should be our particularly strong guide, but I think that, when we constantly hear it said that over 80 per cent, 85 per cent or 87 per cent of people support voluntary euthanasia, we need to look at when people have had an opportunity to vote on it, what has been the outcome? Nowhere has active voluntary euthanasia, as provided for in this bill, received majority support in a plebiscite, to my knowledge; and only in two states of the US has physician-assisted suicide received narrow majority support in that sort of plebiscite.

The second point in relation to public opinion is that, even if we accept that these assessments of public opinion are correct, should that be the only measure? If public opinion so measured in this way showed 80 per cent of people supporting capital punishment or legalising heroin, would we then say we were obliged to follow? I make no comment on those issues.

Regardless of one's views on those matters, we as legislators would have a duty to examine all sides of the issue and not see public opinion polls as the principal argument in favour. I would be very surprised if people in this house were to advance the argument that, because 85 per cent of people in an opinion poll supported something that they abhor and believe to be fundamentally unjust, they would therefore say that we should nonetheless go ahead and pass it. But it is an argument almost constantly made in relation to active voluntary euthanasia, even today highlighting those advocating support for this proposition as being 87 per cent in the most recent Newspoll survey. As I outlined, the proposition in that poll is not clear, but certainly it says that a doctor be allowed to provide a lethal dose and not actually administer it.

The third argument I raise, which is very common, is that we put pets out of their misery, so why do we not do the same to humans. That is summed up by a flier in the Christians Supporting Choice for Voluntary Euthanasia information, headed 'Die like a dog. I wish'. I should say at the outset that I am very fond of dogs and other animals and I am not suggesting that their lives are of no value. It is true that we routinely end the life of dogs, cats and other animals, and I am puzzled as to why advocates for active voluntary euthanasia advance this argument, as it is surely an analogy they would prefer not to own.

We put down dogs and other animals because we, creatures of another species, make a value judgment about their quality of life and subject them to involuntary euthanasia. We decide that they are suffering or that their life is not worth living any more, and we put them down. That is surely not what we want to see in voluntary euthanasia and, indeed, that would be something that the proponents would say is very much not within the confines of this bill. It seems a very odd analogy to talk about what we do to animals. The reason we put down pets is that it is motivated by compassion but also we accept that their life is not equal in value to the life of human beings, generally speaking.

We could give dogs chemotherapy, kidney transplants and palliative care; we could have a massive public hospital system to look after dogs and cats, but we do not do that and that is generally because, while we value animals and love them—they can be a very important part of people's life and they can be heartbroken when their pet dies—we do not accord the life of an animal the intrinsic worth and protection accorded to human life. That is why we consider it

legitimate to put them down, and for us to make that judgment, it is not because we have more compassion for them than we have for fellow human beings.

The fourth argument I would like to address—and it is a common one that we hear—is that it is happening now so let us regulate it and control it. This argument suggests that, through double effect and sometimes deliberate euthanasia against the law, voluntary euthanasia, or involuntary euthanasia, is actually common, and therefore if we regulate it, control it and have a system to monitor it, that will be a better way to deal with that situation. Bob Such, the member for Fisher in another place, a strong advocate for euthanasia, said on radio today something to the effect, 'Let's be honest about it; it's happening, let's strictly regulate it.'

This is not backed up by sufficient coronial evidence or criminal prosecutions, in my view. There are few cases where it is shown that there have been these cases happening. However, if we accept this line of argument, and if we believe that physicians are carrying out euthanasia now, when the potential consequences are criminal charges, imprisonment and a loss of their livelihood, why do we expect they would be strictly law-abiding under a system of legal active voluntary euthanasia? It seems rather incongruous to me to suggest that people are committing involuntary euthanasia on the sly, yet if we have a system where they have to fill out some forms, it goes to a board and gets filed by a registrar, they will then utterly comply with the law. At the moment they are risking imprisonment and losing their medical licence. If that is a problem (and I do not believe the evidence is that it is widespread), it is not to be addressed by legalising the situation.

Finally, people will not feel pressured into active voluntary euthanasia is an argument often made. There is no real evidence that people will feel that they are obliged or ought to do the right thing and end their own life. There is really no way to tell whether or not people will feel pressured. There are certainly examples in other jurisdictions where family members have been instrumental in bringing about active voluntary euthanasia.

Just pointing again to that Michigan Law Review article I cited earlier, which refers to the law in Oregon, there was the case of Joan Lucas, where her children sent an ambulance away when she attempted suicide, saying, 'We couldn't let her go to the ambulance. They would have resuscitated her.'

Joan was required to get a psychological evaluation as part of her applying for a physician-assisted suicide. Because she could not attend the psychologist's office the family assisted her in taking the psychological test that many members would be familiar with (the Minnesota Multiphasic Inventory) by reading out the questions and writing down her answers. That hardly constitutes a satisfactory way to evaluate somebody's psychological state, but it does highlight that there are cases where the family do play an instrumental role in bringing about euthanasia.

I find that very confronting, because it is certainly not something that would happen in my family, regardless of people's views of euthanasia, but, similarly, I feel that way when I see wills being contested in court sometimes and things like that. The reality is that there are bitter family disputes on occasion. I am not suggesting that it would be an avalanche or that everybody getting euthanased would be not consenting or pressured into it, but it is undoubtedly a problem.

The South Australian Voluntary Euthanasia Society website says, 'A desire not to be a burden on the state or one's loved ones is a legitimate concern, and should not be mistaken as evidence of abuse.' I believe the fact that someone may feel a burden is indeed a concern, but a concern in that we should address that they even feel that way. We should never accept that feeling a burden is ever a reason to end someone's life. I am not suggesting that that is what that organisation is advocating, I do not believe that they would feel that, but the fact that that quote is there suggests that a desire not to be a burden is a legitimate concern. I have to say that I find that statement in itself concerning.

Again, pointing to the Michigan Law Review article, it notes that executives of the major organisation advocating and supporting physician-assisted suicide in Oregon, Compassion in Dying, indicated that that group were involved in three-quarters of physician-assisted suicide cases since the implementation of the Oregon law. That would certainly be a concern for me and I would not want to see a situation where advocates for voluntary euthanasia are actively involved in turning up to people's homes to assist them in getting through the active voluntary euthanasia process. It should, surely, only be between a patient, family, physician and their existing support network, but there are certainly instances there where three-quarters of the cases have involved this particular organisation, sometimes a stranger at the end of the phone line who ends up becoming involved. That would be a concern to me.

What is the answer if we do not have active voluntary euthanasia available? I think it is clear that we need good palliative care—and we do enjoy an advanced system in this state—and general care and compassion in our hospital, health and hospice system. There is no doubt that palliative care is advanced and advancing all the time, as indeed treatment and relief for pain caused by cancer is advancing all the time, which is, I guess, the predominant cause of terminal illness and certainly the leading condition that people requesting euthanasia generally suffer from.

I have been struck by how many of the letters and emails that I have received are more about a fear of what might happen rather than what is happening. We certainly need not only the provision of good care but good education about what the treatment possibilities are. Many people are guided by a fear of indignity and loss of their autonomy, rather than incurable pain. There is no doubt that losing your autonomy or control of your bodily functions would be very unpleasant for those of us who are used to having our own autonomy, but we have to remember that a lot of people live with that for many years, and I do not think we should make a judgment that people's lives are automatically not worth living because those factors have come about, because there are many people who, on that rationale, would have long periods of their life not worth living, or that their quality of life would be intolerable.

If a forty year old were to have a stroke and suffer severe paralysis, surely we would not seriously be saying that their life is then intolerable and they should be able to obtain a lethal injection, even though they might have years and years of life left. Similarly, I have heard people say many times, 'If I were to be in an accident and become a paraplegic, I wish someone would put me out of my misery.' It is very unfortunate that people could feel that they could not lead a fulfilled and active life as a paraplegic potentially for years. I think that is something we need more education about because a person can live a productive, fulfilling and dignified life even though they may suffer from a severe medical condition.

I oppose the bill before the council tonight for the reasons that I have outlined. The bill would, for the first time in South Australia—indeed, in any Australian state—allow a situation where going to see a physician or a specialist twice and by filling in some paperwork approved by a board would then lead to a situation which would culminate in a doctor administering a lethal injection and ending a person's life. I believe it would be a terrible step for us to take as a legislature to allow that situation to occur, to set up a framework where doctors can actively, wilfully and irrevocably end a human life with a lethal injection. I believe that would be an incredibly retrograde step, a harm to our society, and I urge all members to oppose the bill.

The Hon. J.M.A. LENSINK (22:06): I last addressed the Legislative Council on this matter in November 2003 and, while I was supportive in principle at that stage of the framing of that particular bill, mainly based on my liberal view that people should be able to make the choices that they choose to make rather than being subject to the requirements of the state, my concerns related to elder abuse and coercion. Like the Hon. Gail Gago, I have worked in the hospital system and am aware of some of the pressures that family members can place on their loved ones.

Also, because when we are talking about a matter which is as serious as deliberately ending somebody's life, which under other circumstances is murder and prosecutable, we need to make sure that the legislation is very strictly framed. I would also like to thank all of those individuals who have written, phoned or emailed me in relation to providing their point of view. I think one of the jobs as a legislator is to use our judgment and to take into consideration the views of our constituents but, on this matter, I would have to say that people are either in favour or against and there is not much of a middle path. If one is trying to do a survey of whether or not people say 'I urge you to support this', it is academic really and ultimately we have to consider all of the different matters before us and apply that in the best way we are able.

I stated in my previous speech that the only circumstances under which I would support a bill in favour of voluntary euthanasia would be under fairly narrow circumstances—that is, for somebody who is terminally ill, who has no prospects of recovery and for whom their illness is keeping them in a state which is beyond bearing.

Palliative care has come a very long way and continues to make advances, but the reality is that it cannot help everybody. There are people who have illnesses and diseases that just cannot be assisted through palliative care means. I also appreciate the current legislation that we have which enables a person's death to be hastened through the double effect.

I was very happy to speak to one constituent in Dr Roger Hunt who is a specialist in palliative care of some 25 years. I have had a little bit to do with him because I worked at the Repat

in Daw House, which is the palliative care unit at the Repatriation General Hospital. His particular experience I found very valuable, given that he has worked in this area for some time.

I think that we need to be realistic about what actually happens in hospitals and the pressure that health professionals are put under by people who ask, 'Can you help me?' If the doctor is to literally interpret what they understand, they are really being asked to hasten their end. The law as it stands is trying to interpret whether or not the doctor is to be prosecuted for a double effect. It is trying to interpret the intent of the doctor, which I think is really unfair; it leaves them quite vulnerable.

A lot of people who have contacted us have various concerns about this, which I can understand, but I think they have misunderstood the legislation before us. I think it is important for us to understand what this legislation is and what it is not. The withdrawal of treatment is not voluntary euthanasia. We are not seeking to use this device as a Darwinian economic measure to do away with people who are no longer useful to society. That is inhumane and monstrous, I think, to all of us. We are not seeking to assist people who may be depressed or suicidal to end their life early. This is definitely for people who do not have any prospects of recovery.

I, clearly, will be supporting this legislation. I would like to commend the honourable member for having structured the bill in what I think enables it in the most appropriate of circumstances. I do not have the concerns that I had previously, so I commend this bill to the council.

The Hon. DAVID WINDERLICH (22:12): I will be supporting this bill. I would like to acknowledge the work of the Hon. Mark Parnell in bringing this to the parliament, the long-standing work of the South Australians for Voluntary Euthanasia (SAVE), and the work of earlier parliamentarians such as the Hon. Sandra Kanck and the Hon. Anne Levy.

My father took about nine months to die from a brain tumour. He was a Lutheran minister of religion and would never have chosen voluntary euthanasia. I certainly would like that choice. The exercise of his view would prevent me from exercising my choice in the future. This bill and my philosophy of allowing people to choose would allow people like my father and others who oppose voluntary euthanasia not to make that choice. I think the issue of choice over one of the most fundamental decisions in life is very important, and it clearly comes through again and again in the views of people who support this legislation and in the views of the general public.

The point was made today at the rally, and it has been made many times, about the importance of compassion in allowing voluntary euthanasia. I am struck over and over again by the stories that people tell (at today's rally, other rallies and emails) of how they found it heartbreaking to witness the suffering of a loved one. It is not heartbreaking in the sense that they were at all weak or wanting to avoid their responsibilities, but simply because they desperately wanted to relieve someone's suffering; they do not want to see their loved ones suffer.

I think courage is also important in a decision like this. Courage is partly about resisting some of the intensive lobbying that has occurred by organised lobby groups, but I think it also involves the courage to make a very big and difficult decision. When we think through legislation like this it is very important to be very clear on both sides. I would like to briefly talk about a couple of points of view which I think reflect a lack of clarity in thinking.

I believe that the notion that life is sacred which is implicit in the views that are put by many people who oppose voluntary euthanasia is actually not truly held in a universal sense by those people, unless they are radical pacifists. There are many contexts in terms of nations going to war or other decisions that governments make when it is clear that life is not sacred. So, what we are talking about—and I think it is important to be clear about this—is an important but more subtle principle, which is that we should not actively take life in a medical context. That, I believe, is the underlying argument of those who oppose voluntary euthanasia.

There is concern that this legislation will be abused. Any legislation can be abused. If we applied that principle, we would not pass legislation here. We would not have the existing legislation relating to palliative care, where there is also potential to abuse terminal sedation and there is also potential to abuse disconnection from life support machines. We pass legislation because, on balance, we believe that it will do more good than harm. I think that is the only way in which we can approach legislation and the only way in which we can approach this bill. We cannot conceive of legislation so perfect that it will not be abused.

There is a view that this is part of a slippery slope that leads to a devaluing of life. I think this is of concern and not just in relation to this legislation. There are many pressures that could lead people to minimise or attempt to evade their sense of duty and responsibility to others, and it is possible that some people may view this legislation in that context but, again, it comes back to my earlier point, which is that it is about balance and whether the good will outweigh the harm and the sorts of safeguards we can build in—and I believe this bill does have strong safeguards.

As I said earlier, our current approaches do have risks of abuse. Almost all the arguments you could advance against voluntary euthanasia you can also advance against current approaches to ending life which are currently legal but which are also subject to pressures and, more importantly, which are conducted in a more subtle code. One of the advantages of explicit voluntary euthanasia is that it regulates the process of ending life, makes it explicit and makes it possible to monitor and review what is going on. I do not believe that is something we have now.

The Hon. Bernard Finnigan said that he did not believe that there was sufficient evidence that doctors were involved in ending life. I am no expert on these matters, but I have been told by doctors that this is going on and I have been told by individuals that this is going on. I think there is no doubt that it is.

People who oppose this legislation put a lot of store in palliative care. Palliative Care Australia has the following policy statement:

> Palliative Care Australia acknowledges that, while pain and other symptoms can be helped, complete relief of suffering is not always possible even with optimal palliative care, and recognises and respects the fact that some people rationally and consistently request a deliberate ending of life.

It does not go further than that or provide any specific solutions, but it does recognise the dilemma. Although palliative care is vital, and the people who work in this area must be wonderful and outstanding individuals, there is a significant minority of people who cannot be helped by palliative care.

The Hon. Bernard Finnigan spoke of the importance of not just following public opinion, and I agree with him entirely. I think we should follow our consciences on this, try to think very clearly and try to follow our deepest beliefs. However, I believe there is a fundamental problem with imposing our views on others in this way about one of the most fundamental choices in life.

There are potential problems of abuse with legalised voluntary euthanasia, as I said, but in the end I think we have the prospect before us of dealing with real, existing problems and suffering now. There are people dying in pain and there are people dying without dignity. The hearts of their families and their loved ones are being broken while watching this process go on.

We know that this is a real and existing problem. I believe that this bill is a way of addressing that problem. We will have to manage the problems that come with our solution and, again, that is an inevitable process of legislation. However, we have something before us that will enable us to respond to a very real problem that is facing many people in South Australia today, so I think it is worthy of support.

The Hon. CARMEL ZOLLO (22:20): As one would expect, this matter is one of conscience in the Labor Party. Since being elected to this parliament, I have had the opportunity to place on record my views on this matter on several occasions. Regardless of which version of voluntary active euthanasia has come before us, I am yet to be persuaded to vote for it. Like the bills that came before it, a healthy campaign has emerged, both for and against. I acknowledge all the many emails and letters received and the sincerity with which people hold their views. Upper house members who are members of the two major parties have only one staff member, and it has been impossible to keep up with the responses.

Without doubt, in the majority of cases, they are views based on people's own personal experience and observations of their loved ones and friends. However, more recently, I have noticed that the against letters are from medical practitioners. Having listened to and then read the contribution from the Hon. Dennis Hood, I commend him for his thorough analysis of the legislation before us.

I have not looked it up, but I think it is the first time that a voluntary active euthanasia bill has been presented as an amendment to the Consent to Medical Treatment and Palliative Care Act. I am of the view that this bill does not limit the application of the voluntary active euthanasia to the terminally ill and that the Hon. Mark Parnell's bill casts a very wide net indeed.

I have asked the parliamentary library to provide me with a precis of the Consent to Medical Treatment and Palliative Care Act because that is the act we are seeking to amend. The palliative care act deals with consent to medical treatment and regulates medical practice so far as it affects the care of people who are dying. I was referred to Adam Rothschild's paper, which provides a very useful summary of the act, as follows:

> In South Australia, the Consent to Medical Treatment and Palliative Care Act 1995 (SA) allows persons over the age of 18 to make anticipatory decisions regarding medical treatment if the person is either in the terminal phase of a terminal illness, or in a permanent vegetative state and is incapable of making a decision regarding medical treatment when the question of administering treatment arises. Under these circumstances the Consent to Medical Treatment and Palliative Care Act 1995 allows a form of advanced directive, there being a commitment to follow an anticipatory direction where it is a consent to, or refusal of, treatment, as long as there is no reason to believe the person has revoked or intended to revoke the direction. An advance directive under the Consent to Medical Treatment and Palliative Care Act 1995 is therefore limited to the terminal phase of a terminal illness and permanent vegetative state.

It goes on to state:

> A medical power of attorney may be given to an adult agent while the grantor is of sound mind, which may be exercised if the grantor becomes incapable of making decisions on her or his behalf.

I will also quote two other sections of Rothschild's summary, as follows:

> In the absence of an express direction by the patient or the patient's representative to the contrary, a medical practitioner is under no duty to use, or to continue to use, life-sustaining measures in treating the patient if the effect of doing so would be merely to prolong life in a moribund state without any real prospect of recovery or in a permanent vegetative state. However, the Consent to Medical Treatment and Palliative Care Act 1995 specifically rejects euthanasia, defined as medical treatment administered for the purpose of causing death, and assisted suicide.
>
> The act allows a legally competent adult to make an advance directive as to their future medical treatment and palliative care. However, a direction given pursuant to the act must relate to a terminal phase of a terminal illness or permanent vegetative state, and be documented on the prescribed form.

So, clearly our existing act must relate to that terminal phase of a terminal illness or permanent vegetative state. I am in agreement with the Australian Family Association (SA) and Family Voice Australia in their observations that the two—that is, palliative care and voluntary active euthanasia—are distinctly different actions with different intentions.

For the information of honourable members, the summary and the two papers provided to me are entitled, 'Capacity and medical self-determination in Australia' by Alan Rothschild and 'The Law and Practice associated with Advance Directives in Canada and Australia: Similarities, Differences and Debates' by Margaret Brown. As I said, they were provided to me following my request, and can no doubt be made available to other members for their perusal.

Detractors of our current act, which this bill seeks to amend, will say that it is not foolproof in every case because a small percentage of people may not have their pain fully relieved. The other issue that is often mentioned in relation to our act is that some doctors do not feel comfortable in administering pain relief to their patients if the outcome of that action assists in hastening a patient's death. I can only say that the legislation before us now, and other similar bills in the past, are even less foolproof.

What is important here is intent. My conscience tells me that there needs to be a line in the sand. I believe that when a doctor is looking after a patient in the terminal stage of a terminal illness and medication is administered to relieve pain, then what is of the utmost importance is the intention, and that is in accordance with the current act.

My conscience also tells me that there are some very good reasons for not supporting this bill. As a member of parliament I do not believe that the bill is a good piece of legislation; that is, I believe that this legislation, as I have just mentioned, is not foolproof. I firmly believe no active voluntary euthanasia legislation can be.

Because this is a conscience vote I place on the record that, regardless of any religious belief, I believe that it is also morally wrong to support active voluntary euthanasia. Whilst it is not the main guiding reason, I am certain that my religion has also shaped my views in relation to this issue, and I have no problem with placing that on the record. The Hon. Dennis Hood has already placed on record the response received from the Most Reverend Philip Wilson, the Archbishop of Adelaide, after the Hon. Mr Hood took the opportunity to write to the heads of several churches. Clearly, I do agree with the Archbishop's view.

The Hon. Bernie Finnigan has just made a very eloquent contribution, and I commend him for covering the many issues this bill raises in a very comprehensive manner. As mentioned earlier, the act that this bill seeks to amend specifically rejects euthanasia, which is defined as medical treatment administered for the purpose of causing death and assisted suicide. As has already been mentioned by the Hon. Bernard Finnigan, earlier this week the Hon. Bernard Finnigan, the Hon. Russell Wortley and myself met with the Christians Supporting Choice for Voluntary Euthanasia group. I have to say that I obtained the impression that this particular group was set up to counterbalance the view that Christians generally would not support voluntary active euthanasia. I thank them for going to the trouble of not only coming to see us but also preparing briefing papers for us. I am unable to support them, as I mentioned but, nonetheless, I acknowledge the sincerity with which they hold their view. I believe that the net the Hon. Mark Parnell is casting is far wider than palliative care and those in a vegetative state, and I will not be supporting this bill.

The Hon. D.W. RIDGWAY (Leader of the Opposition) (22:30): I rise to speak to the Consent to Medical Treatment and Palliative Care (Voluntary Euthanasia) Amendment Bill and, as members are well aware, in my first term of parliament I made an extensive contribution on the Hon. Sandra Kanck's bill at that time. The Hon. Bernard Finnigan talked about removing personal experiences from the debate but, clearly, we all draw on those for our judgment on a whole range of issues we debate in parliament.

Sadly, since the debate on the last bill of this type in the chamber, my father-in-law has passed away. I mentioned him at the time of that debate and, for my benefit and for that of members, I will refresh our memory of his story, which I guess is the genesis of my views. My father-in-law was diagnosed 15 or 16 years ago with pancreatic cancer and given three months to live. I mention this because—

Members interjecting:

The Hon. D.W. RIDGWAY: I like the way I am interjected on by my colleagues on the back bench.

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): Totally out of order.

The Hon. D.W. RIDGWAY: Exactly. He was given three to six months to live, and at that time he was given no medical treatment that could help them, so he went off and used alternative medicine. At that point, I do not think he would have ever have considered any form of voluntary euthanasia: he was going to fight to the bitter end. Luckily, not only for my wife and her family but also for the extended family, he managed to live another 15 years.

Sadly, he died earlier this year of lung cancer. I suspect that once he reached a particular point along that journey—and a pretty unpleasant journey it was towards the end—some way of ending it all may well have been a better option for him and for the family. He is no longer with us, but my wife and her mother, sister and brother spent some good times and also some pretty tough times with him towards the end.

I have always been a great fan of choice for people, and I think that this bill provides that choice. I have always been a little concerned about advance directives or advance requests, as they are called in the bill, and I am pleased that this is addressed by making them renewable every five years. I will now draw on another personal experience.

My mother is in a nursing home in Bordertown. She does not talk at all any more and is in what I would call a less than desirable place in her life, and she has been there for some years now. She said that she never wanted to go there, but I am not sure whether that is still her view. However, I am sure that the renewal process the Hon. Mark Parnell talks about in this bill would have allowed her to make some judgment. If my mother had made the decision 10 years ago, 'If ever I go to a nursing home, I wouldn't wish to be there and I'd want you to turn the lights off,' as she once said, I do not think this sort of blanket advance request would be appropriate.

I remember that, when we last discussed this issue in this place, the Hon. Diana Laidlaw said to me, 'If ever I am incontinent, that's it. I don't want to be here.' I said to her, 'But, Di, if you still enjoy a cigarette,' and I am not sure whether she still smokes, but she did then, 'a glass of wine and seeing your nieces and nephews growing up, getting married and having kids, and the only thing you have to deal with is incontinence, it is not as good as you are today, but maybe it is not as bad as being euthanased'. She said, 'No, no, no.'

That is why I think the Hon. Mark Parnell's bill now allows people to review that along the journey because I think that is important. We make statements when we are young, fit and healthy,

and, as our life progresses, we realise that our focus and things that are important to us do change. Nonetheless, this bill still provides people with that ultimate choice. I refer back quickly to some of the comments I made in my original contribution. In particular, I made a trip to the Netherlands. In the very first year I was in parliament I went to the Netherlands to speak not only to the people who were pro-euthanasia but to those who were against euthanasia.

While I had the utmost respect for the Hon. Andrew Evans, who was here prior to the Hon. Robert Brokenshire, he spoke to those people who were certainly opposed to euthanasia but he did not take the time to get the balanced debate. I left Australia with an open mind. I did not have a view one way or the other. I wanted to talk to those people in another country where we know it is available and used, and I came back with what I suggest is a more balanced view because I listened to both sides of the argument.

I remember going to the Mary Potter Hospice and talking to some of the nurses and nuns, and they said there was a small percentage of people where pain management and palliative care just did not work. There was a small group of people where nothing could help and there should be some mechanism to help them deal with it. The Hon. Bernard Finnigan talked about people who are not terminally ill but who are in a hopeless state. I cannot remember the person's name but I did visit her in Adelaide with the Hon. Angus Redford.

Mary Gallnor is in the gallery now. I do not ask her to yell out the name, but I do remember visiting her. I cannot lip read either, but she knows who I am talking about. We visited this lady who was living a life that probably none of us would really like to live. She had a disability. There was a possible surgical solution but if she took that surgical option there was a chance she would end up being in an even worse state than she was. She said, 'I am not prepared to take the surgical option because if I do and it is a failure, I then end up being either a paraplegic or a quadriplegic.' She had a significant spinal disorder. I am now getting the name. It was Jo Shearer we went to visit. The Hon. Angus Redford and I spent a couple hours, I suppose, with Jo Shearer.

It was a pretty moving experience. This woman had absolutely all of her faculties, her mental capacities. She was a very sharp lady but she was in a desperate situation. She would have taken the surgical option if she knew that, at the end and it all failed and she ended up being a paraplegic or quadriplegic because of the surgery, she could finish her life through euthanasia. My recollection is that her family had grown up. She was probably in her mid 50s, I suspect, at about that time. She was in a state in her life where she wanted to have that option. Sadly, we did not have that and a few weeks after Angus and I visited her she committed suicide.

It really brought home to me that, if we had the option, that woman would have taken that surgical option. It may or may not have worked but it would have given her a door out of the life she had because she was in a pretty tough situation when Angus and I visited, and potentially she was going to be in a worse state.

I will not go on for terribly much longer. I refer quickly to the 86 or 87 per cent of people that we hear today are supporting euthanasia. I know that the Hon. Mr Finnigan said that polls do not mean much. It is interesting that the team he belongs to—and I understand that this is absolutely a conscience vote—and the game that we all play in politics means that if we had 86 per cent or 87 per cent of the people telling us that something was right or wrong, I am sure that his leader, the Hon. Mike Rann, would certainly listen to what the polls were saying, and I think that is something that we have to do.

I know that my colleague the Hon. Rob Lucas always had a view that, notwithstanding the approximately 70 per cent when we debated it last time, certainly at that point he did not want to support the bill. My view is that, as legislators, if we have approximately 80, 85, 86 or 87 per cent of the community wanting a particular law, it is our role as legislators not only to provide that mechanism for them but absolutely to protect those who do not want it.

We are talking about a voluntary program. It is not mandatory, as much as looking across to the other side during a political debate it is something I might consider for some of my political opponents. At the end of the day this is voluntary euthanasia. Our responsibility in this chamber and in the parliament is to listen to the people. Some 87 per cent of people are saying that they want this option, some 6 or 7 per cent are saying they absolutely do not want it and about 6 per cent do not have a view. Our role as legislators is to find a mechanism that gives the 87 per cent a choice to use it and to absolutely ensure that no force, coercion or malpractice is imposed upon the 13 per cent that either do not have a view or do not want it. This bill goes a long way towards achieving all those things. With those few words I indicate that I will be supporting this bill.

The Hon. J.A. DARLEY (22:41): I indicate that I will be supporting this bill. We all are aware of the very clear divide between the supporters of voluntary euthanasia and the opponents of voluntary euthanasia. I am sure other members have received vast numbers of correspondence both for and against the bill. I am comfortable with individuals having choice. In this instance that choice would allow them to seek medical treatment in order to end their suffering from a terminal illness or other very serious injury or medical condition. Given the choice, I do not think this is a decision that anyone would make lightly, but I do agree with the Hon. Mark Parnell that a person whose suffering becomes intolerable should be able to access medical treatment to end their suffering.

The bill proposed by the Hon. Mark Parnell addresses this issue. Very briefly, it includes a number of protection mechanisms, all aimed at ensuring that an individual will be able to access voluntary euthanasia only after very stringent requirements are met. It will be available only to adults who are in the terminal phase of a terminal illness or who have an illness, injury or medical condition which results in permanent deprivation of consciousness or which irreversibly impairs the person's quality of life so that life has become intolerable to that person. Those individuals will also have to meet a number of legal requirements and assessments, including medical assessments, before a decision can be made by a government appointed board regarding their request.

I raised with the Hon. Mark Parnell my concerns regarding the model that is being proposed, and I indicated to him that I would consider the matter further if those concerns could be addressed. Those concerns relate to the issue of adequate safeguards. The Hon. Mark Parnell has introduced a number of measures which are aimed at ensuring that voluntary euthanasia is not open to abuse. I must say that I am not a huge supporter of bureaucratic processes, but I understand his reason for going down the path of establishing a government appointed board which ultimately would be responsible for declaring whether a request should be accepted.

My specific concern relates to instances that could potentially result in voluntary euthanasia being accessed for the wrong reason and, more specifically, where an individual wants to access voluntary euthanasia simply because they do not want to be a burden on their family if they become ill. If the individual discloses this as their reason, then obviously under this bill the request would be denied.

However, I do not think it would be impossible for an individual who is of sound mind to try to access euthanasia under the proposed model, whether it be through the advanced or active request mechanism, without disclosing the real reason behind that request.

I am satisfied that the amendments filed by the Hon. Mark Parnell further strengthen the protection mechanisms in the bill and address my concerns in this regard, and I thank the Hon. Mark Parnell for addressing this issue. In conclusion, as already mentioned, I do believe that individuals should have choice and, if a person's quality of life becomes so diminished and so intolerable to that person, then I also support their choice in seeking medical treatment to end that suffering.

The Hon. S.G. WADE (22:45): I rise to indicate that I do not support this bill. As a Liberal, I accept the right of each individual to personal autonomy, including the right to make end-of-life decisions. Suicide is not a criminal offence. However, murder is a criminal offence. Society, and each individual within it, has a strong interest in making sure that euthanasia does not become a cloak for murder. As a House of Lords Select Committee on Medical Ethics put it in 1994:

> Society's prohibition on intentional killing is the cornerstone of law and of social relationships. The prohibition protects each of us impartially, embodying the belief that all are equal.

While suicide may be morally contentious, murder is not. There is a strong consensus amongst both religious and non-religious communities that murder is morally wrong. I appreciate that current law and practice is open to abuse, and that medical practice and palliative care can take us into grey areas that are morally and legally challenging. However, I think we need to be careful that, in our attempts to eliminate grey areas through euthanasia laws, we may merely shift the grey areas and in the process put more people at risk of intentional killing.

Of course, the key factor that turns assisted suicide into murder is the will of the person who dies as a result of the act. That can only be discerned prospectively. So, for me, the first test for euthanasia legislation is the level of confidence that it provides that euthanasia will not be administered against the will of the person who is to die. Are we sure that a person able to be killed by a third party wants to die and that that desire is ongoing and well founded? I do not consider that the bill meets this first threshold.

The test does not protect people from their transitory intentions. The test does not protect people from acting on situations that can be remedied. There is no requirement for a second medical opinion. There is no requirement for a psychiatric assessment. The oversight of the board is too passive. Given that the legislation is not limited to South Australians, I consider that the bill fails to address the evidentiary and cultural challenges in providing assurance of consent by a person from beyond South Australia. In 1994 an eminent House of Lords Select Committee on Medical Ethics came to the view that it was not possible to ensure that euthanasia is voluntary. It stated:

> ...we do not think it possible to set secure limits on voluntary euthanasia...issues of life and death do not lend themselves to clear definition and, without that, it would not be possible to frame adequate safeguards against non-voluntary euthanasia if voluntary euthanasia were to be legalised. It would be next to impossible to ensure that all acts of euthanasia were truly voluntary, and that any liberalisation of the law was not abused. Moreover, to create an exception to the general prohibition of intentional killing would inevitably open the way to further erosion, whether by design, by inadvertence, or by the human tendency to test the limits of any regulation. These dangers are such that we believe that the decriminalisation of voluntary euthanasia would give rise to more, and more grave, problems than it sought to address.

Whilst I do not go so far as to say that a sufficiently robust euthanasia law is not possible, I do know that this bill is not sufficiently robust. However, for me, this bill should also not be supported because it does not protect the vulnerable. The House of Lords committee also commented in its report, as follows:

> We are also concerned that vulnerable people—the elderly, lonely, sick or distressed—would feel pressure, whether real or imagined, to request early death. We believe that the message which society sends to vulnerable and disadvantaged people should not, however obliquely, encourage them to seek death but should assure them of our care and support in life.

Even if a robust euthanasia regime could ensure that every act of euthanasia is voluntary, the vulnerability of significant sections of the population means that the clear assent of a person may yet nonetheless not be truly voluntary: elderly people who choose to die because they consider themselves to be a drain on health resources, lonely people who feel socially excluded and choose to die because they are devoid of hope, and people with a disability who feel devalued and rejected.

A request of euthanasia may be documented, but if the choice is significantly impacted by duress, abuse, social disadvantage and so on I do not consider that it should be regarded as voluntary. Our first response to a person who says that their life is not worth living should not be to terminate that life but to say: 'What can we do as a society to support you to live a valued life?'

I would like to focus in particular on one vulnerable group: people with a disability. I am concerned that the bill discriminates between people with disability and people without disability. I appreciate that that would not be the intent of the honourable member who is sponsoring the bill but, in my view, that is its effect. When the general public talks about euthanasia, they are usually talking about the terminal phase of a terminal illness. People in this situation are covered by clause 19(1)(a) of the bill. However, the bill goes further. Clause 19(1)(b)(ii) entitles an adult to voluntary euthanasia if they have an 'illness, injury or other medical condition that irreversibly impairs the person's quality of life so that life has become intolerable to that person'.

These terms are so vague and so ill-defined that almost by definition most people with disability would be deemed to have an illness, injury or other medical condition that irreversibly impairs the person's quality of life. From the moment a person with a disability reaches the age of majority, or from the moment of acquisition of the disability, they would be entitled to voluntary euthanasia under this bill even though they may be expected to live for decades. There may not be any sign of a life-threatening illness. A person could ask for euthanasia when that person has recently acquired a disability before they have even had the opportunity to reframe their life expectations in the context of that disability. On the other hand, any other South Australian who found that life had become intolerable would not be entitled to voluntary euthanasia unless they came to meet other requirements of the bill.

In passing this bill, I believe that we would be creating a different standard for people with a disability. If euthanasia does not discriminate against people with a disability, why should it not be available to everyone, even without terminal illness or unconsciousness? I consider that this bill is discriminatory against people with disability and should be opposed.

Further, I consider that, given the widespread discrimination against people with disability, it is likely that euthanasia would undermine the rights of these people. There is a strong consensus

view of the disability movement world wide against euthanasia. In fact, only three weeks ago a consortia of American disability organisations lodged a statement of claim in a court case in the American state of New Jersey to protect people with a disability from euthanasia. In part, that document states:

> Amici Not Dead Yet, ADAPT, Center for Self-Determination, National Council on Independent Living, National Spinal Cord Injury Association, American Association of People with Disabilities and Disability Rights New Jersey…represent a very broad spectrum of people with disabilities, including people with physical, developmental and/or mental disabilities, and people whose disabilities were from birth or acquired during our lifetimes. Many are now or at some point have been labelled 'terminal' by a physician. Many have had doctors threaten to remove life-sustaining treatment on an involuntary basis and have had to fight to receive continued care. As in this case, financial motives of the caregiving institution are rarely far below the surface when such threats come to pass.
>
> All 'end-of-life care' issues have been disability rights issues for decades. No-one, whether disabled or currently able-bodied, is immune from the pervasive societal assumptions that affix to the disability label. Fear, bias and prejudice against disability are inextricably intertwined in these assumptions. Our society values and desires 'healthy' bodies and minds. Severe disability is viewed as worse than death. Physicians, unfortunately, are not immune from such prejudice, and, in fact, have been found to be particularly susceptible to this sort of thinking. These views and assumptions are strongly opposed by people with disabilities…Doctors often acquiesce in societally-mediated feelings that death is preferable to disability. When conscious, though disabled, patients can come to be seen as candidates for euthanasia, how much easier it is to project similar fears onto people with severe brain damage…When medical professionals and the media use phrases like 'imprisoned by her body,' 'helpless,' 'suffering needlessly,' and 'quality versus quantity of life,' purportedly in a humanistic and compassionate way, they are really expressing fear of severe disability and a very misguided condemnation: 'I could never live like that'. For example, our society often translates these emotions into a supposedly rational social policy of assisted suicide or 'passive euthanasia' homicide. Whenever permanent disability is [defined] as the problem, death is the solution…The wish to die is transformed into a desire for freedom, not suicide. If it is suicide at all, it is 'rational' and, thereby, different from suicides resulting from [the same] emotional disturbance or illogical despair [that non-disabled people face].
>
> The medical profession is not immune to these erroneous assumptions. Research shows that doctors frequently project the 'quality of life of chronically ill persons to be poorer than patients themselves hold it to be, and give this conclusion great weight in inferring, incorrectly, that such persons would choose to forgo life-prolonging treatment.' As long as physicians believe that a person with a severe disability has a 'life unworthy of living,' lethal errors and abuses will occur.

In support of the assertion in terms of the medical professions' negative view about disability, I refer to a report in the *Annals of Emergency Medicine*, which found that 86 per cent of spinal cord injured high-level quadriplegics rated their quality of life as average or better than average. Only 17 per cent of their emergency medicine doctors, nurses and technicians thought they would have an average or better quality of life if they acquired quadriplegia.

Australia also devalues the lives of people with disability. The commonwealth government recently released a major consultation document called 'Shut Out', which included the following comment:

> In 2009, in one of the most enlightened and wealthiest nations in the world, it is possible for people with disability to die of starvation in specialist disability services, to have life-sustaining medical treatments denied or withdrawn in health services, to be raped or assaulted without any reasonable prospect of these crimes being detected, investigated or prosecuted by the legal system, and to have their children removed by child protection authorities on the prejudiced assumption that disability simply equates with incompetent parenting.

Addressing the 2006 Australasian Bioethics Conference in Brisbane, Kevin Cocks, a leading disability advocate and Director of Queensland Advocacy Incorporated, said that legalising euthanasia would present a threat to people with a disability because society believes they lack a 'good quality of life'. Mr Cocks said:

> Many of the arguments in favour of voluntary euthanasia are informed by negative assumptions about the lives of people with disability…People with disabilities fear legalised euthanasia would only further institutionalise medical neglect due to a social consensus that their very lives are burdensome, undignified and inconsistent with a 'good quality of life'.

He said that, at present, there was arguably far greater public enthusiasm for people with disability being given assistance to die than there was for providing them with adequate assistance to live. Mr Cocks said:

> While this is the case, people with disability remain possible targets for non-voluntary euthanasia.

In conclusion, I reiterate that my key concern is to support the prohibition of murder. That value is not a uniquely Christian distinctive: it is almost universally upheld in our community.

My Christian religious views have not predetermined my position. In this context, I express my respect for the work of Mr Ian and Mrs Nancy Wood and other members of the group Christians

Supporting Choice for Voluntary Euthanasia, who sincerely and credibly argue for euthanasia from a Christian perspective. Whilst I could not share their support for this legislation, I honour their witness to the Christian values of respect, compassion and mercy.

I urge the council not to support this bill. It fails to provide sufficient assurance that a request for euthanasia is truly voluntary. I fear the bill would put social pressure on very vulnerable people to 'volunteer' for euthanasia, not for their own sake but for others. Further, the bill would fail to protect people with disability from a society and health sector which devalues them because of their disability. The bill fails to challenge the lack of acceptance and ensure meaningful support is provided to people with a disability that would make life not merely tolerable but valued and contributing. I urge the council to reject the bill.

The Hon. J.M. GAZZOLA (23:00): As one would expect, the passage of this issue through parliament has been a most frustrating one. I remember speaking on Sandra Kanck's private member's bill, her Dignity in Dying Bill, in June 2002. On the parliamentary front there has been little progress since then, although public support for the right to die has grown and, according to the figures that we have talked about tonight, it has gone from around 47 per cent in 1962 to around 87 per cent across the country at the moment.

As we also know, there are two private members' bills in this parliament: the one we are debating at the moment—the Hon. Mark Parnell's bill—and also the member for Fisher's bill in the other place. Two bills at the same time in different houses represent the quiet frustration over the years as represented and reflected by the growth of high public support. Even those unmoved by consensus as significant as this must at least take heed of the fact that supporters for these bills have given a lot of careful thought to the issue.

The Hon. Mark Parnell has asked members to come to the debate with an open mind and, if by an open mind we seek to base our decisions on the ground of reason, we will have furthered the debate. As a parliament trusted with the responsibility to address and resolve these difficult public issues, we will be expected to reason through this issue, not cement prejudice and poor argument. We need to be relevant and responsible in the carriage and resolution of this bill. The important arguments that centre on euthanasia have not changed and have been, I believe, well discussed, so I will not reprise my arguments from the 2002 Dignity in Dying Bill.

This issue can only be resolved at the bench of reason, reason that was failed in 2002, and this issue will not go away if it is failed again. In closing, I acknowledge the contributions and representations made by the public to my office. I supported the Dignity in Dying Bill in 2002 and I support the Consent to Medical Treatment and Palliative Care (Voluntary Euthanasia) Amendment Bill.

The Hon. T.J. STEPHENS (23:02): I have made a contribution on this topic before, so I will not delay the chamber. My views have not changed. However, a couple of things have changed since my last contribution. I have been in the unfortunate situation of watching a very close relative, my father, die a very painful death from cancer, and it was horrific. I certainly empathise with those who take the time to tell me similar stories. I am concerned about vulnerable people. My views on this are primarily as a legislator. I am keen to go home at night, having done a day's work, knowing that I have not put somebody's life at risk who may be vulnerable. It is primarily for that reason that my views have not changed and are unlikely to change. With those few words I will not support the bill.

The Hon. R.D. LAWSON (23:03): This bill will amend the Consent to Medical Treatment and Palliative Care Act of 1995. Crucially, it will insert additional provisions into that legislation, but will also delete section 18 of the existing legislation. Section 18 is a saving provision and provides:

> (1) This act does not authorise the administration of medical treatment for the purpose of causing the death of the person to whom the treatment is administered.

That principle is going out the window if this bill passes. The second saving provision is:

> (2) this act does not authorise a person to assist the suicide of another.

Again that principle will be removed from the legislation and from our law. I believe the removal of those protections is a step too far. It is worth reminding members, some of whom were present in the parliament when that bill was passed after a very long debate, of the provisions of the Consent to Medical Treatment and Palliative Care Act, and in doing so I will endeavour not to repeat material that others have already canvassed.

Its essential provisions are as follows. In section 7 it allows a person over the age of 18, whilst of sound mind, to give an anticipatory grant to the consent of medical treatment or an anticipatory refusal to medical treatment, and that was a new provision.

It also provided, in section 8, for the appointment of an agent to consent to medical treatment: any person over the age of 18, while of sound mind, could give an agent power to make medical decisions for them. The medical power of attorney provision did not authorise the agent to refuse the natural provision or natural administration of food and water or the administration of drugs to relieve pain or distress, or to refuse medical treatment that would result in the grantor regaining the capacity to make decisions about his or her own medical treatment. That was an important provision.

The most important of the new provisions in that legislation appears in section 17, the care of people who are dying. It provides:

> A medical practitioner responsible for the treatment or care of a patient in the terminal phase of a terminal illness...incurs no civil or criminal liability by administering medical treatment with the intention of relieving pain or distress—
>
> (a) with the consent of the patient or the patient's representative; and
>
> (b) in good faith and without negligence; and
>
> (c) in accordance with proper professional standards of palliative care,

The section continues:

> even though an incidental effect of the treatment is to hasten the death of the patient.

Secondly, section 17 provides:

> A medical practitioner responsible for the treatment...of a patient in the terminal phase of a terminal illness...is, in the absence of an express direction by the patient...under no duty to use, or to continue to use, life sustaining measures in treating the patient if the effect of doing so would be merely to prolong life in a moribund state without any real prospect of recovery or in a persistent vegetative state.

Life-sustaining measures are defined as:

> Medical treatment that supplants or maintains the operation of vital bodily functions that are temporarily or permanently incapable of independent operation, and includes...ventilation, artificial nutrition and hydration and [forms of] cardiopulmonary resuscitation.

These are important provisions. Unfortunately, the South Australian community has not used medical powers of attorney and advanced directions to the extent that was envisaged at the time. That is because, in my belief, there has been insufficient advertising of them, insufficient publicity and insufficient education, and the way to address that issue is to actually provide that education and to provide greater facilities for the use of these mechanisms, rather than the rather draconian solution proposed in the Hon. Mark Parnell's bill.

I commend the member for making the title of his bill the Consent to Medical Treatment and Palliative Care (Voluntary Euthanasia) Amendment Bill. I have previously deplored the fact that in the past legislation of this kind has been given catchy and alliterative titles, such as 'Dignity with Dying'. That subterfuge has not been adopted here. As the Hon. Bernard Finnigan mentioned in his contribution, sure, if you ask somebody in a survey, 'Do you favour dignity in dying, or dying without dignity?', obviously a large proportion of the population will prefer dignity over indignity, but that is not the question. This is not an either/or issue.

I note in passing that the Victorian organisation promoting euthanasia still uses the title Dying with Dignity. In a colourful and catchy pamphlet issued to members today, that organisation publicises the fact that it has many prominent and admired citizens who support voluntary euthanasia. But the question posed in the language of that pamphlet is that they are calling for the reform of law to allow a person suffering intolerably and without relief from a terminal or advanced stage of an incurable disease to seek medical assistance to die peacefully.

This is full of emotionally loaded language like 'suffering without relief' and 'to die peacefully'. I do not believe language of that kind is appropriate in a debate of this kind. It is fair enough in the court of public opinion in order to garner support and it is perhaps permissible to use emotionally charged language. I do not think it is particularly helpful to legislators facing the questions we have tonight.

The essence of this bill, as has been pointed out by others, is a new concept not previously seen in similar measures, and that is the notion of life becoming intolerable. Once again, it seems

to me a fairly emotionally charged term but also one that is vague and not of definite meaning. It is highly subjective; it is not subject to any objective test. In the context of this type of legislation where it is going beyond the original act which is the person in the terminal phase of a terminal illness, it is unlimited in time. Young people can feel their life is intolerable. It may be as a result of some depressive illness or some other issue that I would not favour entitles a person to make what is termed as an 'active request'.

This bill is also full of, as I see it, hoops to jump through and they look like checks and balances and hurdles that must be cleared. They look like checks but in fact they are merely steps to dance through in order to achieve a desired result. I am not satisfied that these steps are true protection.

Many members may have heard this morning on ABC Radio a lady who called in to give a distressing personal example. She spoke of her mother's final years in a nursing home. I think she said it was in Port Pirie. Her mother was aged over 100 years and her final days were sad and distressing. Apparently she was in a nursing home and did not receive appropriate palliative care. The solution to that problem is better palliative care but the incident also brought home to me and highlighted the fact that the final days of many elderly people cause grief and great distress to their kith and kin.

This also contains a danger: is the call for euthanasia about relieving the suffering of those whose life is continuing or is it about relieving the suffering of those who are in the process of dying and may be well beyond caring about it? This leads to the question whether elderly parents, for example, in the terminal phase of their life will see the distress of their relatives, families and their grandchildren and feel obliged in those circumstances to relieve not their own suffering but the suffering they clearly see their families are undergoing. I think that is actually one of those issues that is not addressed by saying, 'We are putting in steps to prevent duress or inducement.' I believe that the circumstances themselves may force many people to feel that their life is not worth living and that, in order to put their relatives out of misery, they will agree to terminate their life.

The other issue, it seemed to me, about the example given by the lady on the radio this morning was that this bill will, in fact, not provide assistance to many people in that situation. Those people will not have given any advanced directions. By the time they enter that phase of their life, they may well have lost the mental or physical capacity to make any rational decision. This bill will not actually overcome that difficulty, which is inherent in life itself.

I am indicating that I will not be supporting this bill, but I should commend the supporters of it who have campaigned long and hard. The South Australian Voluntary Euthanasia Society has always presented rational arguments to members of parliament—I commend them for it; I am not patronising them by saying it—and the Christians Supporting Choice for Voluntary Euthanasia, which is a new group, have been active and I commend them for their forceful advocacy.

At the same time I should also commend those who are opposed: Family Voice Australia and Right to Life Australia have also been active in ensuring that members receive material to advance their particular cause. I commend also the hundreds of ordinary citizens who are bombarding members with their views. But, in the end, each and every legislator, in the exercise of their conscience, has to reach a decision about the worth of this legislation, and I say that I am unable to support it.

In concluding I want to read a passage from the famous author Morris West. In 1996, when he was 80, and well before the time he died, he wrote:

> As a husband and father, I have executed what is popularly called a 'living will', expressing my wish that in the event of a terminal illness no extraordinary steps, medical or surgical, should be taken to prolong my life. My wife and children have read and agreed to the document. My doctors are aware of its existence. There is nothing in the document that solicits or demands the direct termination of my life. I do not believe that I have the right to lay the burden of this decision upon any other person, be they family or medical carers. I can only trust myself to their skill and compassion to make my exit as painless as possible.

I interpose to say that he is there describing the situation which applies under the existing Consent to Medical Treatment and Palliative Care Act in this state. He then went on to say, in a passage which I think is worth repeating, the following:

> I have one very firm conviction. The ambiguities and the dilemmas created by terminal illness and terminal suffering will not be eliminated by legal documents. A law, however carefully it is framed, becomes immediately an anomaly. It is at once permissive and inhibiting. It is always—and unavoidably—intrusive. It will always be an abridgement of both liberty and privacy. It calls new presences in to places and occasions where otherwise they would have no right to be.

> No place should be more private than the deathbed. No place should be more free from judicial surveillance and post-mortem inquisition of whatever relationships are active at that moment. If abuses occur they should be dealt with after inquiry under common law...What I do not want to see is the introduction of a new figure, a legalised terminator, opening the exit from life only after all the forms and protocols prescribed by an impersonal state have been fulfilled.

I see the Voluntary Euthanasia Board of South Australia as such an imposition imposed by the state. To my mind, the forms and protocols provided in this bill are those of an impersonal state. I do not believe that they are sufficient, nor do they justify the intrusion of the state into this area. This bill is not the solution to an inescapable fact of life; some people will always suffer at the end of life. It is our duty as a society to ensure that their suffering is minimised, but beyond that we should not go.

The Hon. C.V. SCHAEFER (23:20): One of the very early bills that I debated when I came into this place was the consent to medical treatment and palliative care legislation, and I seem to have been speaking to numerous bills to allow euthanasia on a roughly two-yearly basis since that time.

Those who have taken the time to read what I have said previously will not be surprised that I find myself in a position where I cannot support this bill. I, too, would like to acknowledge the sincerity of all concerned on both sides. There seems to be a view out there that there is a constant running poll and the more people who write or email saying that they are either for or against a particular bill the more likely one is to listen to them. On this occasion I think they have probably been roughly half each, anyway.

I have long held the view that we are put in this place to exercise our conscience to the best of our ability and so, as uncomfortable as that may be on numerous occasions, I think it is our duty to do exactly that.

This particular bill, although I know it has been prepared with the absolute best of intentions, is probably more cumbersome, yet it has fewer safeguards than many others. SAVES has put out a comparison sheet between the two most recent bills—the Such bill and the Parnell Bill. By way of some of those comparisons, the Such bill says that 'a person must have intolerable pain that cannot be relieved by methods that the person finds acceptable'; whereas the Parnell bill requires simply that they be 'permanently unconscious or'—not 'and'—'have irreversible impairment of quality of life,' which is not defined.

The Such bill says a request may not be made before the illness occurs; the Parnell bill says it may be made before the illness occurs. The Such bill says that a person must be examined by two independent doctors, and the doctors must agree that the request is justified by medical evidence; whereas the Parnell bill says that the person must consult a doctor and the doctor must be satisfied that the person is of sound mind, otherwise a psychiatrist must be consulted. That puts a huge responsibility, as I see it, on the single GP who has been consulted by that person.

The clause that concerns me most in this bill, as has been adequately and far more eloquently expressed by a number of my colleagues, is that which says that the person who requests euthanasia must, as a requirement, be an adult person, etc., who has an illness, injury or other medical condition that irreversibly impairs the person's quality of life so that life becomes intolerable to that person.

However, there is nowhere that I can see a definition of what makes that life intolerable for that person. Indeed, it appears to me that someone who has, for instance, been an outstanding athlete and finds themselves crippled with arthritis may find that their life has become intolerable by their standards. It just seems to me that there are too many loops in this legislation, aside from my personal objection to the right to request death.

As I have said previously, although there is a fine line, for me the line is in allowing someone to die with dignity and causing someone to die. It is one thing to do all that we can to relieve suffering, even if that does, in fact, hasten death. It is quite another to decide when that death will take place and by what method. I just find that the definitions within this bill are far too loose and far too open to abuse.

I will not go through the various reasons for voting against the bill but, as the Hon. Stephen Wade has adequately expressed, one of the fears one has is for disabled people and the devaluation of their life. The other thing is that people who say that, yes, they are in favour of voluntary euthanasia—and I am not talking about those from SAVES and those who are well informed and privileged, as we are, to have access to the legislation but the people who say, 'Well,

if I ever get to that stage, turn out the lights' (as the Hon. David Ridgway said)—do not realise that there is no law anywhere in the world, as far as I can see, that would consider them eligible for voluntary euthanasia because, in most cases, they are elderly people who have reached advanced dementia and are therefore unable to express their views. As the Hon. David Ridgway also said, how are we to know when they reach that stage whether it would still be their choice to do what they said they would want done when they were a younger and more able person.

I am also concerned that under this legislation, as with many others, many of the international studies show that a large proportion of the people who request that their life be ended are, in fact, suffering from severe and undiagnosed depression. Someone said that this bill will do more good than harm, but I suspect that, if passed, it will do more harm than good and in some ways will make it all too easy for us to end lives, whether it is with the best of intentions or otherwise. I will not be supporting this legislation.

The Hon. I.K. HUNTER (23:29): I rise this evening to speak to the Hon. Mark Parnell's voluntary euthanasia bill. At the commencement of my contribution, I reflect on how many similar bills have gone before because the issue of voluntary euthanasia has been around for some time and is one that we keep returning to. Here in South Australia, euthanasia legislation has now been tabled 10 times in this parliament over the past 10 years—by the Hon. Sandra Kanck in this place and the Hon. Bob Such in the other place. Of course, before then, I understand the Hon. Anne Levy and the Hon. Frank Blevins also introduced somewhat similar legislation.

Western Australia has introduced legislation three times, and voluntary euthanasia legislation has been introduced into the Tasmanian, New South Wales and Victorian parliaments over the past decade. It is an issue that is not going to go away and, if the bill fails tonight, as I think it might, I confidently expect that it will be come back to visit us in the next session of parliament. That is not really surprising when one looks at the opinion polls, which we have already discussed this evening. As we know, the most recent Newspoll on the issue, published in *The Australian* today and taken this week, showed that 87 per cent of people in South Australia support voluntary euthanasia. Not surprisingly, the strongest support is amongst the elderly and those with disabilities—ironically the very people that the slippery-slopers argue need protection from this legislation.

This issue even crosses the religious divide, with 85 per cent of people in a 2007 Newspoll survey who indicated that they supported voluntary euthanasia identifying themselves as Christian. I note that result with interest; it seems that the vast majority of self-professed Christians know very clearly where they stand on this issue, notwithstanding what religious leaders might be saying about it.

Occasionally we come to issues in this place that are considered serious moral questions, and voluntary euthanasia is one of those big moral questions for many people. However, for me the moral question is not the central question in this debate. With voluntary euthanasia, perhaps more than with other issues we may be faced with in this chamber, we are debating whether we should constrain the rights of the individual on a very personal matter—their life, and the ending of it—and in a very narrowly defined situation, in the case of this bill.

Of course I accept that we, as parliamentarians, do have the right and do have a responsibility to protect those people who cannot protect themselves or who are incapable of making decisions for themselves, but I have to seriously question whether we have the right to prevent people from making decisions for themselves when they are of sound mind and are making informed decisions. So I repeat, where it is something as personal as the ending of their life in the circumstances outlined in this bill, I tend to think that we do not have that right.

For me this is the crux of the debate. In a sense it does not really matter what I think about this issue. For me the question is: do I have the right to impose my ethical position on this issue on others who may or may not share that view, or should I allow individuals to make their own choice? Of course we need safeguards when it comes to such legislation, and we have debated safeguards at length tonight. I think the honourable member has included some sensible safeguards, and I welcome the amendments which further strengthen those safeguards.

I alluded earlier to many people arguing against voluntary euthanasia by referring to the so-called 'slippery slope', where legalising voluntary euthanasia will inevitably lead to involuntary euthanasia. Indeed, proponents of this position often cite a series of studies undertaken in the Netherlands to show that the legislation there is being misused. This is simply not the case, and it is unfortunate that one person's inaccurate interpretation of the findings of those studies has been

used time and time again, repeated time and time again, by the anti-euthanasia lobby. As a matter of fact, those studies demonstrated that the legislation was working as intended, and the instances of voluntary euthanasia have actually decreased since the legislation was introduced in the Netherlands.

However, it is not only in the Netherlands that studies into euthanasia have been undertaken. A study undertaken right here in Australia and published in the *Medical Journal of Australia* in 1997 found that euthanasia, without patient consent, was being practised at a higher rate in Australia, where all forms of euthanasia are illegal, than in the Netherlands, where voluntary euthanasia is legal. Surely this in itself is a strong argument for legalising voluntary euthanasia so that we, parliamentarians and parliaments, can regulate it.

Before I conclude I would like to address the argument about the sanctity of life. I will do so by referring to an email I received from a constituent who contacted me earlier this week about the Hon. Mr Parnell's bill. She said:

> My husband has multiple sclerosis and would just like to have the option to decide when and if it is time for his suffering to end. With MS he could be functioning one day and the next be a complete 'vegetable' (his words) and he wants to make a decision/have a choice while he is of sound mind that when he reaches a certain stage someone will then be able to end it for him. Just knowing that there is such a choice would make a huge difference to his daily life and give him peace that he does not have to think about how and when he may need to take matters into his own hands. It is hard for people to understand unless they are actually in this type of situation or are close to someone who is.

So, when people hold up the sanctity of life as a reason to object to voluntary euthanasia I remind them that what they are actually doing to people such as this is condemning that individual to suffer a slow, painful and undignified death, no matter what their personal view is. I do not think that is something we should impose on another person.

In essence, I can summarise my thinking on this matter as follows. If my moral or ethical world view is opposed to voluntary euthanasia, I can decide not to have voluntary euthanasia for myself, but I should not impose my morality on someone who believes differently and who is suffering terribly with no hope of recovery. Let them have the dignity to decide for themselves. For those reasons, I will be supporting this bill.

The Hon. R.L. BROKENSHIRE (23:35): I note that this is one of the few bills in this place on which there is agreement in both houses that this is a conscience vote. I acknowledge the honourable member and commend him for trying to alleviate suffering. In fact, in my own faith, teachings all my life have told me that we should show compassion to those who are suffering and to those who are dying. However, the advocates for this bill have missed one point: they claim that palliative care is incomplete and that it is not a total solution; of course, it is not.

We do not have a cure for cancer, but we do not give up simply because we do not have a cure for all cancer. We research, we spend money on research and we promote causes to try to find cures and ways to alleviate suffering and, indeed, improve quality of life. What we have not done to date, and what I will not be supporting today, is admit to defeat and the opportunities within this legislation to, effectively, choose death through voluntary euthanasia.

We already have advance directives for the terminally ill, and I commend people and the government of the day for what they do with palliative care. I will talk more about that later. However, we can still do a lot more to improve palliative care. We are discovering cures for diseases almost weekly, if not daily, and those efforts are the proper aim of compassion for the dying.

Members have talked about polls and so on and that allegedly 87 per cent of people now support voluntary euthanasia. If you want anecdotal evidence, my office has read and acknowledged all the correspondence that has come through to us from constituents, and from that correspondence we have calculated that about 60 per cent do not want us to support this bill and a little over 40 per cent do want us to support it.

We have looked at all the arguments and, as other colleagues have said, when people say that they want to see the Hon. Mark Parnell's bill supported, it is based on a situation they have experienced in their own family. In addition, in the time between the Hon. Bob Such's bill and this bill, we have had 10,000 plus signatures on petitions and so forth sent through to our office, so there has been some pretty strong intent coming that way.

I note with interest that those who want to see support for the Hon. Mr Parnell's bill say that really it is focused on about 2 per cent of the cases of terminal illness and incredible pain and

suffering and that this would alleviate the problems for that 2 per cent. One of the things I am concerned about is that far more than 2 per cent might end up having voluntary euthanasia as a result of the fundamental flaws in the drafting of this legislation. Indeed, this legislation might be passed to assist that 2 per cent, but far more than 2 per cent could end up being euthanased.

The SAVES newsletter compares both bills: the Hon. Bob Such's bill in the other place and the Hon. Mark Parnell's bill. When you weigh up those two bills, I think that, with respect, the Hon. Bob Such's bill is probably—as I see it, anyway—a little softer on this subject matter than the Hon. Mark Parnell's bill. I note with interest some of the medical letters we have been getting. In fact, I have had more medical letters this time than at other times when these types of bills have been before the parliament.

Dr Pollnitz, was one of those people, and I want to highlight two things mentioned in the letter received from him. Dr Pollnitz, who is a medical doctor—I might add, with other medical qualifications—states in his letter:

> Firstly, the proposed bill places great faith in the judgment of medical practitioners. I regret to tell you that we doctors are human and are liable to make mistakes. Even a good doctor can make a wrong diagnosis, and we can label an illness terminal when it is not. We frequently fail to diagnose depression and we are hopeless at predicting when patients are going to die.

Of course, we heard the Hon. Mr Ridgway talking about a situation such as that in the debate tonight. I agree with what Dr Pollnitz is saying here. We do hear of medical miracles, close calls and people recovering from comas which, using the language of this bill, would have been certified as permanent. The other thing Dr Pollnitz mentions, which takes me to one of my major concerns with this bill, is the subjective third limb of the types of people who can seek euthanasia.

Dr Such's bill requires someone to be in the terminal phase of a terminal illness. By contrast, this bill applies also to the so-called permanently unconscious and to an adult person who has an illness, injury or other medical condition that irreversibly impairs the person's quality of life so that life has become intolerable for that person. Dr Pollnitz points to the hypothetical, and I am quoting directly from his letter. Again, I remind members that he is a qualified medical practitioner with other additional qualifications.

He points to the hypothetical situation of an 18 year old diagnosed with diabetes who is required to inject himself with insulin for the rest of his life. He claims that, under this legislation, that person could get euthanasia. Dr Pollnitz says:

> There are far too many subjective terms in that definition…for my liking.

Also, I think it is important to put on the public record the facts around clause 19(b)(ii), which refers to patients suffering from a whole range of illnesses that are incurable but not terminal. Again, this is hypothetical, but we have to look at the unintended consequences which I want to talk more about in a little while. It does, as I am informed by my legal adviser, indicate that people suffering health issues such as asthma, diabetes, arthritis or even a mental illness could request an end to their life. The patient only has to claim that his or her quality of life is intolerable under clause 19(b)(ii). With a few exceptions, effective pain management is currently available for even the most painful of cancers—and I do acknowledge with a few exceptions. I spent time with a good friend of mine the day before he passed away with cancer. It was not very nice but he did have a painless ending.

I will talk more about Holland in a minute, but just in some of the other correspondence and material I have been reading I noted that in Holland where euthanasia is legalised the termination of life without request is running at about 550 cases per year. I will finish with Holland now. I noticed a couple of members tonight talking about the situation there. I did spend some time in the Netherlands in 2000. Some portfolio responsibility work took me over there. I want to talk about the liberal attitudes, because that was mentioned by the Hon. Michelle Lensink. There is a lot of liberalisation over there. I visited so-called coffee shops, which are pot smoking rooms that people can go to at any time of the day and night, and they do indeed go there for morning tea and go back to work.

I visited injecting rooms, and I went right through the reasons why they had injecting rooms. The truth is that they were not 24 hour a day injecting rooms in any case, but, rather daytime injecting rooms. They had oxygen to revive them and nurses on stand by, but the reason for having injecting rooms was to stop the enormous number of people who were injecting in the reserves and parks around places such as Bern where I visited the injecting room.

I also went through three prisons while I was there. While they are liberal on illicit drug use, it did not stop the black market trade. In fact, I met and spoke with a number of women from Colombia who had been caught bringing black market illicit drugs into the Netherlands; it is just rife.

At the time there was talk about euthanasia in the parliament in South Australia, so I raised the issue with a cross-section of the people I was meeting. It was not like tonight where, allegedly, someone spoke to certain sectors of the Dutch community. I was meeting with a broad cross-section of middle managers who were responsible for managing public and social policy for the Dutch government.

The truth of the matter is that the absolute majority of them when I raised the issue said to me, 'Don't go down the path of the euthanasia legislation that we have in the Netherlands. It is scary and it is not working.' They did not have any specific reason for going one way or the other, but the absolute majority of all the people to whom I spoke said that to me. In fact, I guess it backs up a fact that has not been put on the public record tonight; that is, of all the hundreds of countries around the world less than a handful have implemented this type of legislation.

I also want to refer to what Dr Pollnitz said about medical practitioners making mistakes. It was not a mistake on this occasion, but I will give two examples. Only several months ago in the media there was a story from the United States of America about a person who had been in a coma for many years. A woman had been visiting her husband in a medical facility for all those years. The medical people did not think he would ever wake up, but he actually did and, while I understand he still has a long way to go before there is anything like a full recovery, he now has some quality of live with his wife and children. I wonder what would have happened if voluntary euthanasia had been available in that state of the United States. I received a letter from a practising therapist which states:

> One discouraging day at work I bumped into an ex-patient, who now volunteers his time [at a particular facility in South Australia]. This patient used to be just like my clients, written off, in a vegetative state, with no awareness of others and no hope of recovery stated from the neurologist. This patient was walking, talking and eating independently six months later, and the recovery startled many people, and is often described as miraculous. This patient said to me that he did want to end his life in that vegetative state but couldn't tell anyone.

He is now incredibly thankful for his recovery and, according to the letter from the therapist (which we received on 14 October), he is living a full life.

This bill creates a number of legal minefields, not least of which is the option to prosecute for undue influence. That is more police work that they do not need and, more importantly, it is open to family members aggrieved by a death to press for charges against those close to the loved one who chose euthanasia. The penalty is not high enough to deter a desperate person. While this is exceptional, it does happen. In fact, I have been advised that on several occasions at least in the Netherlands a desperate person has wanted money from a person's estate or life insurance policy. Indeed, the investment and financial services association that wrote to me (and probably to other honourable members here in this house) expressed considerable concerns about the implications of life insurance policies. A person seeking euthanasia could commit a fraud upon their insurer by taking out one or several policies, and that needs to be worked through and I do not believe it has been in this legislation.

I also want to touch on the issue that has been raised by some of my colleagues that this bill allows people to make the decision themselves on whether or not they would sign off on voluntary euthanasia. I do not see that that would be the case a lot of the time. I think the decision would be made by someone with a medical power of attorney because the argument is so strong that it is in the last phase of a sad and unfortunate dying situation. I personally have a medical power of attorney but I do not believe the person who signed that medical power of attorney wanted me, if there was voluntary euthanasia, to sign off. It would put me in a difficult position, theoretically—not me, personally, because I know in this case that the medical power of attorney that I have is to ensure that very good palliative care is provided to that loved one, but it could put a lot of people in that position.

In closing, I return to the question of compassion. We must not give up on providing hope and the option of life to the suffering. Our pain at seeing others in pain should drive us to find cures and better ways of dealing with palliative care. Our laws already allow people who are terminally ill to refuse further medical treatment. Like some members, I was here when we debated the medical treatment and palliative care bill. It has not been put on the public record tonight, but that bill was introduced by the minister for health at that time who was a medical practitioner and had practised for quite a long period of time. I had very detailed discussions with the Hon. Dr Michael Armitage

about all these issues and he convinced me that the best way to go was to support the medical treatment and palliative care bill, which I did.

Since then, things have moved on, and I congratulate the Hon. John Hill, the current Minister for Health. A constituent came to me recently who had been in a care situation for her husband during a significant period of illness and she raised some issues with me about how she believed palliative care could be improved. She said a lot of good things are happening in this state with palliative care, and I believe that, but she gave me some examples of what happens in Victoria because, through networks because of her husband's illness, she had started to investigate what other states were doing. I have sent that letter and some recommendations to minister Hill and he has taken that on board. I congratulate him on that, and I understand he is reviewing thoroughly issues around palliative care. I think that needs to be put on the public record.

I think it also needs to be public that, whilst this bill has been on the table for a year—and, as I said, I appreciate and understand the intent of the honourable member who has tabled this bill—only today the house received quite a lot of amendments to it, and that said to me 'unintended consequences'. I will finish by saying this. In the years that I have been in the parliament we have done the best we can as legislators, with unintended consequences. Governments put in regulations and often you find unintended consequences of those regulations. Here we have an opportunity to disallow regulations and revisit them. If you make a mistake and there are unintended consequences, which happens often with legislation, you can amend it.

I believe there are unintended consequences in this bill and, if it is passed and acted upon by a medical practitioner on behalf of a patient, you will not be able to reverse the unintended consequences because the person would have been euthanased. For those reasons, on a conscience vote, I do not support this bill.

The Hon. R.I. LUCAS (23:55): Over my years in politics I have been called many things, but I have never been called inconsistent in relation to my views on voluntary euthanasia, and in my contribution this evening I will certainly maintain what has been a consistent position over the many occasions that I have been asked as a legislator to vote on the legislation. I refer those persons who are unfamiliar with my views to the *Hansard* debates of 2003-04 and, certainly, a number of occasions prior to that. As a result of that, I do not intend, particularly given the hour, to repeat all the reasons why I have adopted the position I have adopted in the past and continue to do so. However, I want to address relatively briefly three issues.

I must admit that I (and, I assume, a number of other members) was offended at what I believe was the offensive language used by former Northern Territory chief minister Marshall Perron, reported in *The Advertiser* this morning under the headline, 'Hundreds die in pain as "zealots" block change'. The article stated, 'Mr Perron, however, says "fanatical" religious "zealots" are standing in the way of what should be a human right.'

Mr Perron is entitled to his views and to express them but, as I said, I abhor the demonising, as he has attempted to do, of anyone who has a different view from Mr Perron in relation to what is right or what is appropriate with respect to this difficult, complex and controversial issue. I think that portraying anyone who adopts a position different from his own doing so as a result of fanatical religious zealotry, as I said, is offensive to those members who adopt the particular positions that they do on this issue.

As a number of other members have indicated, by and large, I think most of the lobbying that we have received on this occasion (as we have in the past) from both sides of the argument has been relatively considered and moderate and certainly has not included intemperate, offensive language such as that used by Mr Perron. Perhaps that is a product of his Northern Territory background and the way in which politics are played in the Northern Territory, and perhaps it is best left in the Northern Territory.

The second issue that I want to address is the issue (which is always raised, although the numbers change depending on the polls) that in some way the job of legislators is to reflect the majority view of the community. Over the years, I have had many an interesting argument with groups who have lobbied me as an individual legislator on a whole variety of issues, because I obviously (as do a number of others) take a strongly divergent view to that particular proposition. Indeed, if the view is put to me, 'Well, the numbers are 87 per cent, or 70 per cent,' or whatever it is, supporting voluntary euthanasia in one form or another and, therefore, I am obligated to represent the view, when I put the proposition to the people who lobby that way, 'Does that mean, for example, that because 70 per cent of people in polls support capital punishment you want me to

vote for that legislation as well?' of course there is a cough and a splutter and very rarely do I receive a response to that particular proposition.

Indeed, I recall one of my first votes in the parliament, which was in relation to the proposition of whether or not we should have a casino in South Australia. Again, the majority view at the time was to oppose the introduction of a casino in South Australia, and I took (as did a number of other members) a different view in relation to that. I also get the argument in relation to the abolition of gaming machines in South Australia; that there is a majority view out there in the community that gaming machines should be abolished and, therefore, as a legislator I should reflect that particular view.

It may well be that I am a supporter of minority causes, but in relation to this issue and, indeed, that particular argument, on this occasion I again reject strongly the proposition that our task here as legislators is simply to reflect the majority view. If that is the case, you might as well not have members here. You can conduct a referendum, a poll or a plebiscite and implement whatever the result of that exercise might be.

Our job as legislators is to make judgments and decisions. We have been elected to positions of trust and responsibility by the people of South Australia in one way or another, whether it be the House of Assembly or the Legislative Council. We are required and asked to make difficult and complex judgments on a whole range of issues, and in many areas they will not reflect the majority view of the populace. Ultimately, we have to answer to our parties and the electorate at election time in relation to the views that we happen to express.

However, it is a recipe for anarchy, in my view, to put the proposition that we in parliament should be here simply to reflect the majority view of the electorate on this issue because, in my view and my judgment, you cannot just pick the issue because it happens to coincide with your views on this particular occasion. If you want the majority view on voluntary euthanasia, then you will have to accept, if you want to follow the logic of the argument, the majority view on capital punishment and a whole variety of other things as well.

The final point that I have heard in this debate—and I am not just talking about the debate this evening, although it has occurred with some contributions—generally in the community leading up to this one is that, just because you as an individual have a particular view, you should not impose your view on others. What a wonderfully illogical proposition that is to a parliament. We spend half of our waking life making judgments about laws that impose the views of individuals and, ultimately, the majority in the parliament that restrict or limit the activities of individuals.

I remind members of the laws that we passed in relation to the banning of the use of illicit drugs. If you follow the proposition that, if an individual wants to have the right to voluntary euthanasia it does no harm to anyone else—let them have that right; do not impose your view as a legislator—how is the argument different in relation to whether someone wants to use heroin or, indeed, a range of other illicit drugs? If they are doing no harm to anyone else, why should they not have the right to do that?

As I said, we spend half of our waking life in this parliament looking at a variety of laws which, in one way or another, impose restrictions which, in the interests of a public benefit test, a public interest test or what we believe is right or wrong, we make judgments about, whether it is a conscience vote, a party vote or whatever it might happen to be, but they are judgment calls which we are asked to undertake as individual members of parliament. Ultimately, if there is a majority view that is reflected in this chamber and another chamber, that will become a new law, an amendment, or whatever the case might be.

As I said, it is a wonderfully cute line that you hear being mouthed on the front steps—and some of my colleagues in another place have parroted it to me, 'Just because you have a view, you shouldn't impose your view on others.' I am one member; I am entitled to express the view that I have in this chamber, based on the judgment that I have made over a number of years in relation to this issue. I respect the views of others who might have a different view and, ultimately, our democracy works on the basis that, if a majority of people either agree or disagree with me, and if the same thing occurs in the House of Assembly, then there will or will not be change in this area. However, those of us who have a particular view are entitled to express it and we are entitled to express it without the likes of people like Marshall Perrin describing us as 'fanatical religious zealots'.

The Hon. J.S.L. DAWKINS (00:05): Initially I would commend the Hon. Mark Parnell for bringing this legislation to the council. I note the safeguards he has made as a high point of the bill.

I also note his willingness to amend the bill to tighten it even further. Further, I acknowledge the longstanding work of members of the SAVES group; we should acknowledge them in this place as all being committed volunteers who have been working for many years sincerely towards their aim.

I have been sponsoring legislation in relation to altruistic gestational surrogacy for a number of years, and I hope that that might get a bit closer to fruition in the next 24 hours. The amount of time I have been working in that area and with people in the community pales into insignificance compared with the time spent by the volunteers who make up the SAVES group, and I pay tribute to them.

Voluntary euthanasia was one of the first conscience issues placed in front of me when I entered the Legislative Council more than a decade ago. In fact it was in 1998 that the issue really came up for the first time, and it was about whether a voluntary euthanasia bill would be referred either to a select committee or to the Social Development Committee of the parliament. That was the time I really started to think about the issue. I have previously demonstrated my support for voluntary euthanasia legislation and will continue to do so in relation to this bill.

Part of the reason I took a view in favour of voluntary euthanasia involved family experiences I had encountered, and some other members of this chamber have referred to the experiences they have had with loved ones. Certainly issues relating to both my father-in-law and my father, when they passed away within 14 months of each other, influenced me strongly to consider supporting voluntary euthanasia.

Another aspect is the fact that I remember vividly being confronted by someone who asked how could I, as a former chairman of the Parliamentary Christian Fellowship, possibly support voluntary euthanasia, and I took some time to explain my views to that person. That question certainly exemplified some of the thoughts being expressed that people who supported voluntary euthanasia were exclusively non-Christian. I am very pleased that the group called Christians Supporting Choice for Voluntary Euthanasia has been established and again, like the members of SAVES, they are all volunteers and give of their time to this cause. I will quote to the chamber the self-description of that group, namely:

> Christians who believe that, as a demonstration of love and compassion, those with a terminal or hopeless illness should have the option of a pain free, peaceful and dignified death with legal voluntary euthanasia.

I thank all who have contacted me about this legislation by mail and email, and a small number who have taken the trouble to contact me on the telephone.

The Hon. R.I. Lucas: The Hon. Mark Parnell gave them your telephone number.

The Hon. J.S.L. DAWKINS: I think they can find me. I must say that I sincerely respect all of the views put forward. I have some friends here tonight, not that far away, who do not share my views on this, but I trust that I hold their respect, as they do with me. By passing this bill we would not be imposing voluntary euthanasia on those who are opposed to it, but we would be giving everyone the choice. I support the bill.

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (00:10): I indicate briefly that I will not be supporting the bill, consistent with the view I have taken when this matter has been discussed on previous occasions. I say that notwithstanding the very good debate that has taken place tonight. I do not believe that I can add much to it from that particular perspective, given some of the very eloquent contributions that have been made.

Simply, I am a supporter of palliative care, even taken to a fairly extreme level; that is, a level which would lead to lack of consciousness and ultimately, of course, the death of the person who is being given the palliative care, or the earlier death than might otherwise be the case had the care not been given. Whereas I support that philosophy—the underlying philosophy in relation to palliative care, even taken to extreme levels— I think it is important that the underlying philosophy is the relief of pain and suffering. That is always the objective test and the underlying motivation.

I think the problem is that once you start to get into the area of voluntary euthanasia you are really working backwards. You are working from the outcome, which is death, and you then have to work backwards and set up a whole structure of tests, bureaucracy and the like by which that is measured. To me, that is where the problem essentially lies.

In fact, there is really not much difference, I think, between the views of most people here. No-one wants to see anyone suffer. Would there be a jury in this state that would ever convict any

doctor where a person is suffering the final stage of an illness if they are administered pain killing drugs that led to death? Of course no jury will convict anyone for that occurrence. I believe that the underlying philosophy of the particular legislation is important because it does reflect community values.

A philosophy that is motivated by the relief of pain and suffering is important, it is honourable, it is decent. The problem is that when the legislation works backwards, when the death of the person becomes the principal focus and we work back to justify it, I believe that that does, inevitably, create some problems. It does affect society in how it thinks in relation to these things, even though, as I said, the outcome in the case of the administration of palliative care taken to the extreme is the same. I do not intend to take any more time of the council in relation to this subject other than to indicate that I will not be supporting the bill.

The Hon. A. BRESSINGTON (00:13): I also rise to speak to the Consent to Medical Treatment and Palliative Care (Voluntary Euthanasia) Amendment Bill. Since coming to this place I have learned quite a few lessons. I would like to, No. 1, put on the record, straight up, that I did not come into this place with a view on euthanasia, for or against. It was an issue that was out of my reality, if you like, prior to coming here. In fact, this has been a debate that I have dreaded having to be involved in since I have come in here.

I have tried very hard to avoid the moral argument, and also the emotive argument around this. I will put on record that I have been involved with two people who have gone through palliative care, who have had a palliative care order in place, and who have received the kind of treatment that the Hon. Paul Holloway just spoke of. I was present for their death and it was peaceful. It did not take days for that to occur; as a matter of fact, of both of them the longest was 24 hours. I have seen no proof that palliative care, as the Hon. Paul Holloway put it in the extreme, does not achieve the outcome of pain relief and assist people to pass in a peaceful way.

However, what I have based my decision on is the fact that the legislation that we pass in this place on such issues like this is social justice. I believe that every single one of us in here has a responsibility to backtrack and to look at what our record is like. I have to say that I have found nothing since I have been in here that I can hang my hat on to say that I have faith in a government (any government) that would be responsible for administering and enforcing this legislation or in the bureaucracies that underpin that government.

I have seen cases with WorkCover. The Hon. Mark Parnell and I were criticised heavily for running a filibuster against that particular piece of legislation where injured workers are now no longer the primary consideration of a corporation that was originally established to protect those injured workers; now it is bottom line.

The Housing Trust, a government department set up to provide affordable housing for working class people, is now nothing more than welfare housing. If you are not drug addicted, mentally ill, homeless or all three, you have no hope of getting a home with the Housing Trust any more. We talk about slippery slopes—there is one.

We have people living with disabilities and their carers who cannot get respite or the equipment that they need to look after their disabled loved ones. I have asked numerous questions in this place based on cases where parents are desperate to get a wheelchair or a lifting device so that they can give their child a bath. One not so far away was only seven years old. We have actually seen a situation in this state where a parent was driven to kill her own child because of the absolute stress and duress of having to try to cope with a system that simply does not seem to care.

We have child protection. I see day in, day out—and I am still hearing stories—where children are removed who should not be removed, where children are left who should not be left. We have a department that is highly dysfunctional and has been described as pervasive with a rotten culture. We have seen minister after minister come through this place who has been able to do nothing to rein in that culture, and I am not saying those ministers do not have the political will: my point here is that we seem to have great difficulty having ministers who can go to a CEO of a department and say, 'Get over here. Fix it and fix it now.' They can do it.

It is not all about funding. Why can't we in this place make sure that the Child Protection Act that we put forward is enforced to the letter of the law? We have social workers out there who are doing their own thing. What makes us think that setting up another layer of bureaucracy for this place to administer this particular bill is going to be any more effective than any I have just mentioned?

We also have foster carers—again, people of goodwill and good heart—who volunteer to look after our most vulnerable children who are treated like crap. The second that they ask for any support or services, their children are removed. Why? Because they dare ask for some sort of support for the children that they have volunteered to look after.

Not only are they expected to cover most of the costs of raising those children but they are also denied—absolutely denied—the support services that those children need to cope with the trauma that removed them from their families in the first place. I know that other members in this place have had to deal with the same kinds of complaints, so it is not just my office. This is not just my imagination: this happens.

Then, of course, we have the mentally ill. Well, we have seen how that particular system is working. Try ringing ASIS. Try getting them anywhere to do an assessment on a person who is at risk and who is going to be a risk to other people. Try getting action for them. No; they are doped up, put out on the street and left to cope for themselves, and meanwhile mental health beds diminish.

Of course, we have my pet issue, which is drug addicted people, where, again, we have just given up. We provide them with drug replacement therapy; we try anything and everything but assisting them to stop using drugs. The organisation that I founded 14 years ago now—Drug Beat—to this day has not had one referral from Drug and Alcohol Services—not one, not because what we do does not work but because we are not recognised, because we are abstinence based. This is just another indication to me that, really and truly, we have people in positions of decision making and policy enforcement who run their own agendas regardless of the legislation that we are passing here. That is what makes me so nervous about this particular piece of legislation.

I am not going to criticise the bill. I am not going to pull it apart and say that it is bad legislation. I am just saying that, as a society, we are not ready for this yet. I do not believe we are responsible enough. If we were responsible enough we would have ministers in their portfolios making sure that their CEOs and their bureaucrats were doing as they are required to do by legislation. It does not happen. That is purely the only basis for my rejection of this bill.

I promise that, as I said, if I start to see one department, one social justice issue that I can hang my hat on and say, 'You know what? We're actually improving this; we're actually trying to make this better; we're actually trying to meet the needs of our most vulnerable', my vote would swing. Maybe that is a challenge. If the left wants it badly enough, get onto your ministers and get some action, get some improvement in the systems that we have, and maybe in four years' time we can have this debate again and the vote will be different.

Again, I stress concerns about the review process. There is no review process. We can kid ourselves that we can have select committees; we can have the Ombudsman's office. It was only three weeks ago that I was advocating for a foster carer who had had a child in her care for six years, and again asked for support for that child, and within 24 hours that child was removed. We did a public interest disclosure statement, and we forwarded to it to the Ombudsman's office, and the Deputy Ombudsman read the complaint, saw my letterhead, and said to the advocate, 'If Ann Bressington is involved in this case, then we probably won't investigate.' That's the depth of our review process. I might be a pain in the butt to some, but if they are going to base their decision on whether or not to investigate, we should be very afraid—very afraid.

I do not believe that the review process for a euthanasia bill or for the enforcement or implementation of this legislation would be any more rigorous. I do not believe it would be any more effective and, as I said, I certainly have no faith in the processes that we have in place. Meanwhile, while we have our Attorney-General and our Premier saying that we have plenty of mechanisms in place to deal with corruption—we have Ombudsmen, commissioners, and God knows what—I have not had one favourable outcome for anyone who has made a complaint to a commissioner or to the Ombudsman's office. Sorry; I tell a lie: I had one, and it took 6½ years.

So, if we are going to really go down this path of voluntary euthanasia, that could quite easily slip into involuntary euthanasia. It has happened before. We cannot just say that it will not happen because this is Australia. We have to put those mechanisms in place to make sure that we can cope with the fact that some people may not do the bidding of this parliament. I do not believe that that would come as a surprise to anyone sitting here.

We also have issues with victims of abuse in state care. We have a government that is slipping and sliding and dodging and weaving, rather than paying these people the compensation they deserve. It is finding every loophole it can to avoid its responsibility to that group of people.

The Office of the Public Trustee has just finished an inquiry—not pretty stories at all. Most of all, we have a culture in this state—and I will be blunt—where we create villains out of victims. We have a blueprint whereby anybody who dares to make a complaint against a government department or a government department worker is quite easily labelled as unstable, belligerent, vexatious or inarticulate.

We are unwilling, as a parliament, to recognise that sometimes the people we should be listening to above our advisers are the victims, most of whom are not alone in terms of the complaints they are making, and doing so at great personal cost to themselves, knowing damn well that they are going to be targeted and persecuted even further. What are we doing in this place to fix that?

Whistleblowers are held in contempt and yet here we are, talking about voluntary euthanasia, with all these safeguards and all these review processes, when we cannot even get it right on systems that have been in place for 30 or 40 years, or more. Why would we do it differently for this? They are the only objections that I have to this, another bill, something else concerning which we can put another layer of crap onto the mess that we already have and create more and more problems for the people who become trapped in the system—as they will, because they become trapped in every other system. So what? We have another lot of problems to solve over the next 30 or 40 years; give us something to do! I am sorry, I think not.

The Hon. M. PARNELL (00:28): I would like to thank all honourable members who have spoken. I want to particularly thank those who have wrestled with their conscience to work out how we can best serve the people of this state. As other members have said, we have all been contacted by hundreds of people, and I thank those South Australians who took the trouble to ring and write and send emails.

We also had a large number of people on the steps of Parliament House today expressing their support for voluntary euthanasia. I particularly acknowledge the South Australian Voluntary Euthanasia Society (as other members have done) and also the group, Christians Supporting Choice for Voluntary Euthanasia.

This bill has been on the *Notice Paper* for nearly a year and it is now time for us to decide, one way or the other, whether we think it should become part of the law of our state. There have been a number of developments in the past year but I do not propose to go through all of them. I will mention a couple of points and then I want to very quickly address some of the arguments that have been raised, particularly by those who have indicated they have difficulty in supporting this bill.

Much has been said about the opinion poll. In fact, it is quite timely that it came out only yesterday, the latest Newspoll, conducted this month (October). Over 1,000 Australians were surveyed and the result, as has been mentioned before, is that 87 per cent of South Australians support voluntary euthanasia.

The reaction to that poll has been quite varied this evening. A number of members have challenged the fact that the people polled knew what question they were answering. Some people have been questioning the ability of citizens to understand a question asked of them and what it means, and some members have raised what I would call the 'So what?' question—'So what if 87 per cent of South Australians support voluntary euthanasia?' I want to address both of those quickly.

In terms of the actual question that was asked, the Hon. Bernard Finnigan accurately referred to it, but I will do so again. The question was simple: 'Thinking now about voluntary euthanasia, if a hopelessly ill patient experiencing unrelievable suffering with absolutely no chance of recovering asks for a lethal dose, should a doctor be allowed to provide a lethal dose or not?' It is a fairly straightforward question; it is not that nuanced. People always say, 'Well, you get the answer according to the question you ask.' I think that is a pretty simple question, and 87 per cent of South Australians say yes and 6 per cent of South Australians say no.

Perhaps the more important question to pose—and the Hon. Rob Lucas went into this, as did the Hon. Bernard Finnigan—would be: 'Should it be enough for us that 87 per cent of South Australians are asking to pass a law such as this?' I think the answer is no, it is not enough, but the question is: is it a relevant consideration? Absolutely it is, and it is particularly a relevant consideration if what we as elected members are doing is considering actively opposing what our constituents say they want. I think it needs to weigh heavily on us before we just summarily dismiss not just this opinion poll but the one before that, the one before that and the one before that. We

have to be very careful to be saying to South Australians, 'We don't care what you want.' So, I think it is relevant, but it is not determinative. It is not the only thing we have to take into account.

I think the opinion poll is one bit of information. I like to bring things to this place that are fresh, and you cannot get much fresher than yesterday's *London Times*. A remarkable opinion piece by Dr Raymond Tallis appeared in the *Times*, under the heading 'Why I changed my mind on assisted dying'. In the first line, the article states:

> As a doctor I used to think palliative care was the answer. Now I realise that keeping people alive can be unspeakably cruel.

The reason why I think Raymond Tallis's views stand out among the hundreds and thousands we have is that he was the chairman of the Committee on Ethical Issues in Medicine at the Royal College of Physicians. In that role, his committee twice considered bills put forward for voluntary euthanasia by Lord Joffe. Those bills proposed to legalise the choice of physician-assisted dying for mentally competent people with terminal illness who were suffering unbearably at the end of their life. He says in this article:

> On the first occasion, we decided to oppose the Bill and on the second, because we were divided, we opted for neutrality.

The doctor's position now is as follows:

> The case for such a Bill to me now seems clear. Unbearable suffering, prolonged by medical care, and inflicted on a dying patient who wishes to die, is unequivocally a bad thing. And respect for individual autonomy—the right to have one's choices supported by others, to determine one's own best interest, when one is of sound mind—is a sovereign principle. Nobody else's personal views should override this.

The rest of the article basically explains the process that this fairly influential person went through in determining originally that voluntary euthanasia was a bad thing to his current position where he says now that it is something that is deserving of support.

I do want to address some of the arguments that have been raised—some of the ones that were raised a fortnight or so ago by the Hon. Dennis Hood, plus some comments that people have made today. A lot of the debate by members who say they cannot support this bill has focused on the detail, the safeguards and how rigorous or otherwise they are. However, what fundamentally underlies many of these contributions is the fact that those members will oppose it anyway. It does not matter what changes are made, it does not matter whether we bring in an extra doctor, or two doctors, or three doctors. If people are fundamentally opposed to it that is fine; that is their right. However, I would like the opportunity to explore the detail in this bill, to work through the different safeguards we have, and to test how rigorous they are. I will come back later to a process that we might adopt in doing that.

The Hon. Dennis Hood's speech was particularly comprehensive, as was the Hon. Bernard Finnigan's, but I do not think those contributions actually did justice to the fact that people are presently dying in torturous and cruel circumstances, and that palliative care is unable to relieve the suffering. Some members have said that they do not believe that palliative care is not up to the task, and we have had other members—the Hon. Robert Brokenshire was one, for example—who said that if we allow voluntary euthanasia we are somehow giving up on palliative care and that as a society we will stop trying to make things better for people in their dying days. I do not accept that.

Palliative Care Australia, which is the nation's peak body, acknowledges that palliative care does not work for everyone. We all hope that the proportion for whom it does not work reduces over time, but let us not deny the fact that there are people suffering because they cannot get relief. Members would also be aware of the fairly recent court case where it was determined that a competent adult can elect to die by starving himself to death to end the suffering, but our law currently prevents that same person the means to a quick, peaceful and dignified death. Those who are denying law reform in this area are saying, effectively, that that is a satisfactory situation, that the law should not be changed to allow a person to have a peaceful death. I do not accept that, either.

A claim was made by the Hon. Dennis Hood that we have elderly Dutch people wearing tags around their neck saying 'Do not kill me.' That has been discredited as an anti-voluntary euthanasia stance. We have to ask ourselves: if things are so bad in Holland, why does its democratically elected government of 16 million people continue to permit the practice? The reason it does is that the Dutch people support voluntary euthanasia.

Much has been said in relation to people such as Dr Philip Nitschke and his practices. I need to make the point that his is not the approach of groups such as the South Australian Voluntary Euthanasia Society. It could be argued that the reason Dr Nitschke has such a large following is that we do not have the law reform that this bill seeks to introduce, and people do end up looking for self-help options. My bill takes a very different approach. It seeks to normalise, to bring into the medical system, the important decisions about the end of a person's life.

I have said it before but I will say it again: the two most important words in this debate are 'voluntary' and 'choice'. I will be looking very carefully through the *Hansard*, because it is interesting that the people who have spoken tonight in favour of the bill have all used the word 'voluntary' in abundance, while the people who have opposed the bill have rarely used the word 'voluntary' at all. They emphasise 'euthanasia'. For me, euthanasia is the situation that has been described with the dog; it is not the dog's choice. This is voluntary euthanasia; that is, an adult who is competent making a free will decision about the end of their life.

A lot has also been said tonight about the fact that people can be depressed and that depression can sometimes go undiagnosed. I have tried to structure this bill in such a way that, if there is any suspicion that a person is not acting with free will, that their mental state (such as with depression) is such that they are not exercising free will, and that they can be treated—because a lot of mental illnesses can be satisfactorily treated—we would involve a psychiatrist in the process.

Let's not be unrealistic. Are people who are suffering the terrible conditions that have been described likely to be depressed as well? Too right they are—they are likely to be depressed. The question for us is: is their request for voluntary euthanasia being driven by their suffering or by their depression? If it is being driven by their depression, let's treat it and help them to get over any mental illness they have. Let's not deny them that right just because they are suffering terribly and also happen to be depressed because of that situation—they are likely to die very soon in terrible circumstances.

The main problem I have with many of the contributions is that people are happy to pull apart the detail and say, 'Well, that's got loopholes and that's not well enough drafted,' but few people have suggested an alternative to the problem, other than the status quo, and the status quo is unsatisfactory because of the suffering that results. I want briefly to go through some specific comments people have made this evening.

The Hon. Bernard Finnigan urged us to be dispassionate and, to a certain extent, I can accept what he says. There is head and heart in a debate such as this. I consulted both the head and the heart, and I found that this is a good public policy response. It is not just about raw emotion getting in the way, but neither are we robots or people who simply legislate for certainty, making every definition watertight.

We have to acknowledge that we live in an imperfect world, and we are doing our best to impose a system that creates the opportunity for people to live they best life they can and, in this case, when the suffering becomes intolerable, to die the best way they can. The Hon. Bernard Finnigan said that one inappropriate death is one death too many, and we can all agree with that. We all say that one death on our roads is one death too many and that one suicide is one suicide too many, but let's be realistic about what it is we are trying to achieve. We are trying to put in place a package of measures that helps people who are asking for help to end their life with dignity.

The Hon. Bernard Finnigan complained about the board to be set up under this bill. He said that one of the reasons it was flawed was that it was too slow. To be fair, the honourable member does not want it to work any faster; he does not want it to work at all. So, some of the criticisms of the minutiae are really detail that is overridden by the fact that many members, for their own reasons, do not want any law reform at all; no model is unacceptable.

That is fine, and I can accept that if that is people's view but, if not, let's explore what safeguards might be better than those I have put in place. I think they are adequate, but I am more than happy to talk to members, as I have done already in relation to the few amendments I have on file, and I will come back to those later.

As to the contribution of the Hon. Stephen Wade, I am always impressed by his dedication to his shadow portfolio, particularly in relation to people with disabilities. However, again, the tests he proposed that would make the bill acceptable to him would, in fact, make it unworkable. They would not work, and I do not think that that is necessarily a constructive way to approach this debate.

The honourable member spent a lot of time talking about people with disabilities. If more members had come out onto the steps of parliament this afternoon, they would have heard the contribution from Dr Paul Collier, who, as many of us here remember, ran in the last election on the Dignity for the Disabled ticket to become a member of this place. In fact, if I heard him correctly, it he intends to run again for the Legislative Council—someone who is a passionate advocate for the rights of people with disabilities.

His message to us is that it is not up to us—people who might not have disabilities—to tell anyone what they cannot have or to be somehow paternalistic about it. It would be a terrible situation if we said, for example, 'Well, voluntary euthanasia is okay provided you are not disabled because we need to look after you people better.' I do not think that is the approach. It is not what Dr Paul Collier was asking for. We need to have a system which applies to everyone and which treats everyone with dignity and as an individual.

The Hon. Robert Lawson's contribution I have summarised as the existing law is good enough, and I do not think that it is. As an eminent lawyer, he was critical of terms that he thought were emotionally charged, such as the term 'intolerable suffering', and bemoaned that there were not stringent definitions for terms such as that. The difficulty of course, as I said, is that we are not robots and certainly we are not legal robots. The legal system looks for as much certainty as it can, but the system within which we are working is an imperfect one. It is based on humanity and we do not have pain meters. We do not have any way of judging whether someone's suffering is intolerable other than that person's own perspective on their condition. Every case will be different.

The Hon. Robert Lawson said that he was not satisfied that the steps that I had put into this legislation were real protections. I think he used the words that they were hoops to jump through. That is one of the great dilemmas, and I will come shortly to what the Hon. Ann Bressington said. One of the dilemmas that we have got is that we want safeguards, but we do not simply want to put obstacles in the way of people so that they cannot ever use it. We have got to get the balance right. The Hon. Robert Lawson also posed the question about whether what we are trying to achieve here is to relieve the suffering of those who are left behind or are we really interested in the suffering of individuals?

I think that he has come to that view because many of the stories that people have told have been about family members or loved ones, but my experience, in terms of the representations that have been made to me, is that the people who are calling for voluntary euthanasia are saying that they do not want to go through what their mother went through or their father went through, or whatever. People are personalising it. They are seeing it as a right that they want to have for themselves, and they base that experience on what they saw their loved ones going through.

I have not had anyone write to me saying, 'I would have liked to have put down grandmother against her will.' That is not what voluntary euthanasia is about at all. As I mentioned before, in his contribution the Hon. Rob Brokenshire seemed to think that, if we embraced voluntary euthanasia, somehow that would stop innovation in relation to palliative care. The counter to that argument is that the state of Oregon which has voluntary euthanasia has the best palliative care in the United States. I think that we must be careful with attitudes such as that (that would somehow be admitting defeat), because it does deny the inherent good nature of people in this generation and the next who will continue to work to make life better for us all.

The honourable member also said that the police have better things to do than prosecute those who might be suspected of having exercised undue influence. He also went on to say that the penalties were too low. Well, we cannot have it both ways. If you are going to have a system where you want to stop people putting undue influence on those who might want to exercise their voluntary euthanasia rights, you must have penalties and you must have the ability for the police to prosecute those people.

The Hon. Robert Brokenshire acknowledged that I had tabled some amendments. He made the point that they had been tabled fairly recently, and I think he jumped to the conclusion that I was fixing up major flaws in the bill and that there were unintended consequences that needed to be remedied. That is not the case. The amendments I have tabled have been as a result of my discussions with individual members of this chamber, and the amendments fall into two categories. The first one is that it was pointed out to me that maybe the doctor who has agreed to accept a request by a patient for voluntary euthanasia is not an expert in that particular illness, so, I have incorporated an amendment to put that extra doctor into the equation—that you do have to then go to a specialist and you do have to get that specialist to report on your diagnosis, your prognosis and the options that are available to you. That is a sensible amendment. It was not

anything to do with unintended consequences but, rather, to make sure that the best information possible was available to the person to exercise their choice.

The other amendment is in relation to this issue of possible coercion. It is one thing to make it a criminal offence and it is another thing to make a medical practitioner certify that they do not believe that a person is acting under coercion—that they are in fact exercising their own free will—but I have strengthened it by making it a positive obligation to make reasonable inquiries as to whether the person is acting of their own free will or under coercion.

If members have other amendments which they want to put to me and which would provide genuine improvement in this legislation, then I am happy to discuss them. If the bill passes the second reading stage tonight, we will have an opportunity over the next two weeks to make further improvements to this bill.

I note that the Hon. Ann Bressington in her contribution threw out some challenges, in particular in relation to the role of the government appointed board that I have incorporated into this bill. I accept the concerns she has expressed about various elements of government; and she went through a lot of those tonight. I share many of those concerns. Lots of things go wrong when government is involved, but I would like the opportunity to explore whether that system of a government committee is the best one or whether there is another way around it. If the bill were to pass the second reading stage tonight, we could do the committee stage in two weeks in order to explore those possibilities.

I ask all members not only to consider and judge this bill on the basis of your own view—although that is important—but also to consider whether or not you are prepared to deny it to the majority of South Australians who have asked us to seriously consider and pass law reform in this area, regardless of whether you yourself can ever envisage using this law; whether it is reasonable for you to condemn others to suffering and torment they do not want and for which there is a solution. The right to end a life of intolerable suffering is a basic fundamental human right we all should respect. Through this bill we can show compassion and, indeed, love for those who have called out to us for help.

The council divided on the second reading:

AYES (11)

Bressington, A.	Darley, J.A.	Dawkins, J.S.L.
Gago, G.E.	Gazzola, J.M.	Hunter, I.K.
Lensink, J.M.A.	Parnell, M. (teller)	Ridgway, D.W.
Winderlich, D.N.	Wortley, R.P.	

NOES (10)

Brokenshire, R.L.	Finnigan, B.V.	Holloway, P. (teller)
Hood, D.G.E.	Lawson, R.D.	Lucas, R.I.
Schaefer, C.V.	Stephens, T.J.	Wade, S.G.
Zollo, C.		

Second reading thus carried.

STATUTES AMENDMENT (VICTIMS OF CRIME) BILL

The House of Assembly agreed to amendments Nos 2, 4, 5 and 7 made by the Legislative Council without any amendment and disagreed to amendments Nos 1, 3 and 6.

INTERVENTION ORDERS (PREVENTION OF ABUSE) BILL

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

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (00:58): 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 Bill reforms laws for the restraint of domestic and personal violence. It repeals the *Domestic Violence Act 1994* and the parts of the *Summary Procedure Act 1921* that govern personal restraining orders, and makes consequential changes to other Acts.

This Government is concerned about the prevalence of domestic violence and its potentially lethal consequences. A recent discussion paper about domestic and family violence death reviews released by Queensland's Domestic Violence Death Action Group (*Dying to be Heard,* 2008) put it like this:

Domestic Violence is described as the use of violence by one person to control another and is used to describe any abuse that occurs in intimate relationships.

The abuse may take the form of physical, emotional, sexual, spiritual, social, and financial abuse. Abusive behaviours may range from intimidation, stand over tactics and threats to serious assaults, rape, strangulation and death. The abuse may continue long after the relationship has ended and it is well recognised that many women have either left the relationship or are in the process of leaving when they are killed. Often the threats made to victims are not idle threats and each year a significant number of adults and children continue to die as a result of domestic / family violence.

By this Bill, the Government fulfils its commitment to review the rape, sexual assault and domestic violence laws, announced in November 2005 as part of the whole-of-Government policy initiative *Our Commitment to Women's Safety in South Australia.* Our review of domestic violence laws began with the public release of a discussion paper we commissioned from barrister Maurine Pyke Q.C. Her recommendations and a simultaneous review of domestic violence laws by the Victorian Law Reform Commission (resulting in the enactment of the Victorian *Family Violence Protection Act 2008*) form the background to this legislation.

The Bill brings together laws restraining domestic violence and laws restraining other forms of personal violence. The aim is to make these laws easier to understand and enforce and to emphasise that our society does not tolerate personal violence of any kind, whether it occurs within a domestic relationship or not. Nevertheless, there is strong emphasis on domestic abuse and there is no doubt that these laws will mostly be used by people seeking to protect themselves and their children from domestic abuse. For that reason the Bill acknowledges, in its definition of abuse, not only the obvious physical forms of violence but also the brutal and controlling behaviour that is typical of violence that takes place under cover of a private, familial relationship and can be concealed from the world at large, trapping the victim in a nightmare world from which there is little hope of escape. It also extends the kinds of relationship that will be considered 'domestic' and continues to require the courts to give priority to proceedings for the restraint of domestic abuse.

The Bill retains many of the features of the current *Domestic Violence Act 1994* and the personal restraining order provisions of the *Summary Procedure Act 1921:*

- An interim and final civil restraint process (now also adopted by most other Australian jurisdictions) using a civil standard of proof;
- A requirement for courts to give priority to domestic violence restraint (intervention) proceedings;
- Terms of restraint (called 'intervention' in this Bill) that exclude an alleged perpetrator from the family home, regardless of the alleged perpetrator's legal or equitable entitlements to the property;
- Prohibitions relating to firearms and problem gambling orders;
- A bar on applications by defendants to apply to vary or revoke an intervention order if there has been no substantial change in circumstances since the order was made or last varied;
- Police powers to arrest and detain a person for contravention of an intervention order;
- Police applications to the court by telephone or other electronic means (now to be regulated by rules of court);
- A requirement for applicants to inform the court of any relevant contact or Family Court order, and for courts to consider the effect of an intervention order on the contact between a child and the person subject to the intervention order proceedings;
- A power in the Magistrate's Court, when making an intervention order, and to the extent of its powers under section 68R of the *Family Law Act 1975* (Cth.), to revive, vary, discharge or suspend relevant orders relating to children under Part 7 of the *Family Law Act* to the extent that they are inconsistent with the proposed intervention order;
- The Youth Court having the same jurisdiction as the Magistrates Court to make an intervention order where the person for or against whom protection is sought is a child or youth, and to vary or revoke any previous intervention orders;
- A maximum penalty of two years imprisonment for breach of an intervention order, so that it remains a summary offence. (Of course, if the conduct constituting the breach also constitutes another criminal offence, such as assault or causing harm or damage to property, the perpetrator will also be liable for the penalty for that offence. That penalty will be aggravated because in committing the offence the defendant was acting in contravention of an intervention order designed to prevent just that sort of conduct (s5AA *Criminal Law Consolidation Act 1935*).)

New features introduced by the Bill are:

- Binding objects and principles for intervention designed to promote a common approach by those enforcing the Act to perpetrator accountability and to the protection of victims of abuse and their children;
- A definition of abuse that includes not only physical injury and damage to property, but also, specifically, emotional or psychological harm and an unreasonable and non-consensual denial of financial, social or personal autonomy;
- A definition of the relationships within which an act of abuse is to be considered domestic abuse that includes not only relationships between spouses or partners and children but also those between grandchildren and grandparents, brothers and sisters, within an Aboriginal kinship group and between a carer and the person cared for;
- An acknowledgement of the damaging effect on children of experiencing and being exposed to domestic or personal abuse. This is expressed in the principles for intervention and the way they are to be applied, in the class of persons for whose protection an intervention order may be made, in requirements for courts and police to consider the interests and needs of children in determining applications for intervention, in an emphasis on consistency between intervention orders and relevant family court or child protection orders, in offering special arrangements for the taking of evidence of victims, including children, in making it possible for domestic violence victims and their children to stay in the family home if they choose rather than routinely move out to a shelter, in ensuring that relevant Government departments are aware of intervention orders affecting children, in prohibiting the publication of reports of intervention proceedings that would identify victims and their children, and so on.
- Improved police powers to intervene in situations of domestic or personal abuse, including the power to issue an interim intervention order, to direct a person to remain in a certain place and if necessary to detain the person while arrangements are made to protect the victim or to facilitate the preparation and service of orders;
- Express police powers to search for weapons and articles required to be surrendered by an intervention order;
- Simplified processes that reduce opportunities for perpetrator manipulation;
- A power in the court to dismiss an application that is frivolous, vexatious, without substance or has no reasonable prospect of success, with a presumption against dismissal in cases of domestic abuse and in cases where the defendant is alleged to have committed an offence of personal violence or stalking;
- A power in the court, when the protected person and the defendant live in rented premises under a tenancy agreement to which the defendant is a party, and when the intervention order excludes the defendant from those premises, to assign the tenancy to the protected person or other persons (not including the defendant), in circumstances where it would be unreasonable for a landlord to withhold consent to the assignment;
- An ability for police or the court, by interim order, to require a defendant to be assessed for an intervention program to deal with associated problems of substance abuse, problem gambling, anger management or mental health and for the court then to order the defendant to undertake such a program;
- Provision for courts to protect victims or witnesses who give evidence in court in these applications from distress or embarrassment by the use of special arrangements, such as physical screens and CCTV, and by limiting the ways a defendant may cross-examine them so that the defendant cannot do so in person;
- The registration of interstate and New Zealand intervention orders in a way that requires the court to take into account the implications of service on the safety of a protected person;
- A prohibition on the publication of reports of proceedings for domestic and personal abuse that would tend to identify the person or persons whom the application seeks to protect and their children, any other person involved in the proceedings (not including people acting in an official capacity or the defendant), and any child of the defendant;
- An intervention order to prevail over a child protection order to the extent of any inconsistency, with a power in the Youth Court to deal with any inconsistency by varying or revoking the child-protection order;
- The exemption of protected persons from guilt for an offence of aiding, abetting, counselling or procuring the commission of the offence of contravening an intervention order, provided no other protected person is affected by the commission of the offence.
- Notification requirements that ensure all relevant public-sector agencies (that is, those responsible for education, families and communities, and child protection and the South Australian Housing Trust) are aware that intervention orders have been made, varied or revoked; and
- Authority for public sector agencies and organisations contracted to provide services to them to provide information to police on request to locate a defendant for service.

I turn now to the practical scheme of the Bill.

What is an intervention order?

Intervention orders are orders restraining a person from doing certain things and, if necessary, requiring the person to do other things. The order may be issued for the protection of anyone against whom it is suspected the defendant will commit an act of abuse or any child who may hear or witness or otherwise be exposed to the effects of an act of abuse committed by the defendant against another person. The order may be issued to protect more than one person.

What can an intervention order do?

The terms of an intervention order (whether interim or final) can include any form of restraint that is needed to protect the victim from abuse: for example, prohibitions on contact in person or by texting, phoning or emailing, prohibitions on proximity and exclusion from the family home.

The order can require the defendant to do certain things: for example, to surrender specified weapons or articles. When an order requires surrender of weapons or articles, police may search the defendant or the defendant's possessions or enter and search places where the weapon or article is suspected to be and take possession of it, using reasonable force to do so.

An intervention order can also require the alleged perpetrator to be assessed for, or to undertake, an intervention program dealing with substance abuse, problem gambling, anger control or mental health. If a defendant is assessed as eligible for a program, and there are services available for the defendant to undertake it, the court may order the defendant to do so without the defendant's agreement.

The order may also contain terms that protect children affected by the violence and ensure their continuing safety and security.

Grounds for issuing an intervention order

The grounds for issuing an intervention order against a person, whether interim or final, are simple. Grounds exist if it is reasonable to suspect that the defendant will, without intervention, commit an act of abuse against a person, and if the issuing of the order is appropriate in the circumstances.

These grounds are anticipatory. There is no need for proof of the commission of an act of abuse before an intervention order is issued.

Who may issue an intervention order?

Both police and the courts can issue interim intervention orders, and on the same grounds, but only a court may confirm an interim order; dismiss an application for an intervention order, substitute an intervention order for an interim one; or vary or revoke an intervention order. (The Commissioner of Police may, however, revoke an interim order that was issued by a police officer. This power is intended for situations where the issue was clearly inappropriate or there was some mistake in the process.)

An interim intervention order issued by police serves as an application to the court for an intervention order. A defendant who is served with the interim order is taken to have been served with a summons to appear in court on the date specified in the order for the hearing of that application (within eight days of the date of the issue of the interim order). When police issue an interim order, there is no preliminary hearing by the court, as there would be when a person applies directly to the court for an interim order; there is only a final hearing to determine what to do with the interim order that the police have issued.

This new police power, combined with improved powers to hold a defendant pending preparation and service of process and while making arrangements for the security of the victim, is designed to give victims and their children immediate protection from abuse without the need to go to court first, in circumstances where the alleged perpetrator can be served on the spot and is therefore instantly bound by the order. A similar effect can be achieved under the current law by telephone application to a magistrate when the alleged perpetrator is present, but as a matter of practice this process is usually reserved for out-of-hours situations. The ability to apply to a magistrate by telephone or other means is preserved in this Bill for situations where it is not possible, or it is inadvisable, for police to issue an interim order and it would take too long to wait for the next sitting of the court to obtain one.

When can police issue an interim intervention order?

Police may issue an interim intervention order if there are grounds to do so and if the defendant is present to be served with the order or in custody. The issue of the order must be authorised by a police officer of the rank of sergeant or above, although investigating police officers of lower rank may do so with written or telephone authorisation from the more senior officer. There are no other limits on this power.

An interim order issued by police can require the defendant to stay in a particular place until the order is prepared and served, for as long as it takes. If the defendant won't stay as required by police or it looks like the defendant is not going to stay, the police may arrest and detain the defendant without warrant for as long as it takes to prepare and serve the order, but for no longer than two hours or such longer period as is approved by the court (no more than eight hours in aggregate).

The police will have their own *pro-forma* interim intervention orders, incorporating all information relevant to an application for intervention, including information about current relevant orders for parenting or child protection or firearms or problem gambling, the terms of interim intervention that have been imposed, and the date and time when the court will hear the application and determine whether the interim order is to be confirmed, substituted or dismissed. It will include a form by which the defendant can consent to the terms of the order and another by which the defendant is to provide an address for future service.

Additional police powers

The Bill gives police extensive powers to hold and detain defendants to intervention orders, aimed at better protecting victims of abuse.

Having served an intervention order on a defendant, police may arrest and detain the defendant to prevent further immediate abuse and allow measures to be taken to protect any person protected by the order, for as long as is necessary to prevent immediate abuse or for these measure to be taken, but for no longer than six hours or such longer period as is approved by the Court (and this no more than 24 hours in aggregate). This power is expected to be used only in cases where there is an immediate risk of violence to the protected person should the defendant not be detained.

When an intervention order requires the defendant to surrender a weapon or article, police may search the defendant and anything in the defendant's possession for that weapon or article or enter premises or a vehicle to take possession of it, and may use reasonable force to do so.

Police may also arrest and detain a person in custody without warrant for suspected breach of the interim order or a final order, as long as the person is brought to court as soon as possible, and no more than 24 hours later, for the court to deal with the alleged offence. If the alleged breach occurs on a weekend or public holiday, the 24 hours does not include that period. This means that a person who is arrested for breach of an intervention order on, say, the Friday night of long weekend will be detained in custody for three days before the person comes to court.

Police obligations to provide copies of orders they issue

As well as serving the defendant, police must give a copy of each order they issue to the Principal Registrar of the Magistrates Court and each person protected by the order. That is because the order is taken to be an application to the court, and must be lodged with the court and the people to whom it applies as if it is such an application. The Registrar must then provide copies to relevant public sector agencies (the departments responsible for the *Children's Protection Act 1993,* the *Education Act 1972,* and the *Families and Community Services Act 1972* and the South Australian Housing Trust).

Finally, police must give the Registrar a copy of the defendant's address for service, if supplied, so that the court can locate the defendant for the service of its orders and notices.

Other options for police

The police may still apply to the court for an interim intervention order without issuing one themselves. This will usually happen when the defendant is not present or available for service when police want to intervene or when police are not sure how to make an interim order that is consistent with a current Family Court or child protection order.

Locating the defendant for service

When police apply for an interim intervention order they may have difficulty finding the defendant, and unless the application is served on the defendant the court cannot make a final determination. Information from public sector agencies and people under contract to provide services to such agencies may often help police find the defendant, but sometimes it is not clear whether the State's Information Privacy Principles authorise them to release this information to police. The Bill provides that information that is in the control of such an agency or person must be made available to police on request if it could reasonably be expected to assist in locating a defendant on whom an intervention order is served.

Who may apply to the court for an intervention order?

An application to the court for an intervention order may be made regardless of whether police have been called out to an incident and regardless of whether there has been a previous act of abuse. A person need not have been abused already to invoke these laws, which are designed as much to protect from apprehended abuse as from further abuse.

Anyone needing protection from an act of domestic or personal abuse may apply.

An adult may make an application and may do so through another person with the court's permission.

A child may apply either on the ground that the defendant may commit an act of abuse against the child or simply on the ground that the child may hear or witness or otherwise be exposed to the effects of an act of abuse committed by the defendant against any person.

If the defendant or a person proposed to be protected is a child who is the subject of an order made under s38 of the *Children's Protection Act 1993*, the Minister responsible for that Act may apply. It is expected that the Minister may do so when applying for new orders or variations of existing orders under the *Children's Protection Act 1993* about the child.

A child who is entitled to apply may do so in person if aged 14 or over, with the permission of the court. Otherwise, the child's application must be through a parent or guardian, someone the child usually lives with, or another suitable person who has been approved by the court.

Police may apply in their own right, whether they have the consent of the alleged victim or not, if they have not already issued an interim intervention order.

All these people, and also the defendant, may apply for a variation or the revocation of an intervention order. The defendant, however, may apply only with the permission of the court, which will not be granted unless there has been a substantial change in relevant circumstances since the order was issued or last varied.

Preliminary hearing of application for order

When a person applies to the court for an intervention order in circumstances where the police have not already issued an interim order, the court must hold a preliminary hearing as soon as practicable and without summoning the defendant. It will then either make an interim order or dismiss the application.

An interim intervention order made by a court comes into effect only when served on the defendant, as does a police-issued interim order.

The interim intervention order will set a date for a hearing at which the application will be determined finally.

The court can adjourn the determination hearing for a limited time if satisfied that the interim order has not been served or there is other good reason for the adjournment.

Hearing to determine application for intervention order

At this hearing, the court has three options:

- to confirm the interim intervention order (whether issued by police or the court);
- to issue an intervention order in substitution for the interim order (this will usually happen when a term of the interim order needs to be changed); or
- to dismiss the application and revoke the interim order.

If the interim order is confirmed, it continues in force as an intervention order against the defendant *without any further requirement for service,* because the defendant has been given full notice of the hearing date and what will happen at the hearing and has been told that the interim order is ongoing until revoked or substituted. When a defendant fails to appear at this hearing, the order may be confirmed without hearing further from the defendant. It can also be confirmed when the defendant has consented to the order, even if the defendant disputes some of its terms, without hearing further from the defendant.

The court will substitute another order if there are terms in the interim order that need to be changed—either at the instance of the person for whom protection is sought or the defendant. A substituted order must be served on the defendant before it has effect, but, until it is served, the interim order will remain in force.

If the court dismisses the application and revokes the interim order, revocation takes effect immediately but the defendant must be served with written notice of the revocation.

How long does an intervention order last?

All intervention orders, whether interim or not, have continuing effect: they continue in force, subject to any variation or substitution by the court, until revoked.

Intervention orders are to be ongoing because no court can predict, when making an order restraining a defendant from being violent, what may happen when the defendant is no longer subject to that restraint. That is for the defendant to establish, much later, in an application to revoke the order, by reference to the defendant's conduct since the making of the order (inasmuch as that has any relevance at all to the defendant's future conduct when not so restrained), to changes in the defendant's circumstances or the circumstances of the victim or both, to changes in their relationship and to a range of other relevant factors.

The continuing nature of intervention orders means they cannot be made for a specified period or until a particular event occurs. It also means that an intervention order cannot lapse. If, for example, an intervention order is varied, the order as in force before it was varied continues to bind the defendant until the amended (substituted) order is served.

The transition provisions bring restraining orders made under the current laws within this regime. If such an order were given an expiry date and, after this new legislation comes into operation, is brought before a court for variation or revocation, the court must, if it decides to continue the order in original or varied form, turn the order into a continuing order. The original order cannot be extended for a fixed term.

How are the terms of the order made known to the defendant and protected persons?

The terms of an intervention order and any associated orders will be set out in the orders themselves.

In addition, though, the issuing authority (police or the court) must try to ensure that the defendant and those protected by the order understand what these orders mean by explaining their terms and effect (but a failure to do so will not invalidate the order). For example, if the order is an interim one, issued by police, the police officer must ensure that the defendant understands that this is an application to the court and serves as a summons to appear in court for a hearing on the date specified in the summons, as well as explaining each individual term of the order.

The issuing authority must also explain how these orders interact with any current *Family Law Act* (Cth.) or *Children's Protection Act* (S.A.) orders of which the authority is aware.

Finally, the explanation must include that a protected person cannot give permission to contravene the order.

Court obligations to provide copies of its orders

As well as serving the defendant, the Principal Registrar must give a copy of each interim order and each intervention order that it issues, and each notice of variation or revocation of either kind of order, to:

- The Commissioner of Police;
- Each person protected by the order;
- The applicant, if the applicant was not the police or a person protected by the order;
- The relevant public sector agencies (the Departments administering the *Children's Protection Act 1993,* the *Family and Community Services Act 1972* and the Education Act 1972I and the South Australian Housing Trust).

In this way not only those directly affected by the order but all relevant agencies and Government authorities, whether already providing services to a person or family affected by the order or not, will become aware that an order has been made, its current status and its terms at the earliest possible moment and can take this information into account when providing their services.

There are also requirements for the court to notify relevant authorities of any associated orders it makes—problem gambling orders and tenancy orders—and to notify the relevant public sector agencies of any foreign intervention order it registers.

Housing options for victims

Some victims of domestic violence choose to move out of their home, despite the defendant being subject to a restraining order excluding the defendant from the home, for their own safety and the safety of their children.

Others who are confident that the order will protect them from future violence may wish to stay in the home, particularly when there are children in the household whose schooling and social lives would be disrupted by a move. Until now, there have often been legal or practical barriers to staying in the home.

The Bill contains measures to help victims of abuse either leave home safely or stay in their home.

First, it allows an intervention order to prohibit the perpetrator from being anywhere near the family home, even though the perpetrator may own or rent it. The aim is to encourage victims of abuse and their children to stay in the family home if they want to and so prevent their lives being unnecessarily disrupted.

Secondly, it offers a means of longer-term security to protected persons who wish to stay in the home. The Bill allows the court, when making an intervention order that excludes a defendant from rented premises in which the defendant lives with the protected person, to make another order by which the defendant's interest in the tenancy agreement is assigned to the protected person or to some other person or persons other than the defendant.

For these purposes a tenancy agreement will include not only agreements for residential tenancies under that Act but also residential parks agreements and agreements for the tenancy of rooming houses.

This measure takes into account the needs of the landlord (that the new tenant will comply with the obligations under the tenancy agreement, such as payments for rent and utilities charges) and prevents the order being made if incompatible with the legal obligations of the landlord (for example, when the landlord is a registered housing co-operative and the proposed assignee is not eligible for membership of that co-operative or, although eligible, is not willing to accept the responsibilities of membership, or when the landlord is the South Australian Housing Trust and the proposed assignee does not meet the eligibility requirements).

These orders do not terminate the tenancy agreement but allow it to continue in terms that are consistent with the assignment of a tenant's rights in a residential tenancy agreement under s74 of the *Residential Tenancies Act.*

This provision does not prevent applications by other parties to the agreement to the Residential Tenancy Tribunal or to the South Australian Housing Trust under the provisions of their Acts.

Finally, the Bill contains measures to help victims who decide to move out of the home, leaving the defendant in residence. It is common for such a defendant to continue the abuse by denying the victim or the children access to the home to collect personal possessions or by denying the victim access to the family car to transport children to and from school or to shop for the family. If there is already a restraining order in place that does not refer to personal property, the defendant will often invoke the no-contact terms of that order to deny such access.

To countermand this, the Bill allows the court or police to order the defendant to return specified personal property to the protected person, and to do so in a way specified in the order; to allow the protected person to recover or have access to or make use of specified personal property, again in a way specified in the order (for example by giving the protected person access to the former home at a particular time); and to allow the protected person to do these things under police protection or in the company of a specified person, if desired.

Child defendants

The legislation contemplates that sometimes a child will be the defendant to an intervention order. It allows the Youth Court to hear such matters as if it were a Magistrate's Court and to make intervention orders against children, using all the special safeguards afforded to children by that court. (The Youth Court may also make intervention orders itself, in appropriate cases, protecting a child.).

Of course, if a child breaches an intervention order, the matter will be heard in the Youth Court in the same way as would any other criminal offence committed by a child.

Protected persons exempt from liability for aiding and abetting breach of intervention order

The Bill exempts a person who is protected by an intervention order from liability for aiding, abetting or procuring its breach, unless the conduct, so abetted, also contravenes this order or any other intervention order against the defendant for another protected person.

This provision recognises the power imbalance between parties to abuse and the potential for subtle manipulation by the perpetrator of the victim by way of pay-back or retribution or in an attempt to reconcile without regard to the order. Of course, when the protected person is overborne by threats to aid and abet a breach of an intervention order, there is a defence of duress. But even if there is no duress, the criminal law should not be used against an abused person unless this person has assisted a breach that puts the safety of other people protected by this or another order at risk.

Police report that there are some occasions when a victim of abuse will manipulate the defendant to breach the order, to get the defendant into further trouble. These rare cases do not warrant an exception to this exemption. We expect that in cases where there would, but for this exemption, be good grounds for a charge against a protected person for aiding and abetting a breach of an intervention order (that is, where there is no suggestion of coercion or duress), police should simply apply to the court for a variation or revocation of the intervention order on the ground that it is not working as intended. The court can then review the terms of the order and rectify the problem to the extent possible. The possibility of such a review may well deter this kind of manipulation by protected persons.

In conclusion

In enacting these reforms, Parliament will be sending a clear message that it will not tolerate the use of violence to control or intimidate another person, particularly in a domestic setting; that it recognises and abhors the lasting psychological and emotional damage to children from exposure to such violence; that it expects perpetrators to accept full responsibility for their violent behaviour; and that the paramount consideration is always the protection and future safety of the victims of abuse and the children who are exposed to it.

It will also be offering perpetrators of domestic or personal abuse the means to deal with associated problems of substance abuse, mental health, problem gambling and anger control, in the expectation that they will then be able to reflect upon and appreciate the effects of their abusive behaviour on others, take responsibility for it and learn to treat other people, particularly those close to them, with respect and care.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal.

3—Interpretation

This clause provides necessary interpretative provisions for the measure.

4—Application of Act outside State

This clause ensures that the measure applies in relation to a defendant wherever the defendant resides and to abuse wherever it occurs.

This is similar in effect to current section 4(3) of the *Domestic Violence Act 1994* and section 99(2a) of the *Summary Procedure Act 1921*.

Part 2—Objects of Act

5—Objects of Act

This clause describes what the measure achieves and the purposes designed to be achieved.

The measure brings together the provisions relating to domestic violence restraining orders under the *Domestic Violence Act 1994* and other restraining orders for violence under the *Summary Procedure Act 1921*. Violence amongst more remote family members, carers and others currently dealt with under the *Summary Procedure Act 1921* is to be dealt with under this measure.

Part 3—Intervention and associated orders

Division 1—General

Note—

This Division is designed to set out the substantive framework for the issuing of intervention orders with the following Divisions dealing with matters of procedural detail and associated problem gambling and tenancy orders.

6—Grounds for issuing intervention order

The grounds for issuing an order are that it is reasonable to suspect that the defendant will, without intervention, commit an act of abuse against a person and the issuing of the order is appropriate in the

circumstances. This reflects section 4(1) of the *Domestic Violence Act 1994* and section 99(1) of the *Summary Procedure Act 1921* and continues the South Australian approach which allows for an order to be made in anticipation of violence, rather than only after the event.

7—Persons for whose protection intervention order may be issued

This clause provides that an order may be made, not only for the person against whom the act of abuse is directed, but also for any child who may hear or witness, or otherwise be exposed to the effects of an act of abuse against another.

This emphasises the importance of considering the broader implications of abuse for children.

It is also made clear that an order can protect persons other than a person who applies for the order.

8—Meaning of abuse—domestic and non-domestic

This clause describes the many potential aspects of abuse. It refers to physical, sexual, emotional, psychological and economic abuse and recognises that abuse may result in—

- physical injury; or
- emotional or psychological harm; or
- an unreasonable and non-consensual denial of financial, social or personal autonomy; or
- damage to property in the ownership or possession of the person or used or otherwise enjoyed by the person.

Extensive examples are included of the types of acts that may result in emotional or psychological harm or an unreasonable and non-consensual denial of financial, social or personal autonomy. These concepts are designed to expand on and more effectively describe what is currently referred to as intimidating or offensive behaviour in section 4(1) and (2) of the *Domestic Violence Act 1994* and section 99(1) and (2) of the *Summary Procedure Act 1921* and the range of examples included has been significantly expanded.

Some of the examples are drawn from the corresponding Victorian legislation.

This clause also sets out when abuse will be considered to be domestic abuse. This covers a broader category of relationships than is currently captured by the concept of family member in the *Domestic Violence Act 1994* (generally limited to spouses or partners and children). The new concept extends to the relationship between grandchildren and grandparents, brothers and sisters, an Aboriginal kinship group, and so on, and also between a carer and the person cared for.

9—Priority for intervention against domestic abuse

This clause requires proceedings relating to intervention against domestic abuse to be given priority, as far as practicable.

This equates to section 18 of the *Domestic Violence Act 1994*.

10—Principles for intervention against abuse

The principles set out in this clause are to guide the police and magistrates in the issuing of intervention orders.

Subclause (1)(a) and (b) describes at a high level the pervasiveness and character of abuse in our society. This is designed to guard against prejudices and uninformed views about abuse.

Subclause (1)(c) sets out the primary aim of preventing abuse. There is a similar emphasis in section 6 of the *Domestic Violence Act 1994* and section 99(5) of the *Summary Procedure Act 1921*.

Subclause (1)(d) reflects an increased focus on encouraging defendants to accept responsibility and take steps to avoid committing abuse and on assisting protected persons and children.

Subclause (2) sets out other matters that must be taken into account. Currently, courts are required to take into account certain Family Law Act orders and the matters set out in paragraphs (b) and (d) (see section 6 of the *Domestic Violence Act 1994* and section 99(5) of the *Summary Procedure Act 1921*). This is expanded to include Children's Protection Act orders, agreements and orders relating to the division of property and other legal proceedings between the defendant and protected persons.

11—Ongoing effect of intervention order

It is made clear that intervention orders are ongoing (that is, that they do not expire after a specified time period).

12—Terms of intervention order—general

The clause sets out examples of the types of prohibitions and requirements that may be included in an intervention order. These include, most significantly, excluding a defendant from a residence or prohibiting the defendant from engaging in particular conduct.

The terms are similar to those set out in section 5 of the *Domestic Violence Act 1994*.

The clause provides that if a defendant is excluded from rented premises, then despite any other Act or law the protected person may change the locks and the defendant may not terminate the tenancy agreement. These are new aspects to the law.

13—Terms of intervention order—intervention programs

This clause authorises the Court to impose a new requirement for the defendant to undertake an intervention program. This is part of the focus on trying to get the defendant to accept responsibility and to take action to avoid committing acts of abuse. Assessment in relation to such a program can be required as a term of an intervention order. The assessment and programs are to be managed by the Courts Administration Authority's intervention program manager, along the same lines as those that may be imposed as a condition of bail or as a term of a bond.

14—Terms of intervention order—firearms

This clause requires an intervention order to include specific terms designed to ensure that the defendant surrenders any firearms in his or her possession and is prevented from possessing firearms while the order is in force. It allows the Court to allow a defendant to possess firearms but only if the defendant has never been guilty of violent or intimidatory conduct and needs to have a firearm for purposes related to earning a livelihood.

This reflects the current requirement for firearms orders contemplated by section 10 of the *Domestic Violence Act 1994* and section 99D of the *Summary Procedure Act 1921*. The new scheme streamlines the requirement by integrating it with the intervention order.

15—Inconsistent Family Law Act or Children's Protection Act orders

This clause explains that the effect of the Commonwealth *Family Law Act* is that Family Law Act orders referred to in section 68R of that Act prevail over intervention orders but that the Magistrates Court may vary the Family Law Act order in proceedings for an intervention order.

This clause provides that an intervention order is to prevail over a Children's Protection Act order under section 38 of that Act and contemplates that the inconsistency will be resolved by an application made under that Act.

16—Explanation for defendant and protected persons

This clause contains a new requirement for the police and magistrates to explain the terms and effect of intervention orders to defendants and to protected persons. They are also required to explain the effect of clause 15 (if relevant) and that a protected person cannot give permission for contravention of an order.

This is a simplified version of the approach taken in the corresponding Victorian legislation.

Division 2—Police orders

17—Interim intervention order issued by police

This clause contains a new power for the police to issue interim intervention orders on the spot.

The defendant must be before the police officer or in custody. The order must be issued or sanctioned by a police officer of or above the rank of sergeant. This is similar to the situation in respect of the issuing of interim firearms prohibition orders under the *Firearms Act 1977*.

It is contemplated that the police will establish a series of pro forma interim intervention orders to suit the different sorts of situations with which they are most often confronted.

An interim intervention order will require the defendant to appear before the Court at a specified time and place. This must be within 8 days and gives the defendant an opportunity to make submissions and present evidence to the Court. It is contemplated that the form would also include provision for the defendant to consent to the order if the defendant so chooses.

An interim intervention order issued by a police officer must be served personally on the defendant.

The provision draws on the ideas in the corresponding Victorian legislation but avoids the complexity of a different scheme of orders and notices.

This mechanism is designed to ensure that the police can respond effectively on the spot to situations of abuse.

18—Revocation of interim intervention order by Commissioner of Police

The Commissioner of Police is empowered to revoke an order issued by a police officer. Again this is similar to the arrangements in respect of firearms prohibition orders.

Division 3—Court orders

19—Application to Court for intervention order

This clause provides for formal applications to the Court by the police, an abused person or representative, a child exposed to abuse or, if there is a relevant Children's Protection Act order in force, the Minister responsible for the administration of that Act.

Allowing representatives and the Minister to make applications invokes a new approach.

Application to the Court is an alternative avenue for police if they are approached in the absence of the defendant or the circumstances of the particular case involve inconsistent Family Law Act orders or Children's Protection Act orders (a matter only able to be resolved by the Court). An abused person may choose to approach the Court directly.

The clause replaces the provisions for making a complaint in sections 7 and 8 of the *Domestic Violence Act 1994* and sections 99A and 99B of the *Summary Procedure Act 1921*. Details relating to the making of applications by telephone or other electronic means are left to rules of Court.

20—Preliminary hearing and issue of interim intervention order

The Court is required to hear an application as soon as practicable and without summoning the defendant to appear. The Court may dismiss the application including if satisfied that the application is frivolous, vexatious, without substance or has no reasonable prospect of success, but there is a presumption against exercising the discretion to dismiss the application if the applicant alleges that the defendant has committed an offence involving personal violence or an offence of stalking under section 19AA of the *Criminal Law Consolidation Act 1935*. This presumption is similar in effect to section 99CA(2) of the *Summary Procedure Act 1921*.

The process is similar to that of making a restraining order in the absence of the defendant under section 9 of the *Domestic Violence Act 1994* or section 99C of the *Summary Procedure Act 1921*.

As for telephone applications under section 8(1)(d) of the *Domestic Violence Act 1994* and section 99B(1)(d) of the *Summary Procedure Act 1921*, the Court may adjourn the hearing if it wishes to question the applicant in person.

The Court may rely on affidavit evidence at the preliminary hearing but the defendant may require the deponent to appear at the hearing of the application for cross-examination. This is the same approach as in section 9(3) of the *Domestic Violence Act 1994* and section 99C(3) of the *Summary Procedure Act 1921*.

As for interim orders issued by a police officer, an interim intervention order issued by the Court must require the defendant to attend the Court at a specified time and place for the full hearing of the application. It is contemplated that the standard form order would also include provision for the defendant to consent to the order if the defendant so chooses.

An interim intervention order issued by the Court must be served on the defendant personally or in some other manner authorised by the Court. Expressly allowing the Court the flexibility to order some other form of service is new.

The mechanism presented in this clause is designed to provide a quick way of obtaining protection for the victim of abuse, with the defendant given an early opportunity in the full hearing to put the defendant's case.

21—Adjournments

This clause allows for adjournments in the event of difficulties serving an interim intervention order or for other adequate reason. As in the equivalent current provisions, the emphasis is on urgency with adjournments ordinarily being for no more than 8 days (see section 9(5) of the *Domestic Violence Act 1994* and section 99C(5) of the *Summary Procedure Act 1921* although in those cases the period is 7 days).

22—Determination of application for intervention order

This clause contemplates the Court confirming, substituting or revoking an interim intervention order.

It allows for the issuing or confirmation of an order to take place in the absence of the defendant after summons or without taking further submissions or evidence if the defendant consents (and is to the same effect as section 9(1) and section 4(4) of the *Domestic Violence Act 1994* and section 99C(1) and section 99(2b) of the *Summary Procedure Act 1921*).

In the case of substitution of an order, the clause provides for the interim order to continue in force until service of the substituted order. This is similar to the current approach with confirmation of orders in an amended form.

23—Problem gambling order

The Court is empowered to make problem gambling family protection orders under the *Problem Gambling Family Protection Orders Act 2004*.

Section 10A of the *Domestic Violence Act 1994* currently provides for the making of problem gambling family protection orders.

24—Tenancy order

This clause introduces a new power for the Court to assign the defendant's interest as a tenant to the protected person or some other person if the Court is imposing an intervention order (other than an interim intervention order) under which the defendant is excluded from rented premises at which the defendant and protected person previously resided.

Before doing so the Court must be satisfied that the assignee could reasonably be expected to comply with the obligations under the tenancy agreement. This is designed to ensure that it is satisfactory to assume landlord consent to the assignment.

The defendant will continue to be responsible for liabilities accrued before the assignment and any bond paid by the defendant will (subject to any agreement by the parties to the contrary) remain in place as security for the proper performance by the assignee of obligations under the tenancy agreement.

Division 4—Variation or revocation of orders

25—Intervention orders

This clause enables police orders and court orders to be varied or revoked on application to the Court. As in section 12(1a) of the *Domestic Violence Act 1994* and section 99F(1a) of the *Summary Procedure Act 1921* a defendant may only apply for variation or revocation of an order (other than an interim order) if there has been a substantial change in the relevant circumstances since the order was issued or last varied.

26—Problem gambling orders

This clause provides for variation or revocation of problem gambling orders when an intervention order is revoked or on separate application.

If an intervention order is revoked but the problem gambling order is not revoked, then the matter is to become an ordinary matter for the Independent Gambling Authority under the *Problem Gambling Family Protection Orders Act 2004*.

Division 5—Evidentiary matters

27—Burden of proof

The Court is to decide questions of fact on the balance of probabilities. This equates to section 17 of the *Domestic Violence Act 1994* and section 99K of the *Summary Procedure Act 1921*.

28—Special arrangements relating to evidence and cross-examination

This clause is new to the scheme. It contemplates the Court making special arrangements for taking evidence that are similar to the *Evidence Act 1929* arrangements for vulnerable witnesses. It also limits how a defendant may cross-examine victims of and witnesses to abuse in a similar manner to that contemplated for victims of offences in section 13B of the *Evidence Act 1929*.

Part 4—Foreign intervention orders

29—Registration of foreign intervention order

This clause provides for registration of interstate and New Zealand intervention orders. The regulations are to nominate the types of orders or notices that may be registered and given effect here as intervention orders. The Court may require the Principal Registrar to serve the order on the defendant, in which case it will not come into force against the defendant until so served.

See section 14 of the *Domestic Violence Act 1994* and section 99H of the *Summary Procedure Act 1921*.

Part 5—Offences and enforcement

Division 1—Offences

30—Contravention of intervention order

As well as making it an offence to contravene an intervention order (see section 15 of the *Domestic Violence Act 1994* and section 99I of the *Summary Procedure Act 1921*), this clause states that a protected person is not to be guilty of an offence of aiding, abetting, counselling or procuring the commission of such an offence provided no other protected person is affected by the commission of the offence.

If the contravention is constituted of failure to participate in an intervention program or assessment, the offence is expiable. Otherwise the maximum penalty provided is one of imprisonment. It should be noted that the provisions of the *Criminal Law (Sentencing) Act 1988* allow a Court to impose a fine instead in certain circumstances and generally set out the principles to be applied in determining sentence. Intervention programs are also a feature of that Act. It should also be noted that in circumstances where the abuse independently amounts to the commission of an offence other criminal penalties will also apply.

31—Landlord not to allow access to excluded defendant

This clause makes it an offence for the landlord to provide a key or otherwise assist or permit a defendant to gain access to the premises if the landlord has been notified that the defendant is prohibited from being on the rented premises. This is a new provision.

32—Publication of report about proceedings or orders

This is a new provision making it an offence, without the authorisation of the Court, to publish by radio, television, newspaper or in any other way a report about proceedings under the measure, or an order issued or registered under the measure, if the report identifies, or contains information tending to identify any person involved in the proceedings (including a witness but not including a person involved in an official capacity or the defendant), or a person protected by the order or a child of a protected person or of the defendant, without the consent of that person.

Division 2—Special police powers

33—Powers facilitating service of intervention order

This clause enables a police officer to hold on to a defendant for up to 2 hours in order to apply for, serve, or prepare and serve, an intervention order on the defendant. The Court may extend the period but not beyond 8 hours. Compare section 11(3) of the *Domestic Violence Act 1994* and section 99E(3) of the *Summary Procedure Act 1921*.

34—Powers following service of intervention order

This is a new and significant power loosely based on Victorian provisions to enable the police to arrest and detain a defendant for up to 6 hours to prevent abuse or to enable measures to be taken immediately for the protection of a protected person. The Court may extend the period but not beyond 24 hours. It is also contemplated that the rules of Court may authorise an application for extension to be by telephone or other electronic means.

35—Power to arrest and detain for contravention of intervention order

This clause enables a police officer to arrest and detain a person for contravention of an intervention order. It provides the same power as section 15 of the *Domestic Violence Act 1994* and section 99I of the *Summary Procedure Act 1921*.

36—Power to search for weapons and articles required to be surrendered by intervention order

This clause provides express power to search for weapons and articles required to be surrendered by an intervention order. This has been elevated from a matter dealt with in the terms of the order (see section 5(2)(k) of the *Domestic Violence Act 1994*).

Division 3—Disclosure of information

37—Disclosure to police of information relevant to locating defendant

This clause compels public sector agencies and contractors to provide information that may assist in locating a defendant on whom an intervention order is to be served to the police on request.

Part 6—Miscellaneous

38—Delegation by intervention program manager

This clause provides a power of delegation to the Courts Administration Authority's intervention program manager.

39—Dealing with items surrendered under intervention order

This clause provides that surrendered firearms are to be dealt with under the *Firearms Act 1977* and other weapons and articles at the direction of the Court.

40—Evidentiary provision

This clause provides an evidentiary aid relating to contravention of a requirement regulating participation of a defendant in an assessment or intervention program.

41—Regulations

This clause provides general regulation making power.

Schedule 1—Related amendments, repeal and transitional provisions

Part 1—Preliminary

1—Amendment provisions

This clause is formal.

Part 2—Amendment of *Bail Act 1985*

2—Amendment of section 24—Act not to affect provisions relating to intervention and restraining orders

The provision currently provides that nothing in the Act affects the operation of the *Domestic Violence Act 1994* or the provisions of the *Summary Procedure Act 1921* relating to restraining orders. The amendment updates the reference.

Part 3—Amendment of *Criminal Law Consolidation Act 1935*

3—Amendment of section 348—Interpretation

An ancillary order is defined to include a restraining order issued under section 19A of the *Criminal Law (Sentencing) Act 1988*. The Full Court is empowered to make ancillary orders on appeal against acquittal or on an issue antecedent to trial. The reference is updated.

Part 4—Amendment of *Criminal Law (Sentencing) Act 1988*

4—Amendment of section 19A—Intervention orders may be issued on finding of guilt or sentencing

A court is empowered, on finding a person guilty of an offence or on sentencing a person for an offence, to exercise the powers of the Magistrates Court to issue against the defendant a restraining order under the *Summary Procedure Act 1921* or a domestic violence restraining order under the *Domestic Violence Act 1994* as if a complaint

had been made under that Act against the defendant in relation to the matters alleged in the proceedings for the offence. The reference is updated.

Part 5—Amendment of *Cross-border Justice Act 2009*

5—Amendment of section 7—Interpretation

This amendment updates the definition of restraining orders for the purposes of the cross-border justice scheme.

6—Insertion of Part 3 Division 2A

This clause enables police to exercise the power to issue an interim intervention order in any part of the cross-border area, including in those parts that are within Western Australia or the Northern Territory.

Part 6—Amendment of *Evidence Act 1929*

7—Amendment of section 13B—Cross-examination of victims of certain offences

Section 13B of the *Evidence Act 1929* contains special provisions for cross-examination of victims of certain offences, including an offence of contravention of a domestic violence restraining order. The reference is updated.

Part 7—Amendment of *Firearms Act 1977*

8—Amendment of section 5—Interpretation

Under section 5(11) a person is not a fit and proper person to possess a firearm if the person is the subject, or has in the past been the subject, of a domestic violence restraining order. The reference is updated.

9—Amendment of section 32—Power to inspect or seize firearms etc

This amendment extends the powers to seize firearms to those possessed in contravention of an intervention order.

Part 8—Amendment of *Problem Gambling Family Protection Orders Act 2004*

10—Amendment of section 4—Grounds for making problem gambling family protection order

Section 4(8) provides for adjournment of proceedings in favour of proceedings under the *Domestic Violence Act 1994*. The reference is updated.

Part 9—Amendment of *Summary Procedure Act 1921*

Note—

The amendments remove provisions relating to personal violence restraining orders, to be dealt with under the new measure. After amendment, Part 4 Division 7 of the Act will deal only with paedophile restraining orders.

11—Non-application of Acts Interpretation Act

This clause provides that the provision for automatic commencement after 2 years does not apply to this Part. This is to enable certain provisions to be suspended indefinitely if necessary to take account of other measures.

12—Amendment of section 4—Interpretation

This clause deletes the definition of *relevant family contact order* because it is unnecessary to the paedophile restraining order provisions. It also makes a necessary adjustment to the definition of *restraining order* to reflect the fact that the Part will only deal with paedophile restraining orders.

13—Repeal of section 99

This clause repeals the section dealing with the making of personal violence restraining orders.

14—Amendment of section 99AA—Paedophile restraining orders

This amendment sets out that a police officer may make a complaint under the section. This is currently set out in section 99A.

15—Repeal of sections 99A and 99B

These sections currently set out who may make a complaint under the Division and establish a scheme for the making of telephone complaints. The latter are not relevant to complaints for paedophile orders.

16—Amendment of section 99C—Issue of restraining order in absence of defendant

This amendment removes a reference to section 99CA which is to be repealed.

17—Repeal of sections 99CA and 99D

This clause repeals the sections on special provisions relating to non-police complaints for section 99 restraining orders and firearms orders for section 99 restraining orders.

18—Amendment of section 99E—Service

This amendment removes reference to firearms orders.

19—Amendment of section 99F—Variation or revocation of restraining order

This amendment removes reference to an application being made by a victim.

20—Amendment of section 99G—Notification of making etc of restraining orders

This amendment removes reference to an application being made by a victim.

21—Amendment of section 99H—Registration of foreign restraining orders

This amendment removes reference to an application being made by a victim.

22—Repeal of section 99J

This clause repeals the section dealing with complaints by children.

23—Repeal of section 99L

This clause repeals the section dealing with the relationship between the *Domestic Violence Act* and this Act.

24—Amendment of section 189—Costs

This clause updates the reference to domestic violence restraining orders so that it will continue to be the case that costs will not be awarded against an applicant unless the Court is satisfied that the applicant has acted in bad faith or unreasonably in bringing the proceedings.

25—Further amendments

References to a member of the police force are updated to police officer throughout the Act.

Part 10—Amendment of *Youth Court Act 1993*

26—Amendment of section 7—Jurisdiction

Section 7 gives the Youth Court the same jurisdiction as the Magistrates Court to make a restraining order under the *Summary Procedure Act 1921* or a domestic violence restraining order under the *Domestic Violence Act 1994* if the person for or against whom protection is sought is a child or youth, and ensures that the Youth Court has power under that Act to vary or revoke such an order previously made by the Court. The references are updated.

Part 11—Repeal

27—Repeal of *Domestic Violence Act 1994*

This clause provides for the repeal of the *Domestic Violence Act 1994*.

Part 12—Transitional provisions

28—Continuance of restraining orders

This clause ensures that existing orders will continue to be effective. If an application is made to vary or revoke an existing order that has an expiry date and a decision is made that the order should continue in some form, the Court is required to turn it into an ongoing order (and so there will be no concept of an extension of an order).

29—Continuance of registered foreign restraining orders

This clause ensures that orders that are currently registered will continue to be effective.

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

CRIMINAL LAW (CLAMPING, IMPOUNDING AND FORFEITURE OF VEHICLES) (MISCELLANEOUS) AMENDMENT BILL

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

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (01:00): I move:

That this bill be now read a second time.

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

Leave granted.

This Bill proposes reforms to the *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007* and makes a related amendment to the *Summary Offences Act 1953*. The measures in this Bill represent an initial and immediate response by Government to the increasing prominence of hoon and dangerous driving behaviour by a certain section of the public. South Australia Police, the Government and the public of South Australia are concerned and will not continue to tolerate this criminal conduct on South Australia's roads. This Bill will address these concerns by strengthening the current laws relating to clamping, impounding and court ordered forfeiture of vehicles by increasing the period for which vehicles can be impounded or clamped by police from 7 days to 28 days,

by providing for court ordered forfeiture in more cases and by allowing for the destruction of forfeited and uncollected impounded vehicles. Another key feature of this Bill is to permit the relevant authority to seize a vehicle where it is plain sight, without the need to obtain a warrant from the court. Finally this Bill introduces the new offences of interfering with an impounded vehicle and misuse of a motor vehicle on private land.

Currently under the *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007*, police are able to impound or clamp a vehicle before proceedings are finalised when a person is reported, charged or arrested with a prescribed offence for a period of seven days. Police may clamp or impound a vehicle used in the alleged commission of the offence (that is, whether belonging to the driver or not); or any other vehicle of which the alleged offender is the registered owner. Fees associated with police clamping or impounding are incurred by the alleged offender but are not liable to be paid unless and until found guilty of the prescribed offence. Apart from the current method for credit providers to seek relief, there is no appeal mechanism for alleged offenders or owners of vehicles who are not responsible for the offending, to seek release of a police impounded or clamped vehicle. If found guilty of the prescribed offence, the offender is liable to pay the fees associated with police impounding or clamping and receive a penalty at sentencing for the prescribed offence, which may involve a fine, imprisonment and or licence disqualification.

If an offender has previously been convicted or expiated for one or more prescribed offences in the last 10 years, the prosecution apply to the court for a further period of impounding or alternatively forfeiture of the vehicle as the case may be, depending on the number of previous convictions for prescribed offences. If a vehicle is forfeited, the vehicle must be sold by public auction or tender and once costs associated with sale and any other fees are deducted, the proceeds must be paid into the Victims of Crime Fund established under the *Victims of Crime Act 2001*. Alternatively, in the case of the sale of uncollected impounded vehicles, the proceeds are treated as unclaimed moneys, the owner of which cannot be found. If sale is not achieved, or the vehicle is not worth selling, the vehicle may be disposed of.

I will now explain how the Bill will change the current law.

Amendments to increase the period of police impounding and clamping to 28 days

The first measure is to increase the period for clamping or impounding of a motor vehicle from 7 to a period of 28 days. This increase applies to police clamping or impounding prior to finalisation of proceedings. There will be no mechanism for the offender to seek release of the vehicle until the period of clamping or impounding has been served. As is currently the case, any costs associated with police clamping or impounding during the 28 day period will be liable to be paid if the alleged offender is found guilty. If, however, the alleged offender is acquitted of the prescribed offence or the charge is withdrawn, the Commissioner of Police will bear the costs associated with impounding or clamping, as is currently the case.

When police impound or clamp a motor vehicle, there are certain notification requirements on police about alerting registered owners. A new notification requirement is introduced in this Bill. The Commissioner of Police must ensure that reasonable attempts are made to advise current registered owners of a clamped or impounded motor vehicle that an application may be made to the Commissioner for a determination to bring the clamping or impounding period to an end. Where an application is made by a registered owner seeking the Commissioner's determination, the Commissioner must determine the application as soon as is reasonably practicable. If however the Commissioner has not determined an within eight days after it is received, the Commissioner is to be taken to have refused the application. The measure to apply to the Commissioner can be described as a hardship mechanism, designed to provide a pathway to seek relief for a small minority of registered owners who, through no fault of their own, but of another who is the alleged offender of a prescribed offence, have a vehicle clamped or impounded for 28 days. It should be noted that aside from receiving an application, the Commissioner of Police can still make a determination to release a vehicle that has been impounded or clamped of the Commissioner's own initiative, prior to the expiration of the 28 days.

These amendments are designed so that a determination by the Commissioner of Police to release an impounded or clamped vehicle, prior to expiration of the 28 day period, will only occur in very limited circumstances and not for the benefit of the alleged offender. These situations are:

- where the offence occurred without the knowledge or consent of any person who was an owner of the motor vehicle at the time of the offence; or
- where the motor vehicle is not owned by the alleged offender and the continued clamping or impounding of the motor vehicle would cause severe financial or physical hardship to a person other than the alleged offender or a person who has knowingly involved in, or who aided or abetted, the commission of the offence; or
- where other grounds, exist that warrant the clamping or impounding being brought to an end.

Amendments to permit temporary roadside clamping

Another amendment to Part 2 of the *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007* seeks to permit temporary clamping by the relevant authority, namely SAPOL, on a public road or other area of a kind prescribed by regulation. It is consequential on the amendments to section 16(3). SAPOL has advised that police resources are being inefficiently used when patrol members who seize a vehicle under authority of the *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007* are required to wait by the roadside until the tow truck arrives. SAPOL further advise that patrol members have on occasions waited with a seized vehicle for up to two to three hours for this to occur. Once clamped on the roadside, a tow truck will then be requested to attend the scene and remove the vehicle to a designated SAPOL impounding yard.

This obviates the need for SAPOL officers to wait alongside a vehicle seized on a public road for the tow truck to arrive to take it away. The general prohibition of clamping on public roads or other area of a kind prescribed by regulation will remain under section 16(3) of the Act, but will make an exception to this. The practical effect of the amendment to section 16(3) will be to permit SAPOL officers to temporarily affix clamps or any other locking device to the motor vehicle on a public road or in any other place in order to secure the vehicle until it can be seized and moved, a short time later.

Amendment to clarify procedure for release of impounded or clamped vehicles

The final amendment to Part 2 of the *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007* removes any ambiguity regarding the collection or release of motor vehicles at the end of the clamping or impounding period. Firstly SAPOL have experienced a number of cases where at the end of the impounding or clamping period, alleged offenders seek the release or return of the clamped or impounded vehicle outside business hours. Secondly, this amendment will clarify that the onus falls upon the person entitled to custody of the motor vehicle to apply to SAPOL to arrange release of the vehicle at the end of the clamping or impounding period.

The Government is aware of recent cases of motor vehicles being impounded in the early morning (e.g. 3am) by SAPOL and the registered owner or person entitled to custody of the vehicle expecting to reassume possession of the vehicle at the end of the impounding period at exactly 3am. In such cases, the Government is of the view that it is reasonable for the vehicle to be collected during business hours. Therefore technical amendments to section 8 of the *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007* are required to address this issue. It should be noted that on receipt of such an application, the relevant authority, namely SAPOL must release the motor vehicle as soon as is reasonably practicable.

For the sake of completeness it should be noted that where an application is made by the person entitled to custody of the motor vehicle for its release, and this falls outside of normal business hours, and release during business hours would extend the period of clamping or impounding by a day or more (e.g. if the vehicle was due for release on a weekend or a public holiday), no additional fees impounding or clamping fees will be incurred. This is necessary to ensure fairness and to remove any ambiguity as to whether additional fees should apply in these cases. This will be confirmed in the Regulations.

Amendments to court ordered forfeiture and impounding.

The next set of amendments apply to Part 3 of the *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007*, that deal with court ordered impounding or forfeiture. Currently a court may impound or forfeit a motor vehicle owned by the alleged offender, whether or not it is the same vehicle that or was used to commit the prescribed offence. These amendments will target offenders who have a history of committing and being found guilty of prescribed offences by increasing the period of court ordered impounding and reducing the number of chances before their vehicles become eligible for court forfeiture. I will now explain how the Government will target these repeat offenders of prescribed offences, who continue to demonstrate disregard for the authority of the law.

Firstly, technical amendments are contained in the Bill to change how courts take into account previous offending history involving prescribed offences. Currently the court considers the date of previous findings of guilt or expiation to determine whether further impounding or forfeiture is required. Instead, these amendments will substitute the date a prescribed offence was committed or allegedly committed or expiated for within 12 months or 10 years, as the case may be, of the date of the prescribed offence for which the offender has been convicted.

Secondly, another amendment will extend the period of court ordered impounding from three months to six months, where an offender has, during the period of 10 years immediately preceding the date of the offence, committed or allegedly committed and subsequently been found guilty of, or expiated, one other prescribed offence. Therefore in addition to receiving a penalty from the court for the prescribed offence, an offender, if subject to court ordered impounding, will also endure the inconvenience of being deprived of use of the vehicle for up to six months but also, be liable to pay the hefty fees associated with impounding that will accumulate on a daily basis during the period of court ordered impounding.

Thirdly, where the offender has committed or allegedly committed and been found guilty of, or expiated, at least one other prescribed offence within 12 months of the date of the offence, their vehicle will now be eligible for court forfeiture upon application by the prosecution. The Government is of the view that such offenders pose a serious risk and their vehicles should be exposed to forfeiture where they commit another prescribed offence within 12 months and are found guilty of that second offence. This approach is very much a policy of two strikes in 12 months and you are out.

Fourthly, the Bill will allow court forfeiture of a vehicle upon application of the prosecution where an offender has, within 10 years of the offence, committed or allegedly committed and subsequently been found guilty of, or expiated, two other prescribed offences. Under the current law, offenders receive three chances before they become eligible for court forfeiture of their vehicle.

A new category of forfeiture offences will be defined in the *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Regulations 2007*. At this stage it is intended that a forfeiture offence will be any indictable offence under sections 19A, 19AB or 19AC of the *Criminal Law Consolidation Act 1935*; namely the offences of Cause Death or Harm by Dangerous Driving, Leaving Accident Scene After Causing Death or Harm by Careless Use of Vehicle or Vessel and Dangerous Driving to Escape Police Pursuit. On conviction for any of these offences, the prosecution may apply to the court for forfeiture of the vehicle; irrespective of the past prior number if any of convictions or findings of guilty for prescribed offences.

Amendments to Part 4, the powers of relevant authorities

Section 14(2) of *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act* allows police, when they intend to apply to the court for an impounding or forfeiture order, to issue a notice prohibiting sale or disposal until the proceedings in the matter have been finalised. It is an offence to contravene such a notice. The offence carries a maximum penalty of a fine of $2,500 and six months' imprisonment. A person convicted of this offence is liable to an additional penalty of paying an amount equivalent to the value of the vehicle to the court. Monies received in payment of this additional penalty are paid into the Victims of Crime Fund.

The Government has identified that section 14 of the *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007* could be manipulated by alleged offenders and so this Bill provides the opportunity to remedy this.

Section 14(2) deals only with the unauthorised sale or disposal of vehicles and does not contemplate deliberate damage or interference to a vehicle by its owner. An owner intent upon subverting the forfeiture provisions can make the vehicle unsaleable or reduce its sale value by damaging it or stripping it of anything of value (including the very modifications that made it a 'hoon' vehicle). As the law now stands, this would not be an offence under the *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act* or any other law, because the vehicle is not the property of another at the time it is damaged or interfered with - it belongs to the owner.

Once an order for forfeiture is made, and the property in the vehicle passes to the State, damage to it or interference with it may constitute an offence of damage to property or an offence of interference with a motor vehicle under the *Criminal Law Consolidation Act 1935*. Similarly, the sale or disposal of a vehicle after an order for forfeiture has been made may constitute the offence of theft under section 134 of the *Criminal Law Consolidation Act 1935*.

The Government proposes that section 14(2) be amended to prevent an owner subverting the forfeiture provisions. In addition to prohibiting sale or disposal of the motor vehicle, the notice will prohibit the owner intentionally damaging or altering the motor vehicle or causing or permitting another to damage or alter the vehicle.

These amendments will only apply to vehicles that are subject to forfeiture applications, not court imposed impounding, because although an owner might try to sell or dispose of his vehicle to avoid impoundment, there is nothing to be gained by deliberately damaging or interfering with it and there is no consequence of depriving the State of the proceeds of sale. There is no loss to the State because the State was never entitled to this money. The State is however entitled to proceeds from the sale of forfeited vehicles.

Furthermore, in allowing the court to impose additional penalties that reflect the loss to the State of the proceeds of sale when a vehicle is sold or disposed of in contravention of a prohibition notice, section 14(6) does not distinguish between notices issued in anticipation of forfeiture and notices issued in anticipation of impounding. That distinction is important and section 14(6) should not impose the additional penalty for contravention of a notice issued under section 14(2) of the *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act* when police intend to apply for an order to impound. This is because there is no loss to the State when a vehicle is impounded and damage is done before this occurs.

Therefore section 14(6) is proposed to be amended so that a court may impose an additional penalty that the owner pay an amount equivalent to the value of the vehicle or its depletion in value only in cases where the notice that was contravened was issued in anticipation of an application for forfeiture.

Another amendment to Part 4 will permit a relevant authority to enter any place to seize a vehicle, where it can be seen, without the necessity to obtain a warrant. Currently in searching for a vehicle subject to clamping or impounding, the relevant authority has the power to enter into a place occupied by an offender or alleged offender and using reasonable force, break into or open any garage or other structure in which the motor vehicle may be stored at that place. The Government is aware however of cases where alleged offenders deliberately move the vehicle to another residence or place to evade seizure. Where a vehicle is being stored at a place other than a place occupied by the offender, the relevant authority must either have consent to enter the premises (which is not always given) in order to seize the vehicle or apply to a Magistrate for a warrant under section 17 of the Act. Although a warrant can also be applied for by telephone, this is always not practicable.

This amendment authorises a relevant authority to seize a motor vehicle at any other place than those already prescribed in section 16(1), without the necessity of the consent of the property owner, where the vehicle is in plain sight, that is for example, on the front lawn, driveway or rear yard. The intention of this amendment extends to vehicles partially obscured within a garage or other like structure. Provided the vehicles can be positively identified as being the vehicle subject to seizure under this legislation, the relevant authority can seize the vehicle. Where access is obstructed for example due to a locked gate, the relevant authority will be authorised to break the lock to gain access. A warrant will still be required however in cases where the relevant authority suspects a vehicle is being stored, for example in a locked garage, but cannot positively confirm this by sight.

The final amendment to Part 4 introduces a new provision into section 18 of the *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act* to make it an offence for a person (other than a relevant authority) to interfere with an impounded motor vehicle, or any item or equipment in or on an impounded motor vehicle, while the motor vehicle remains in the custody of a relevant authority in accordance with the *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act*. The maximum penalty for this offence will be a fine of $2,500 or imprisonment for six months.

This amendment was necessary as a result of an incident in Mount Gambier where a forfeited vehicle was apparently damaged before it could be collected to be sold after the court ordered it to be forfeited under the *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007*. This action may have been intended to subvert the penalty regime. Also in making the vehicle unsaleable, it deprived the State of proceeds of sale that

would ordinarily be used to reimburse the expenses of SAPOL and the Sheriff, to pay credit providers who have sought relief and to pay the Victims of Crime Fund.

The Government has been made aware of the possibility that a registered owner may discover that their impounded vehicle is being stored in commercial parking premises and may try to drive the car away early by paying the car parking fee, or may remove items or accessories from the vehicle, later claiming they were stolen while the vehicle was in the custody of the State. This conduct may be a contempt of court but, except for making a false claim, is not an offence. It is proposed the *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act* should cover this conduct explicitly.

This amendment will ensure that those who engage in such behaviour will be prosecuted.

Amendments to method of disposal of vehicles

This amendment will allow the Commissioner of Police, on such grounds as the Commissioner thinks fit, to order the destruction of a vehicle that is not collected after two months from being due for release from police or court-ordered impoundment and to direct the Sheriff to destroy rather than sell a vehicle that has been forfeited by the court. The preference for disposal by public auction or public sale of a forfeited or uncollected impounded vehicle will remain, but will be subject to section 20(5) of the *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007*. Section 20(5) currently prescribes when a forfeited or impounded motor vehicle may be disposed of otherwise than by sale. The current provisions of section 20(5) will remain. If the Sheriff or the Commissioner (as the case may be) believes on reasonable grounds that the motor vehicle has no monetary value or that the proceeds of the sale would be unlikely to exceed the costs of the sale; or if the motor vehicle has been offered for sale and was not sold, then the vehicle may be disposed of by means other than sale. However a third alternative will be introduced, empowering the Commissioner of Police to make a direction on such grounds as the Commissioner thinks fit to dispose of the vehicle other than by sale. The amendment gives the Commissioner an absolute discretion to make this decision. The Government is of the view that the Commissioner of Police is the most suitable authority to make such a decision.

Finally section 20(7) of the *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007* will be amended to clarify that if a motor vehicle is sold, destroyed or otherwise disposed of under section 20 of the Act, any interests in the vehicle that existed prior to the sale, destruction or disposal are extinguished; and any purchaser of a vehicle, or any part of the vehicle, acquires a good title.

Amendment to *Summary Offences Act 1953*

This is a related amendment to the *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007*, as it seeks to introduce a new offence of misuse of a motor vehicle on private land into the *Summary Offences Act 1953*. It is intended that this offence will become a prescribed offence for the purposes of the *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007*.

The new offence will only apply to private land when the alleged offender has entered private land or is on private land without lawful excuse or without the consent of the owner or occupier of the place. The *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Regulations* will subsequently be amended to include this new offence as a prescribed offence in order to trigger the application of the clamping, impounding and forfeiture provisions.

As stated, the offence will cover a range of conduct that includes racing vehicles, operating a vehicle so as to produce a sustained wheel spin; driving a motor vehicle so as to cause engine or tyre noise, and driving a motor vehicle onto an area so as to break up the ground surface or cause damage. The maximum penalty for this offence will be a fine of $2,500. Provision is also made for compensation to be awarded for property damage upon conviction, where the court is satisfied that the offending caused damage.

The clamping, impounding and forfeiture provisions already apply to some prescribed offences when they are committed on private land because these offences can be committed anywhere. These are

- the prescribed offence of driving dangerously so as to cause serious injury or death (s19A *Criminal Law Consolidation Act 1935*);
- the prescribed offence of driving to escape pursuit, if members of the public are endangered (s19AC *Criminal Law Consolidation Act 1935)*;
- the prescribed offence of damage to property when it involves marking graffiti (s85 *Criminal Law Consolidation Act 1935*);
- the prescribed offence of marking graffiti (s9 *Graffiti Control Act 2001)*; and
- the prescribed offence of failing to obey a police direction to cease emitting excessive amplified noise from a vehicle if the noise is excessive in being likely to 'unreasonably disturb persons in the vicinity of the vehicle' (s54 *Summary Offences Act 1953)*.

This amendment would not extend the clamping, impounding and forfeiture to traffic offences that can be committed only on a road - that is, the conduct described in the prescribed offences of driving at excessive speed, reckless and dangerous driving, driving while under the influence of alcohol and driving with the prescribed concentration of alcohol or drugs (*Road Traffic Act* offences) and the offences of driving unregistered and driving while disqualified (*Motor Vehicles Act* offences). These have always been road-related offences, and to extend them to private land is beyond the scope of this proposal. That is the reason why the amendments are being made to the *Summary Offences Act* rather than the *Road Traffic Act*.

Summary

The Bill is designed to expand current impounding and forfeiture provisions so that they deter and punish hoon driving and similar antisocial crime more effectively.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007*

4—Amendment of section 3—Interpretation

A new class of prescribed offences called forfeiture offences is added for the purposes of the amendments to sections 11 and 12.

5—Amendment of section 5—Power to clamp or impound vehicle before proceedings finalised

Section 5 is amended to require owners to be alerted to the possibility of making an application to the Commissioner under section 8 for a determination bringing the clamping or impounding period to an end; to make a consequential amendment to subsection (5); and to make a minor clarifying amendment to subsection (6)(b).

6—Amendment of section 6—Period of clamping or impoundment

The period for which a vehicle is to be clamped or impounded is extended from 7 days to 28 days.

7—Amendment of section 7—Extension of clamping period

This clause makes a consequential amendment to section 7.

8—Amendment of section 8—Removal of clamps or release of impounded vehicle

This clause firstly, replaces subsection (1) to make it clear that an application for release of a motor vehicle from clamping or impounding under Part 2 (ie. police clamping or impounding) must be made during ordinary business hours after the end of the clamping or impounding period.

Secondly, the clause sets out grounds on which the Commissioner may choose to release a vehicle early. New subsection (2a)(a) and (b) reflect the grounds set out in section 13(1)(a) and (b) of the Act for the court to decline to make an order for forfeiture or impounding. These amendments expressly provide that an application cannot be made under subsection (2a) by the alleged offender and provide that if the Commissioner of Police has not determined an application within 8 days of its receipt, the Commissioner is deemed to have refused the application. The discretion of a relevant authority to release early that is currently set out in section 8(3) is consequently limited to release for administrative reasons.

Finally, the clause makes it clear that the relevant authority is not obliged to remove clamps or release a motor vehicle into the custody of a person unless satisfied that the person is entitled to custody of the motor vehicle (which is a defined term).

9—Amendment of section 11—Application of Part

This clause extends the application of the Part to conviction of a single forfeiture offence (an indictable offence of a kind prescribed by the regulations).

10—Amendment of section 12—Court order for impounding or forfeiture on conviction of prescribed offence

The amendments in this clause change the circumstances in which a court must order impounding or forfeiture of a motor vehicle on application by the prosecution. If a person is convicted of a single forfeiture offence, the order is to be for forfeiture. If a person has, within 12 months either before or after committing the offence of which he or she is convicted, committed or allegedly committed another prescribed offence of which he or she has been found guilty or paid an expiation fee, the order is to be for forfeiture. If a person has, within 10 years either before or after committing the offence of which he or she is convicted, committed or allegedly committed 2 or more other prescribed offences of which he or she has been found guilty or paid an expiation fee, the order is to be for forfeiture. If those circumstances do not apply but the person has, within 10 years either before or after committing the offence of which he or she is convicted, committed or allegedly committed 1 other prescribed offence of which he or she has been found guilty or paid an expiation fee, the order is to be for impounding. The period for which the vehicle can be impounded in this circumstance has been extended from 3 months to 6 months.

11—Amendment of section 14—Commissioner may give notice prohibiting sale or disposal of vehicle

This clause amends section 14 to include, in the notice served on owners under that section, a prohibition on intentionally damaging or altering the vehicle (or causing or permitting another to do so) where the Commissioner reasonably believes that a forfeiture application may be made on conviction of a person for the relevant offence and makes other consequential changes to the clause.

12—Amendment of section 16—Seizure

Section 16 is amended to allow seizure of a motor vehicle without consent or a warrant where it can be seen that the motor vehicle is at a particular place and to allow the temporary affixing of clamps or another locking device to a vehicle in order to secure it until it can be seized and moved.

13—Amendment of section 17—Warrants for seizure etc

This clause makes a consequential amendment to section 17.

14—Amendment of section 18—Offences

This clause inserts a new offence of interfering with an impounded motor vehicle while it is in the custody of a relevant authority. The penalty for the offence is $2,500 or imprisonment for 6 months.

15—Amendment of section 20—Disposal of vehicles

This clause amends section 20 to allow the disposal of a forfeited or uncollected impounded vehicle by destruction or another method where the Commissioner of Police thinks fit.

16—Amendment of section 21—Credit provider may apply to Magistrates Court for relief

This clause makes a consequential amendment to section 21.

Schedule 1—Related amendments and transitional provision

The Schedule makes a related amendment to the Summary Offences Act 1953 to insert a new offence of misuse of a motor vehicle on private land (in similar terms to the offence, currently in the *Road Traffic Act 1961*, applying to roads and road related areas). The penalty for the offence is a maximum fine of $2,500.

The transitional provision in the Schedule provides that the amendments to sections 20 and 21 apply to motor vehicles impounded or forfeited before or after commencement of the amendments.

Debate adjourned on motion of Hon. D.W. Ridgway.

MAGISTRATES COURT (SPECIAL JUSTICES) AMENDMENT BILL

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

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (01:11): 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.

A Justice of the Peace may be appointed as a special justice under the *Justices of the Peace Act 2005*. Like the position of Justice of the Peace, the role of special justice is voluntary. Special justices are laymen. They are not legal practitioners. Under the *Magistrates Court Act 1991*, special justices are permitted to preside over matters in the Petty Sessions Division of the Magistrates Court as well as other matters if there is no magistrate available. Special justices may not, however, impose a sentence of imprisonment in criminal proceedings.

This Bill will amend the *Magistrates Court Act* to extend the jurisdiction of special justices to additional minor offences and procedural matters. This follows the Government's announcement of an additional $450,000 to be provided for extra sittings by special justices and training within the Court.

Allowing a broader range of minor offences to be dealt with by special justices will free stipendiary magistrates to deal with more serious criminal offences. This improves outcomes for victims of crime as well as increasing access to justice.

I seek leave to have the remainder of the second reading inserted into Hansard without my reading it.

Special justices are appointed under the *Justices of the Peace Act 2005*. Like the position of Justice of the Peace, the role of special justice is voluntary.

Like Justices of the Peace, special justices are laymen. They are not legal practitioners. They undergo a TAFE S.A. training course to prepare them for their appointment.

Under the *Magistrates Court Act*, special justices are permitted to preside over matters in the Petty Sessions Division of the Magistrates Court as well as other matters if there is no magistrate available. Special justices may not, however, impose a sentence of imprisonment in criminal proceedings.

Special justices in the Petty Sessions Division of the Magistrates Court presently have jurisdiction to:

- deal with matters remitted to the Court under section 70I of the *Criminal Law (Sentencing) Act* (to remit or reduce fines where a debtor is unable to pay);
- conduct reviews of enforcement orders under the *Expiation of Offences Act 1996*; and

- hear and determine charges of offences against the *Road Traffic Act 1961* for which no penalty of imprisonment is fixed.

The Chief Magistrate has suggested that special justices be permitted to deal with minor offences generally, up to a maximum penalty limit.

This Bill will:

(a) extend the jurisdiction of special justices to hear and determine a charge of any offence with a maximum penalty not exceeding $2,500 and no penalty of imprisonment as well as some other prescribed offences with a maximum fine of $2,500 that do include imprisonment as a penalty (although special justices remain prohibited from imposing a sentence of imprisonment);

(b) permit special justices to hear and determine any expiable offence where the person served with the expiation notice elects to be prosecuted, including offences with a higher maximum penalty;

(c) allow special justices to deal with prescribed uncontested applications; and

(d) allow special justices to determine applications for review of cancellation of relief orders under section 10 of the *Expiation of Offences Act* as well as clarify that special justices may adjourn court proceedings and deal with minor procedural matters assigned by the Court rules.

The Bill makes it clear that special justices may deal with such matters even if a magistrate is technically available to hear the matter.

Special justices will undergo extra training, both at TAFE and in the Court, in these additional responsibilities.

This proposal should increase the capacity of the justice system to deal with offences. Allowing a broader range of minor offences and procedural matters to be dealt with by special justices will free stipendiary magistrates to deal with more serious criminal offences. This improves outcomes for victims of crime as well as increasing access to justice.

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 *Magistrates Court Act 1991*

4—Amendment of section 7A—Constitution of Court

Section 7A provides for the constitution of the Magistrates Court and subsection (2) of that section provides for the Court to be constituted by a special justice in certain circumstances. It is proposed to repeal that subsection and substitute a new subsection (2) that will allow the Court to be constituted of a special justice in the following circumstances:

- when sitting in its Petty Sessions Division;
- when hearing uncontested applications of a class prescribed by the regulations;
- in any other case, when there is no Magistrate available to constitute the Court.

However, when the Court is constituted of a special justice in criminal proceedings, the Court is prevented from imposing a sentence of imprisonment. The main change to the subsection is the addition of prescribed uncontested applications to the matters that may be heard by special justices.

5—Amendment of section 9A—Petty Sessions Division

The changes proposed to section 9A will broaden the jurisdiction of the Petty Sessions Division of the Court. Currently paragraph (b) of that section allows for the hearing and determination of a charge of an offence against the *Road Traffic Act 1961* for which no penalty of imprisonment is fixed. Paragraph (b) is to be repealed and substituted with a new paragraph allowing for the hearing and determination of any of the following charges:

- a charge of an expiable offence where the alleged offender elects to be prosecuted for the offence;
- a charge of a prescribed offence (being an offence for which the maximum penalty does not exceed a fine of $2,500 but includes imprisonment and the offence is prescribed by the regulations for this purpose);
- a charge of any other offence if the maximum penalty for the offence does not exceed a fine of $2,500 or include imprisonment (but may include disqualification from holding or obtaining a driver's licence).

The jurisdiction of that Division will also include applications to conduct a review of an enforcement order under both sections 10 and 14 of the *Expiation of Offences Act 1996*. Currently, paragraph (c) only allows for reviews under section 14 of that Act.

6—Amendment of section 15—Exercise of procedural and administrative powers of Court

This proposed amendment clarifies that the exercise of procedural and administrative powers of the Court may be exercised by a Registrar, special justice or justice, in accordance with the terms of that section.

Debate adjourned on motion of Hon. D.W. Ridgway.

STATUTES AMENDMENT (RECIDIVIST YOUNG OFFENDERS AND YOUTH PAROLE BOARD) BILL

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

LOCAL GOVERNMENT (ELECTIONS) (MISCELLANEOUS) AMENDMENT BILL

The House of Assembly agreed to the bill with the amendment indicated by the following schedule, to which amendment the House of Assembly desires the concurrence of the Legislative Council:

Clause 21, page 10, lines 28 to 30 [clause 21, inserted section 91A(8), definition of prescribed contract]—Delete the definition of prescribed contract and substitute:

prescribed contract means a contract entered into by a council for the purpose of undertaking—

(a) road construction or maintenance; or

(b) drainage works.

At 01:12 the council adjourned until Thursday 29 October 2009 at 14:15.