There was also the stormwater inlet which was surrounded by rocks, and it was identified in this report that the stormwater inlet by the built-up rock garden presents both a significant drowning and fall hazard. The report acknowledges that both these hazards have been recognised by the installation of some chain fencing around the rock inlet garden. That was put in place only after my discussions with the developer. There is a partially submerged headwall, which has been determined as posing a serious drowning hazard. It is about 1.2 metre out from the grassed area, and photographs in the report show that there is a nice little ledge there that an adventurous child could leap on and fall into this murky water and disappear.

The stormwater overflow drain has been identified as both an entrapment and strangulation hazard. I have been advised that the grates on that overflow drain are wide enough for all but the child's head to fall through. A child could fall between the bars and possibly break their neck or be strangled. The slimy banks of the pond are another hazard identified in this report. Very simple, clear and affordable suggestions have been made by this independent authority to remedy this problem. This drain is located close to a kindergarten and two primary schools. The facility is adjacent to a very popular cafe which attracts young families.

The stormwater facility is very attractive, and attracts a lot of ducks, and children play there all the time. I think we need to start thinking very clearly and carefully about providing water facilities in this type of development. They are becoming increasingly popular, but there does not seem to be a lot of control or care taken either in their design or the hazards they pose.

Indeed, the injury surveillance unit determined that the degree of hazard present at this site is high, and the feasibility of recommended countermeasures is also high. The hazards have been identified in a fairly detailed, easy to read report, so it would be reasonably easy to fix so as to make the whole facility a lot safer for our children. It is very disappointing that the council has sat on this report for months and taken no action. The council's insurers have identified that there is a risk hazard, and the council itself has admitted that some work needs to be done. I urge the Tea Tree Gully to get out there and have a look at this site.

I have sent the council a copy of the report and a detailed letter requesting urgent action. The last thing I want to see is a child injured or drowned at this particular site, and I am sure the council and councillors feel the same. I urge them to take immediate action in relation to this facility.

The Hon. M.J. ATKINSON secured the adjournment of the debate.

CRIMINAL LAW CONSOLIDATION (ABOLITION OF TIME LIMIT FOR PROSECUTION OF CERTAIN SEXUAL OFFENCES) AMENDMENT BILL

Second reading.

The Hon. M.J. ATKINSON (Attorney-General): I move:

That this bill be now read a second time.

I will be moving that I insert the second reading explanation in *Hansard* without my reading it, which is a departure from my normal practice.

The SPEAKER: The minister cannot move that; the minister may seek leave to do so.

The Hon. M.J. ATKINSON: Yes, sir, I will be seeking leave. I realise that this bill arrived from another place only yesterday evening and, although the great majority (if not all) members of the house have indicated their support for the bill, nevertheless it is, in my view, a discourtesy to seek leave to insert the second reading explanation and then go directly into debate. That would be improper. So, I propose to insert the second reading explanation and then adjourn the matter on motion, so that the opposition will have an opportunity to read the bill and the second reading explanation. Debate can be resumed at a later date. I do that in order to fulfil the desires of the managers on both sides of the house. Accordingly, I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

The SPEAKER: Is leave granted?

Mr VENNING: No.

The SPEAKER: Leave is not granted.

Mr VENNING: I believe it ought to be read out so that we know what is going on.

Members interjecting:

Mr VENNING: It has been clarified with me that both sides of the house agree that they want it to lay as it is, so, sir, I withdraw that comment and allow the leave.

The SPEAKER: Then, if you withdraw, I will not allow it. Leave is not granted.

The Hon. M.J. ATKINSON: Mr Speaker, the bill reverses a measure made in parliament 51 years ago. The bill rights a wrong that was done to the victims of sex offences committed between 1952 to 1982, apart from those offences that were detected within three years. The wrong was the creation of what was then a three-year statute of limitations for laying an information alleging a sexual offence.

In its original form (and until 1952) the Criminal Law Consolidation Act 1935 provided a time limit for laying an information for only one sexual offence, the offence of carnal knowledge. Where the victim of carnal knowledge was either 'any female above 13 but under 16 years' or 'an imbecile or idiot woman or girl' no information was to be laid more than six months after the alleged offence.

The six-month time limit was abolished as part of a package of changes instituted in 1952. However, these 1952 changes created a longer time limit for laying an information alleging any sexual offence.

In the early 1950s, the South Australian government appointed a committee to examine the 'treatment of sexual offenders'. That committee consisted of Dr H.M. Birch, Superintendent of Mental Institutions, Dr Frank Beare (nominated by the British Medical Association, SA Branch), Mr Roderick Chamberlain KC, Assistant Crown Solicitor, later the Honourable Mr Justice Chamberlain, and Mr Claude Philcox (nominated by the Law Society of SA).

The Committee reported to the government in 1952. One of its recommendations was that the existing six-month limit on the commencement of a prosecution for carnal knowledge offences was 'illogical' and 'too short'. However it continued:

> We think there is a good case for the imposition of some general time limit for the laying of all sexual charges. The courts frequently remark on the difficulties both in proving and disproving these offences, and it is obvious that these difficulties increase with the lapse of time. . . We think there should be a time after which events such as this could be regarded as buried.

A bill was prepared and introduced to parliament. After reading the committee's report, my predecessor, the member for Hindmarsh (Mr Hutchens) commented on the 1952 bill:

> The provision in clause 10 is desirable. It sets out a time limit in which a charge for a sexual offence may be laid. We have all heard of the past being raked up against a man when it is should have been forgotten long ago. Often it is done after a man has settled down to married life and it causes disharmony between the man and his wife.

Some of the criticism of the 1952 parliament is an example of what I would call the 'parochialism of the present'. We are judging the 1952 parliament by our values. Yes, it almost certainly did not take sexual offences against children as seriously as it should, but its principal purpose, as the quote from Cyril Hutchens shows, was to be merciful to consenting adult homosexual couples, one of whom might subsequently be charged with sodomy or gross indecency.

With little debate, the parliament enacted what became section 76a of the Criminal Law Consolidation Act. The section imposed a limitation of three years on the laying of informations for sexual offences. Both the 1952 committee and the parliament rationalised this decision on four grounds as follows:

- evidential—the difficulties of proving sexual offences;
- to protect men with homosexual histories from blackmail;
- to protect the victims from unnecessary publicity and shame; and
- to protect offenders from the consequences of past indiscretions, best now forgotten.

On 1 December 1985, 33 years later, section 76a was repealed. The repeal occurred with little parliamentary debate and no debate on how this would affect offences committed more than three years earlier. The result of that repeal was that offences committed before 1 December 1982 could still not be prosecuted as the repeal did not have retrospective effect. Put another way, those who acquired immunity through the effluxion of the statutory three years up to 1 December 1985 were allowed to keep that immunity.

Section 76a was part of the Criminal Law Consolidation Act 1935 for 33 years, from 27 November 1952 to 1 December 1985. That 33-year history, in effect, created a gap of 30 years during which sexual offenders could be assured of getting away with their crimes if they could keep them secret for three years or more.

Sexual offences committed before or after this period have faced no such barrier. However, the barrier remains for sexual offences committed in the 30-year gap. Those who committed sexual offences in that 30-year gap have an immunity from prosecution. The bill proposes to remove that immunity. I seek leave to insert the remainder of the second reading explanation in *Hansard* without my reading it.

Leave granted.

There are some misconceptions about the effect of the immunity or the effect of this Bill. The immunity is not restricted to crimes against children. It is relevant to all sexual offences committed in that 30-year gap up to 1982, but not relevant to any offences committed after that date. Another misconception is that if the immunity is removed by this Bill, victims will then obtain a legal right to confront their sexual abusers in court. Criminal prosecutions in this State are under the direction of the Director of Public Prosecutions. The DPP has a duty not to spend public funds on prosecutions for which there is no reasonable prospect of obtaining a conviction, and the DPP has expressed concerns 'about raising the expectation of victims in circumstances where there is little prospect of a matter proceeding.'

The Joint Committee that investigated this matter provided, in its Report, a list of arguments both for and against removing the immunity. One of the main arguments against removing the immunity was that the lapse of time would make successful prosecutions almost impossible. There is certainly some force to this argument. The long delay will make successful prosecutions extremely difficult, and will require consideration to be given to whether an accused can obtain a fair trial in the circumstances of the case. Can any member here say with certainty where they were and what they were doing on 4 June 1982?

Allegations of sexual crimes are often not reported to police. When they are reported, they are notoriously difficult to prove beyond reasonable doubt. According to a 1996 Australia-wide study, only 10 percent of women who had experienced sexual violence since the age of 15 reported the incident to police. In 78% of the cases reported to police, the alleged offender was not charged. In South Australia, about 2 000 persons each year report sexual crimes to police. Most are not prosecuted. In the year 2001 there were 323 prosecutions. This resulted in only 128 convictions.

Relying on the South Australian figures, a rough guide is that about 85 per cent of sexual offences reported to police are not prosecuted because there is no reasonable prospect of conviction. Of the 15 per cent or so that are prosecuted, fewer than half result in convictions. Thus, fewer than 7 per cent of sexual offences reported to police are finalised by a conviction being recorded. This is the conviction rate when a complaint is recently made, when a prosecution is started shortly afterwards, and when, in most cases, at least some other evidence is available to support an alleged victim's own testimony.

However, when sexual allegations are many years old, the prospects of obtaining a conviction are much lower. That is because there is generally little or no supporting evidence such as the accounts of others, evidence of the victim's distress soon after the incident, DNA samples or medical reports.

Whenever sexual offences, allegedly occurring between 1952 and 1982, were reported to South Australian police more than 3 years after they occurred, it was police policy (consistent with the legislative policy) to take no action. Police did not interview persons who might have been witnesses and did not try to obtain medical reports or other scientific evidence. The police cannot be criticised for that. There would have been no point in gathering such evidence because these offences were statute-barred and no prosecution would have been possible. Today, much of this evidence is no longer available. Persons who might once have been witnesses might now be dead. Documents might have been destroyed. This cannot be remedied merely by removing the immunity.

Even the main evidence, the testimony of the alleged victim, needs to be prepared and presented to a court with sufficient detail so that the accused is able to prepare and present a defence for a fair trial. However it is unlikely that a victim will be able to recall, with sufficient detail, events that happened more than 20 years ago. The DPP has warned:

> The alleged victim cannot remember things simply because it was such a long time ago. Often that lack of memory due to the passage of time is compounded by the fact that the alleged victim was a child at the time of the alleged offences. As a result, the allegations are very general in nature and often very vague. This does not lend itself to proof beyond reasonable doubt.

Similar difficulties would confront alleged offenders who were trying to establish their innocence, perhaps by proving their whereabouts at particular times. This disadvantage might be sufficient to make their trial unfair and thus provide grounds for a permanent stay of any prosecution.

Another serious difficulty is the fact that the judge must warn the jury that it is 'dangerous to convict' an accused on the evidence of the alleged victim alone. In *Longman v The Queen* (1989) 168 CLR 79, the High Court held:

> The jury should have been told that, as the evidence of the complainant could not be adequately tested after the passage of more than twenty years, it would be dangerous to convict on that evidence alone unless the jury, scrutinizing the evidence with great care, considering the circumstances relevant to its evaluation and paying heed to the warning, were satisfied of its truth and accuracy. To leave a jury without such a full appreciation of the danger was to risk a miscarriage of justice.

The same approach was confirmed by the High Court more recently, in *Crampton v R* (2000) 176 ALR 369 where the Court said:

> The trial judge should have instructed the jury that the appellant was, by reason of the very great delay, unable to adequately test and meet the evidence of the complainant.

A similar warning was given again by a majority of the High Court in *Doggett v The Queen* [2001] HCA 46. These High Court rulings are not merely words of advice. They are binding on other Courts.

Therefore, if this sort of warning is not given, any conviction risks being overturned on appeal.

Comparisons have been made between alleged sex crimes that might be prosecuted more than 20 years after the event and the war crimes trials of the 1990s that were prosecuted more than 40 years after the event. Despite great expense these trials produced no convictions. The difficulties inherent in prosecuting such old matters led some senior legal practitioners to advise the Joint Committee that it would be futile to remove the immunity. That is also, presumably, why the previous Government did not remove the immunity and why my predecessor, as Attorney-General, the Hon. Robert Lawson, was opposed to removing the immunity.

However there are also powerful and persuasive reasons, identified by the Joint Committee, why the immunity should now be removed. Firstly, a successful prosecution is not impossible. The delay of 21 years or more in bringing charges is less than half as great as the delay in the 1990s war crimes trials. There have been successful criminal prosecutions interstate in cases more than 20 years old. Second, many interstate defendants, charged with offences after a similar lapse of time, have pleaded guilty and been sentenced. That is not possible now in South Australia when the information alleging the crime cannot be laid.

Third, the serious nature and long-term effects of sexual offences were not appreciated when section 76a was enacted in 1952. When section 76a was repealed in 1985, there was still little research on this subject. Only in recent years has there been a widespread understanding of the way offenders typically silence their victims with bribes or threats, that it often takes many years for a victim to obtain courage enough to confront the offender or take action against him, and the long-lasting effects that the crime often has on victims.

The Joint Committee suggested that removing the immunity would also:

- right a wrong that was done in 1952;
- reflect a change in public attitudes and values over recent years;
- bring South Australia into line with other states where no such immunity has ever existed;
- bring sexual offences into line with other indictable offences for which no statute of limitations exists; and
- acknowledge the discrimination suffered by women and aboriginal persons who have been over-represented as victims of sexual offences.

Removal of the immunity cannot recover evidence that has been lost or never collected, so action not being taken in the past will create inevitable difficulties for the conduct of any future trials for offences committed before 1 December 1982. However, the principles at stake in the removal of the immunity are more important than these legal difficulties. Even if we were to conclude that the removal of the immunity would not lead to any convictions at all for old offences, this Bill should still be supported because of the important message it would send to victims. It would say to victims that the offences that occurred so long ago are, nevertheless, regarded as serious crimes and not something for which an immunity from prosecution can be tolerated any longer.

Compensation

This Bill does not address issues of compensation for victims, but the Joint Committee did raise that topic. A person who was the victim of a sexual crime before 1 December 1982 might bring civil proceedings against a perpetrator, seeking payment of compensation. The immunity from criminal prosecution has not ever been relevant to these type of civil proceedings, but there are separate time limits on bringing civil actions, and a claim for damages arising from abuse more than 20 years ago would be well out of time. However if a victim can rely on the recent discovery of a new material fact, an extension of time might be possible.

There are significant obstacles to success in such a claim. It is costly and unsupported by either the DPP or the Legal Services Commission. The Law Society's Litigation Assistance Fund has funded one such case, but this was indeed exceptional. As one lawyer told the Joint Committee:

> In no case that I have seen so far in the past few years have I been able to say to these people: 'It is worth your proceeding to civil action.' Civil action is an expensive process, and we have the whole difficulty of the matters being brought out of time. ... [I]n hardly any cases would the victims of these sorts of crimes be able or advised to bring civil action

On the matter of criminal injuries compensation, the Solicitor-General has provided this advice:

> Before 1969 there does not appear to have been any criminal injuries compensation scheme.

The *Criminal Injuries Compensation Act* 1969-1974 required a conviction before compensation could be awarded. That Act was repealed on 1 July 1978. There may be persons who were the victims of offences between 1969 and 1978 who were never able to secure convictions because of the limitation period and who were left without compensation.

The *Criminal Injuries Compensation Act 1978* applies to all offences committed on or after 1 July 1978 and the commencement of the *Victims of Crime Act 2001* which came into operation on 1 January 2003.

Under the *Criminal Injuries Compensation Act 1978* applications must be brought within three years (section 7(1)) but the Court may extend that time (section 7(4)). It is not necessary for there to have been a conviction but the offence must be proved beyond reasonable doubt and with corroboration.

Accordingly, victims of sexual offences between July 1978 and December 1982 have always been able to claim under that Act. An application for compensation could still be brought even though the criminal proceedings were time barred.

The Government, of course, can make ex gratia payments to any person when sufficient cause exists. This Bill does not alter the existing law as to compensation.

Finally, I want to address the question raised yesterday in another place by the Hon. Angus Redford, where he asked whether the Government had considered the constitutional validity of this legislation. I have sought advice from the Solicitor General on that question and he has no concerns about the validity of this legislation.

The Solicitor-General advises there is a rule of statutory construction that any law creating an offence or defining the elements of an offence will be construed to apply prospectively only. The rule of statutory construction is a strong one based as it is on the protection of individual liberty. It follows however from the very existence of the rule that the law recognises that Parliament does have legislative capacity to enact a criminal provision with retrospective effect if it so wishes and that the Courts will apply the provisions retrospectively if Parliament has made its intention clear.

The Hight Court has accepted the validity of the retrospective criminal legislation in *R v Kidman* (1915) 20 CLR 425 and more recently in *Polyukhovich v Commonwealth* (War Crimes Act case) (1991) 172 CLR 501.

It is significant that retrospective Commonwealth legislation has been held valid not withstanding the implications which arise from Chapter 3 of the Constitution. In *Polyukhovich* the retrospective element of the legislation strongly influences the dissenting opinion of Brennan, Deane and Gaudron JJ.

However, any difficulties that Chapter 3 might hold for Commonwealth legislation do not arise in the case of State legislation. Moreover in this case the conduct itself was always criminal. The proposed legislation removes the limitation period only. In the Solicitor-General's opinion the law is valid.

Explanation of Clauses

Part 1—Preliminary

Clause 1: Short title

Clause 2: Amendment provisions

These clauses are formal.

Part 2—Amendment of Criminal Law Consolidation Act 1935

Clause 3: Insertion of section 72A

This clause inserts a new section into Division 14 of Part 3 of the *Criminal Law Consolidation Act 1935*, providing that any immunity from prosecution arising because of the time limit imposed by the former section 76A is abolished.

Mr MEIER secured the adjournment of the debate.

APPROPRIATION BILL 2003

Adjourned debate on motion to note grievances (resumed on motion)

(Continued from page 3397.)

The Hon. M.R. BUCKBY (Light): I rise to add to my comments in the earlier debate on the budget this year. At that stage, I had progressed into the budget for Transport SA and noted that some 211 staff from Transport SA will disappear. I question the impact that this will have on the services that are delivered by Transport SA and whether those staff will