# HOUSE OF ASSEMBLY

**Wednesday 14 August 2002**

**The SPEAKER (Hon. I.P. Lewis)** took the chair at 2 p.m. and read prayers.

## VOLUNTARY EUTHANASIA

A petition signed by 24 residents of South Australia, requesting the house to reject voluntary euthanasia legislation, ensure medical staff in hospitals receive proper training in palliative care and provide adequate funding for the palliative care of terminally ill patients, was presented by Ms Rankine.

Petition received.

## DETAINED CHILDREN

**The Hon. M.D. RANN (Premier):** I seek leave to make a ministerial statement.

Leave granted.

**The Hon. M.D. RANN:** I am greatly concerned that, here in our state, children are being held in detention by the commonwealth government for extraordinarily long periods of time. I am advised that the Bakhtiari boys and their sisters, whose plight is now known across our nation and overseas, were put into detention over 18 months ago. That is the kind of sentence that is handed out to adults convicted of very serious criminal acts; it is not the way we should treat innocent children.

I have seen media reports today that the boys' father is not known in the Afghanistan villages where he says he lived and worked. I do not know whether Mr Bakhtiari is telling the truth or telling lies, but the country of origin of his children is irrelevant to the question of whether children should be kept locked up behind razor wires for years. The South Australian government believes that no children should be kept locked up unless they have been involved in very serious criminal activity. Let us remember that the children of asylum seekers have been brought here by their parents and relatives. I am aware of proceedings in the Family Court where lawyers acting for the Bakhtiari boys are seeking their release from detention. I am advised that Justice Burr described psychological reports as disturbing and indicated that he considered the boys' case should be dealt with urgently in order to prevent further suffering.

Following the disturbing stories about the plight of these young boys back in July, I asked that child protection workers from Family and Youth Services provide me with a report on the health and wellbeing of 12 year old Muntazar Bakhtiari and 14 year old Halamdar Bakhtiari. The department, FAYS, attended the Woomera detention centre on 30 July and 6 August this year to make an assessment. I have recently received the FAYS report on the boys and their three younger sisters. It is not in the best interests of the children concerned to talk in detail about the state of mind of the boys or other members of their family, but I have here a series of recommendations specifically about the Bakhtiari boys, and also about all the children detained at Woomera.

It is important to note that state child protection workers are allowed into the centre only with the permission of the commonwealth government and cannot legally enforce their recommendations under South Australia's Child Protection Act as would be possible in other cases concerning children who are not on commonwealth land. However, in the past, the commonwealth has acted on South Australia's recommendations contained in such reports, and in this instance, Family and Youth Services have requested an urgent response to the report which the commonwealth received on Friday.

The report recommends that the family, including the mother and all the children, be released into the community in order to prevent further emotional and social harm being done to the children, especially the boys. It also says that a full assessment of the whole family should be conducted by a psychiatrist or psychologist who is not connected—I repeat, not connected—with Australian Correctional Management (ACM) or the commonwealth Department of Immigration, because the family feels that they cannot trust anyone associated with the centre.

The report states that if the children must be kept in detention, if the commonwealth insists on keeping them in detention, then the family should be transferred to the Villawood Detention Centre in Sydney so they can have contact with their father, which is particularly important for the boys at this stage of their development. It says that a youth worker should regularly visit the boys to build up trust and reduce the risk of self-harm or the risk of suicide. It says the children should have greater access to schooling and education.

The report also makes recommendations that relate to the well-being of all the children at Woomera. It says that there is a need for a protocol to protect and remove children from dangerous situations within the compound to protect children seeing traumatic incidents or being harmed in such incidents. It says the staff at the centre need to be adequately trained to care for the children in detention and that the centre needs a social worker and a youth worker on staff. It says the centre should provide safe play areas and increase the variety of activities for children.

Like Justice Rodney Burr, who yesterday described this matter as 'alarming', I also consider the matter urgent and I hope that the immigration minister, Mr Ruddock, will act on these recommendations urgently. So, the Social Work Assessment Report on the Bakhtiari family has recommended that:

A. A full and proper assessment of the family's overall functioning should be done via psychiatric or psychological assessment to be implemented by a service not connected with ACM or DIMIA. (This separation is considered vital to the therapeutic process as there is no trust felt by the family to any staff associated with the centre);

B. The family—mother and all the children—should be released into the community in order to prevent further emotional and social harm being done to the children, especially the boys.

If the family must remain within detention, the following recommendations are made by the department's report:

C. That the family be transferred to Villawood centre in Sydney so that they can have easier access to their husband and father, Mr Bakhtiari. This is very important for Halamdar and Muntazer who need a male adult figure at this stage of their development;

D. That the mother be visited long term by a mental health worker, again not associated with ACM or DIMIA, to attempt to slowly build up a relationship of trust and thereby commence to provide some support to the mother in her efforts to cope with the stresses of detention;

E. That a youth worker or mental health worker versed in adolescent health provide a consistent visiting service to the boys in an attempt to build a relationship of trust and thereby help them to better manage the stress of detention and help them to reduce the risk of self-harm and/or suicide;

F. That the children have access to greatly increased schooling and education with a view to providing a normal school day, in hours. Further, that the children be integrated into schooling within the community and not be separated, as is the current arrangement;

G. That in general the centre provide safe areas for children to play in and have their activities. Also, that there be a greatly increased number and variety of activities provided for all of the children in the centre, and that the families be involved in selecting and running these activities. Access to child-appropriate activities needs to increase, in terms of hours each day.

In terms of broader needs within detention centres that contain children, the following recommendations are made as factors that may have greatly assisted the Bakhtiari children if they had been implemented early in the course of their detention:

H. That the centres develop a protocol by which children are protected and removed from situations of danger and upset within the compound. All of the children in such centres need to be protected from viewing traumatic incidents and the risk of being physically harmed during those incidents. The duty of care to children needs to be effectively managed.

I. That the centres ensure that staff are trained in child development and behaviour to the extent that they are better equipped to observe, interact and intervene with children in detention—that is, staff become more child focused or aware in the course of their duties.

J. That staff are engaged in regular training that counters minimisation of risk and harm to children—that is, they are more alert to child protection needs.

K. That centres provide more staff connected to mental health, especially psychiatrists, to allow quick access to such services and treatment when required. Also, that youth worker and social worker positions be added to the staff body.

L. That centres include, as part of policy, a child impact statement that highlights the effects upon children of procedures and decisions made within such centres.

As part of the government's overall strategies, I requested that officers from my own Department of the Premier and Cabinet visit Baxter and Woomera detention centres so that they could see at first hand the facilities for detainees and, in particular, children. The commonwealth did not allow them to go into the Woomera detention centre because of ongoing tensions. However, I will continue to press the commonwealth to provide access to my staff so that I can be given a full account of the condition of the facility.

My officers from Premier and Cabinet were, however, shown around the Baxter detention centre, which is yet to be opened. They reported that Baxter is a stark and forbidding facility, 28 hectares in area, and located in the arid lands roughly 12 kilometres from Port Augusta. It has been designed with security as its paramount objective, with a central control area that has banks of television monitors to survey all parts of the facility, including areas outside the electrified fence.

I am told that there are nine compounds that can house around 1 200 detainees in total. Each compound consists of a rectangular building of tiny individual housing units surrounding a grassed courtyard. The internal design of housing units has safety and security in mind, with the furniture and beds welded in or bolted down. All the compounds are individually fenced and, sadly, trees and shrubs are missing. This facility is not the sort of place that any child should have to endure. I repeat: this facility is not the sort of place that any child should have to endure. The young and susceptible, such as the Bakhtiari boys, should not have to spend their formative years located in prison-like facilities that are surrounded by electric fences, razor wire and guards.

So, today I call upon the commonwealth government to consider other options for the children of detainees, options which put their safety and wellbeing as paramount, as we undertake to do with all other children in the state of South Australia.

## LEAN, Mr R.G., DEATH

**The Hon. P.F. CONLON (Minister for Police):** I seek leave to make a ministerial statement.

Leave granted.

**The Hon. P.F. CONLON:** I wish to advise the house of the passing of one of the finest police officers to have served our state. I refer to the death on Sunday 4 August 2002 of Robert Gordon Lean APM. Rob Lean was well respected for the honesty and loyalty he displayed through his long career spanning more than 39 years with the South Australia Police. As a 24 year old from Kimba on the West Coast of South Australia, he joined the force on 15 June 1959. The early years of his career were spent on general police duties, with a stint in the Anti-Larrikin Squad, before moving into the area of crime investigation.

Rob Lean spent many years in various CIB positions before becoming the officer in charge of the Drug Squad in 1982. It was during this time that then Chief Inspector Lean developed a staunch reputation throughout the police force for his integrity and dedication. In 1988, he was instrumental in setting up the Victims of Crime Branch and was the driving force behind the establishment of the BankSA Crime Stoppers program in South Australia in 1996. He was very proud of these two important achievements in his career.

After a period in internal investigations and the Anti-Corruption Branch, Mr Lean was promoted to Assistant Commissioner, Operations, before finishing his career in September 1998 as the Assistant Commissioner, Crime. Assistant Commissioner Lean was the recipient of the Australia Police Medal in the Australia Day Honours list in 1991. On retirement, he took up a position as racecourse detective with Thoroughbred Racing SA, a position he very much enjoyed. Many members would recall the *Advertiser* feature on Rob Lean about his position as the course detective. It was headed, 'Mr Integrity', such was his reputation. On behalf of the government of South Australia I extend our sympathies to his wife Pam, and their two sons Craig and Grant, and their families.

## PAPER TABLED

The following paper was laid on the table:

By the Minister for Environment and Conservation (Hon. J.D. Hill)—

State Water Plan, Report on the Implementation of Catchment Water Management Plans, Review of the Implementation of.

## CATCHMENT WATER MANAGEMENT

**The Hon. J.D. HILL (Minister for Environment and Conservation):** I seek leave to make a ministerial statement.

*Mr Brindal interjecting:*

**The Hon. J.D. HILL:** I wouldn't talk if I were you.

Leave granted.

**The Hon. J.D. HILL:** Pursuant to the Water Resources Act 1997, the South Australian Water Resources Council prepared two reports (which I have just tabled) on the effectiveness of our water resources management efforts. The reports are: Report on the Implementation of the State Water Plan and the Review of the Implementation of Catchment Water Plans. The report on the state water plan assessed the extent to which the two existing state water plans Our Water, Our Future (1995) and State Water Plan 2000 have been implemented and how this implementation achieves the objects of the Water Resources Act.

Fifteen indicators, outlined in the State Water Plan 2000, were used to monitor and evaluate the implementation. The Water Resources Council found that both plans have been substantially implemented and are contributing to achieving the objects of the Water Resources Act.

Significant improvements in the management of water resources have been made in terms of management and policy frameworks, community perception and involvement and real resource improvement through on-ground works. Examples include the development of the water markets through the transfer of water licences leading to net gains in South Australia in River Murray allocations and economic development without new allocations; and rehabilitation works on bores and drainage systems in the Great Artesian Basin leading to substantial water savings.

The Review of the Implementation of Catchment Water Management Plans was conducted on a 'report card' type assessment process based on five key outcomes of the act. Key indicators were established against which catchment water management boards were able to report progress. A report card tool kit was developed to assist catchment water management boards and the Water Resources Council to complete their assessment.

The council's strategic reporting style focused on indicating performance and identifying overall results, rather than taking a technical approach. It recognised the great diversity of water resources across the state and acknowledged that the eight catchment water management boards had been established at different times and were, therefore, in different stages of development. The assessment of implementation revealed that the systems established under the Water Resources Act are producing good outcomes for catchment health and community expectations. Community investment of time and financial resources was found to be producing a sound return.

The assessment process has proved useful beyond the production of the report. It has provided the opportunity for boards to look closely at progress. It has also clearly revealed data and information gaps crucial to tracking board performance and changes in the health of the catchment. A strong foundation is being constructed by the work of the boards in developing and implementing their catchment water management plans.

Both reports have established a strong foundation for future reporting and shaping of catchment water management boards' processes for developing and reporting on their water planning and catchment management. The council's recommendations in both reports will be examined in detail and taken into account for the preparation of the next State Water Plan, and for assessing the performance of catchment water management boards.

I commend the time and effort expended by the Water Resources Council in the development of both reports. I also recognise the commitment of the eight catchment water management boards to the implementation of their catchment water management plans and, through their input, to the reporting process. I commend these two reports: Review of the Implementation of Catchment Water Management Plans and Report on the Implementation of the State Water Plan, to the house.

## MINISTERIAL CODE OF CONDUCT

**The Hon. J.D. LOMAX-SMITH (Minister for Tourism):** I seek leave to make a ministerial statement.

Leave granted.

**The Hon. J.D. LOMAX-SMITH:** I rise to discuss my compliance with the ministerial code of conduct, a code of which I am rightly proud because I think it sets a new benchmark for behaviour in this house. As members would know, the public is sorely tired of the behaviour of some politicians and the way that they constantly personally attack other members of parliament and bring us all into disrepute by their personal attacks which describe a person rather than playing the ball—always attacking another person in the house.

**The Hon. D.C. KOTZ:** I rise on a point of order, Mr Speaker.

**The SPEAKER:** The member for Newland has a point of order.

**The Hon. D.C. KOTZ:** The minister has been given leave to present a ministerial statement. It would appear that the minister is commenting before she starts the ministerial statement.

**The SPEAKER:** There is no point of order.

**The Hon. J.D. LOMAX-SMITH:** Thank you, Mr Speaker. This morning the ABC reported that questions had been raised about my ongoing involvement with Adelaide Pathology Partners. The member for Waite then stated:

> Clearly there is a conflict between her portfolio responsibilities and her private business interests—

and that—

> this is in conflict with the Premier's stated code of conduct.

I would like to say at the outset that I am not ashamed of my professional qualifications, or of having started a medical practice and run it as manager for some years. As both the ABC and the member for Waite might have known, they appear to have derived their information from the Register of Members' Interests which was tabled yesterday. This was a primary return submitted by me in March of this year. They should have further discovered that, since submitting my return, I have in fact sold my interest in Adelaide Pathology Partners.

*Members interjecting:*

**The SPEAKER:** Order! The minister will proceed with her statement.

**The Hon. J.D. LOMAX-SMITH:** The sale occurred on 28 June 2002. I point out that this was done before the ministerial code of conduct came into effect. Had the member for Waite been on the ball, instead of playing the man, he would have discovered that the code, which is in fact one of the toughest codes of conduct in the country, came into effect on 1 July 2002. The contractual arrangements of the sale involved a series of items related to my not engaging in practice after June 2002, and the manner of notifying referring doctors, which is a matter that is being progressed by my former partners.

For the record, although I have sold my business, I will be receiving a share of the profits from the business for the financial year 2001-02, over the next few months; and the member for Waite will understand that those fees are only paid some months after the service is provided. I discussed this matter with the Premier and wrote to him (as was required by the code), even before the code came into effect, informing him that, whilst I was in the process of selling my practice, the final arrangements would take several months to complete.

The member for Waite should be aware of the provisions of the Members' of Parliament (Register of Interests) Act that make it an offence for a person to publish information derived from the register unless that information constitutes a fair and accurate summary of the information contained in the register and is published in the public interest.

*Members interjecting:*

**The SPEAKER:** Order! The minister will continue the statement with the respect that the house accords ministerial statements.

**The Hon. J.D. LOMAX-SMITH:** The member should be familiar with this provision because it makes it an offence to comment on the facts set forth on the register, unless that comment is fair and published in the public interest and without malice. A simple phone call could have easily clarified the truth. Finally, the member for Waite should know that there are substantial penalties, including imprisonment, for publishing information in contravention of the act. I think it is true to say that the public expect better of us. They expect us to argue about issues, to debate policies and facts, and not to continually attack individuals: it brings us all into disrespect.

## STANDING ORDERS SUSPENSION

**The Hon. R.G. KERIN (Leader of the Opposition):** I move:

That standing orders be suspended for one hour to enable me to move the following motion:

That the House of Assembly no longer has confidence in the Speaker of the House of Assembly.

Motion carried.

## SPEAKER, The

**The Hon. R.G. KERIN (Leader of the Opposition):** I move:

That the House of Assembly no longer has confidence in the Speaker of the House of Assembly.

In explaining this motion, I point out that what we are debating today is a matter of the gravest importance and certainly it is a serious matter. It is a matter which is constantly raised with me and other members by the public as to the state of the institution at the moment. It is a matter which goes right to the heart of our democratic processes. There is an expectation that those who espouse the virtues of our political traditions do not flout those same conventions. It is a belief in the Australian tradition of a fair go. What we have witnessed since the beginning of this parliamentary session is a fundamental erosion of the very principles upon which this parliament was established—

*Members interjecting:*

**The SPEAKER:** Order! Let us hear each of these addresses in silence with the respect to which the speaker having the call is entitled.

**The Hon. R.G. KERIN:** Thank you, Mr Speaker. What we have witnessed since the beginning of this parliamentary session is a fundamental erosion of the very principles upon which this parliament was established and you, sir, as Speaker, must take ultimate responsibility for this deterioration in parliamentary standards. Likewise, this government has proven to be equally at fault because of its willingness to support your increasing tendency to flout the very rules that are intended to ensure that this parliament represents the people of South Australia in the most appropriate and equitable manner.

Enough is enough. It is a simple fact that your rulings are bringing discredit upon this house and the very traditions and procedures which you espouse. It is a mockery to suggest that this parliament needs constitutional reform when you, as one of its highest office holders, seem determined, in its current form, to preside over a parliament in which all members are not equal. The impartiality of the Speaker is the most important principle upon which the parliament must function; and it is this fundamental principle which has increasingly been ignored during your time in the role of Speaker. The principles of impartiality are enshrined in Erskine May, which states:

The chief characteristics attaching to the office of Speaker in the House of Commons are authority and impartiality.

It further states:

Confidence in the impartiality of the Speaker is an indispensable condition of the successful working of procedure and many conventions exist which have as their object not only to ensure the impartiality of the Speaker but also to ensure that his impartiality is generally recognised.

This is what Erskine May dictates on the subject of the impartiality of the Speaker. And it is a point that was not lost on the member for Hammond when he assumed the role of Speaker in May and when he stated:

Confidence in the fairness of the Speaker is an indispensable condition of the successful working of the parliamentary procedures. It is my determination to do my utmost to protect all members' rights collectively and individually and thereby uphold the dignity of parliament and maintain a level of respect which the institution properly demands as the very foundation of our representative democracy.

This was your pledge to this parliament and to the people of South Australia, Mr Speaker. However, the reality of the situation is that, by any measure, you have failed in protecting this most fundamental principle of our parliamentary process. As a result of your actions, members of this house no longer have confidence in your ability to perform the role of Speaker in a fair and impartial manner. Yesterday in this house the Speaker named me for comments made in the context of a radio interview regarding the purpose of an MRI machine at the Queen Elizabeth Hospital. The crux of the Speaker's objection was that I—

**The SPEAKER:** Order! I let the leader know that he cannot reflect upon the decision of the house: he must stick to the substance of the debate and not debate what the house has decided. The leader.

**The Hon. R.G. KERIN:** The crux of the Speaker's objection was that I had implied that the comments made by the—

**The SPEAKER:** Order! I am warning the leader that he may not debate the decision of the house taken yesterday. He is badly advised, I am sure, if he is not able to otherwise work it out himself. No member may visit and question, other than by substantive motion, a motion already passed by the chamber.

**The Hon. R.G. KERIN:** This is a substantive motion, sir, and—

**The SPEAKER:** Not on that. It does not seek to overturn yesterday's motion: it simply seeks to discover whether the house has confidence in the Speaker. The leader.

**The Hon. R.G. KERIN:** I will paraphrase. I am not happy with yesterday's decision but I accept that the decision was taken by the majority of the house. However, issues that arose yesterday were misrepresented to the house and, basically, they form part of my lack of confidence in the Speaker. Mr Speaker, you claimed that the first time the issue of misleading the parliament was raised was by me on radio yesterday morning. You distributed a transcript which shows that that is certainly not true. You handed out a transcript that disproved what you told this house, and I think that is integral to what we are dealing with here today.

Not only were the comments wrong, but they clearly set out the Speaker's regard on the matter therefore prejudicing any ruling he could have made about it. I will move on. That is not an isolated incident. The Speaker has chosen, with increasing regularity, to involve himself in political debate, which has irretrievably damaged his ability to be impartial in the course of his duties. The Speaker has issued a couple of press releases that have contained incredible personal attacks on me, and he continues to make constant unfounded allegations. The Speaker judges it okay for him to do that, but any criticism of him is punishable by naming within this house.

This is an incredible irony and shows that the Speaker has lost the plot. It is as if he assumes he is the only member whose integrity should be protected in this place. I also draw the attention of the house to the Speaker's tendency to enter into debate in this chamber in a most partisan fashion. On 9 May, following a question asked by me regarding the public liability crisis, the Speaker commented before calling for the answer, 'I do not know what you did about it.' Then, on 15 May, following a government question in relation to the CFS budget issues, he added as an aside, 'I am astonished.' The inference, it seems to me, is that someone has misled the house, which I think is quite an incredible reference to make from the chair.

That behaviour is below the dignity of the office of Speaker. You have abandoned the role of an impartial Speaker and assumed the title of judge, jury and executioner. Erskine May—the bible which you so often quote—prevents the Speaker from such practices where it states:

> He [the Speaker] takes no part in debate either in the house or in committee.

These are the rules which govern our parliamentary system, and no member is above them. The saddest aspect of this situation is that not only does the Speaker feel it necessary to publicly comment on issues pertinent to this house, thereby prejudicing his rulings in the house, but he has seen fit to gag or expel anyone with the audacity to question the wisdom of his rulings or defend themselves against his often baseless accusations. This cannot and must not be allowed to continue. Members must not be intimidated—

*An honourable member interjecting:*

**The SPEAKER:** Order! I warn the member for Mawson.

**The Hon. R.G. KERIN:** —from giving grabs to journalists as innocuous as, 'I am unable to comment for fear of retribution.' Such intimidation affects the ability and the right of both members and the media to do their job. Parliament is not a one way street. The opportunity for free and open debate is essential to the workings of an open democratic system. This opportunity is not currently being afforded to all members of the house.

Another cloud that hangs over this speakership is the perception that the government is in some way influencing your impartial decision making processes. The most blatant example of this occurred on 4 June when you, sir, ruled on a matter of privilege. This in itself was not all that extraordinary. However, lo and behold, only minutes later the member for Enfield asked the Attorney-General a prepared question which made specific reference to the ruling. When this issue was raised on a point of order, you denied having discussed this issue with the government. But within hours of this statement you returned to the house after the cameras had left to admit that you had in fact spoken with the Attorney the night before you made the ruling.

Not only do instances such as these raise serious concerns about the relationship between the government and the Speaker but they also go right to the heart of the issue of impartiality. The government has been an all too willing accomplice in the deterioration in parliamentary procedures during the session. It is pleased to have a speaker who seeks to silence the opposition. The Premier has had nothing but praise for the Speaker and, when nominating him for the high office of Speaker, went as far as to say:

> I have always found Peter Lewis to be a person of honour and I believe that he would perform the office of Speaker with great dignity. He will do so independently, not sitting in any party room.

This close relationship, which was born from a desire to take government at any cost, has continued to this day with the government continually supporting the Speaker's increasingly bizarre rulings and public statements.

*Members interjecting:*

**The SPEAKER:** Order!

**The Hon. R.G. KERIN:** It has become increasingly apparent to members on this side of the house that the South Australian public are fed up with the current situation. Your actions, sir, in recent months have only served to destroy what respect you may have garnered when you first took office, promising greater accountability and fairness. We have now reached a situation where this great institution is increasingly seen as a farce in the eyes of the public. South Australians deserve a parliament where members are free to speak their mind and where governments can be appropriately questioned and held accountable for their actions. Those who espouse the virtues of our political traditions must not be allowed to flout those same conventions.

Many South Australians that I have seen over the past few weeks have constantly confronted me with statements such as, 'What are you going to do about the Speaker?' or 'What is going to happen in the House of Assembly?' This has now become an issue of public importance and an issue of public

confidence in our state and its parliament. I have no doubt that the Premier and the Deputy Premier have been confronted with exactly the same question, and I will be very interested in hearing what they intend to do to restore public confidence in both this state and in this parliament. I commend the motion to the house.

**The Hon. P.F. CONLON (Minister for Government Enterprises):** Some of my colleagues will address some of the few points that were made by the Leader of the Opposition. It sits ill in the mouth of the Leader of the Opposition to be critical of the Speaker when he for so long harboured the member for Stuart as a speaker who once threw out the member for Enfield for raising his eyebrows—something entirely new to Erskine May—but I will leave that alone for the present.

The major and very serious reason why this motion should be rejected is that it would reward the opposition for what is its most manifest failing. It has not occurred to members of the opposition that they also owe duties to this parliament and to the public of South Australia. Their first duty is to be the opposition: to be Her Majesty's loyal opposition. They have failed abjectly in that regard, and let me explain why. Let me explain the history of this. After the election in February—one that was held much too late because of their desire to cling to their positions and to their superannuation—the members of the opposition spent some considerable time feting and praising a certain member for Hammond.

What happened, however, is that the member for Hammond chose to support not the Liberal Party but the Labor Party into government. Let us go to the heart of the matter. The heart of the matter as to why they are a dismal opposition is that they do not believe they should have been the opposition. The poor fellows do not believe they should have been the opposition. So, what happened on that fateful day in February—

**The SPEAKER:** Order! The member for Unley has a point of order. While the member for Unley is on his feet, I understand that I was mistaken in identifying the member for Mawson, when it should have been the member for Unley.

**Mr BRINDAL:** Well, you were mistaken there, because I said nothing either, sir. I wasn't guilty, either.

**The SPEAKER:** Then I apologise to both of you.

**Mr BRINDAL:** My point of order is purely, as you ruled earlier, sir, on relevance. This is a matter on the competency of the Speaker of the house, not of the opposition.

**The SPEAKER:** There is no point of order.

**The Hon. P.F. CONLON:** What happened after that fateful day in February is that all the feting stopped, all the praise stopped and the vilification started, and the sheer obsession with the member for Hammond, the current Speaker, started. What did happen in February? The opposition then made its first refusal to become the opposition: it clung to government until there was a vote in the house. That vote in the house did not even rely on the Speaker.

**The Hon. D.C. Kotz:** Where's the substance of your argument?

**The Hon. P.F. CONLON:** The substance of my argument is that your motion is misguided. I ask you about the duties that you owe in this parliament, not the Speaker. I ask you to consider this. What do Liberal voters, those poor South Australians who had the bad judgment to vote for you, think of your performance in opposition? You should go and ask them. I think fewer of them would be voting for you right now, and they would all be disappointed in your performance. After March, when the vote of the house—not even involving the Speaker—consigned you to opposition, you still refused to accept it. You still refused to be the opposition. What did we do after 5 March? We went about the job of being the government.

I personally have worked my brains out on the mess we were left with electricity. What did the opposition do? Its obsession with the Speaker became a neurosis, to the extent that even the Prime Minister—the Liberal Prime Minister—of Australia had to remind members opposite that they did owe a duty to the people of South Australia as an opposition, to be in opposition. Perhaps members opposite could look at what we did in opposition, because we are a good government and we were a good opposition. We moved a few no-confidence motions. We moved some in the former Premier, as you would know, Mr Speaker, and we got him. We moved some in their ministers, and we got some of them.

We censured some of their ministers in the upper house. I do not recall its ever occurring to us as Her Majesty's loyal opposition that we should be tackling the Speaker. We may have disputed a ruling from time to time but no no-confidence motion, despite under the chairmanship of the member for Stuart—

*Mr Brindal interjecting:*

**The SPEAKER:** Order! The member for Unley will come to order. He will have his turn later, presumably.

**The Hon. P.F. CONLON:** The problem they have is that they do not believe that they should have lost. They have not been able to look inside themselves and see their shortcomings as to why people would not vote for them. They could not look to the people of South Australia and try to get an explanation. All they have is a Speaker who is a symbol for them of all that they have lost according to their born to rule mentality. The principal reason why we should reject this resolution is that we should not reward an opposition for its most abject failing, that is, its failure to understand its responsibilities to this parliament and to the people of South Australia.

I will close by saying this. If they feel that they are so hard done by, if they feel that they were robbed, if they feel that they should be in government, they have an opportunity. We have marked the Essential Services Commission Bill as a bill of special importance. Let them stick it up. If they think the people want them back, they should stick up our bill, and we will give them an election—and we know what will happen. We will still be here, but a lot of them will not be. I urge the house not to reward the opposition for being the most abject failure of an opposition in the history of a parliament.

*Members interjecting:*

**The SPEAKER:** Order! The Deputy Leader of the Opposition.

**The Hon. DEAN BROWN (Deputy Leader of the Opposition):** I rise to support this motion, and I again read from Erskine May, as follows:

> Confidence in the impartiality of the Speaker. . .

*An honourable member interjecting:*

**The SPEAKER:** Order! The deputy leader has the call.

**The Hon. DEAN BROWN:** I think the behaviour of the government compared to that of the opposition, in being allowed to interject this afternoon, is what this motion is all about.

**The SPEAKER:** Order!

**The Hon. DEAN BROWN:** I will come to that very shortly, indeed. Erskine May states:

> Confidence in the impartiality of the Speaker is an indispensable condition of the successful working of procedure, and many conventions exist which have as their object not only to ensure the impartiality of the Speaker but also to ensure that his impartiality is generally recognised.

That is what this motion this afternoon is about, because when the Speaker breaches that impartiality, and repeatedly and quite deliberately does so in favour of the government and against the opposition, the parliament can no longer have confidence in the Speaker. Events have shown that the Labor-Lewis compact is not just about broomrape or river fishermen. It is about a deliberate and planned strategy to silence and gag the opposition; to make sure that the Liberal Party in this place has to abide by a new set of standards that this parliament has never seen before. This parliament has not witnessed previously the types of rulings that this Speaker has brought down. This Speaker has now developed his own code of revenge, as far as the opposition is concerned. Impartiality has been thrown out. Instead, we have biased rulings, and we have a puppet of the Labor government.

Let me give some examples of the abandonment of the impartiality principle of the parliament; there are many of them and I would like to go through them. Last Friday, the Speaker intervened in the debate on radio regarding the MRI at the Queen Elizabeth Hospital. He came deliberately to the defence of the Minister for Health. In so doing, he clearly did not know his facts at all. He said that, in fact, the Labor cabinet had approved the purchase of the MRI. Even the Minister for Health has denied that, and has said just the opposite. He also claimed that John Olsen had interfered in the cabinet decision last November on the purchase of the MRI. John Olsen did not even sit in cabinet at that stage.

Mr Speaker, let me give some more examples. On 13 May, you named me in this house for expulsion simply for saying in the media that, in fact, I had no comment to make about the Speaker because it would be a breach of standing orders. So pompous and arrogant has the Speaker become that he decided to name me in this house, because I had somehow reflected on his standing by saying, 'No comment.' Clearly, that shows the extent to which you are trying to rewrite the rules when it comes to the standing orders of this parliament. Let me give another example.

On 14 May the Speaker named the member for Bright. The member for Bright asked to be able to stand and explain his comments and the Speaker said that unless he apologised he could not explain his comments. I then moved disagreement with the Speaker's ruling, I debated that motion and suddenly, when the Speaker realised he did not have the numbers, he changed his ruling and asked the member for Bright to proceed. Let me give some more examples. On 9 May this year, when the Leader of the Opposition was asking a question of the Treasurer about public liability, before the Treasurer could respond the Speaker said from the chair, 'I don't know what you did about it.' It is outrageous for an impartial Speaker to pass comment like that. It is shown on page 102 of *Hansard*.

As another example, on 15 May the Minister for Government Enterprises was making some quite outrageous claims in this parliament when the Speaker said:

> As an aside, I am astonished. The inference, it seems to me, is that someone has misled this parliament.

That appeared in the first copy of *Hansard* to be published. It was however expunged from the final record of *Hansard*. As the fifth example, I highlight this afternoon that you named someone on this side of the house for saying, 'Hear, hear!' when the Attorney-General, the Deputy Premier and the Minister for Government Enterprises were repeatedly interjecting and not being named at all. I could give many other examples. These show that your responsibilities in this parliament have now become subservient to your commitment and loyalty to the Labor government. You are no longer a champion of the parliament. Instead, you have become a tactical stooge of the Labor government. You are unworthy of holding the office of Speaker.

**The Hon. K.O. FOLEY (Deputy Premier):** You would have to say they are a pack of sooks. The Deputy Leader of the Opposition talked about the Speaker—you, the member for Hammond—having his own form of revenge. That is from a political party that has taken the Speaker of this house to the Court of Disputed Returns, tried to dig up any piece of information it can, fed information to the police and run around ringing up creditors of the commercial operations involved with the Speaker. For the Liberal Party to talk about 'his own form of revenge' is quite hypocritical and laughable.

Let us understand this. The parliament was recalled this week for a very special purpose. Public liability in this state and in this nation is at crisis point. We are the second state in Australia to be moving legislation of a substantive nature to deal with it. That is why we are here today—and what is this opposition doing? It is distracting itself from what this parliament should be all about. But how quickly the opposition has forgotten. In the past two terms when Labor was in opposition, the Speakers of the former parliament—Liberal Party members—moved on a number of occasions for Labor Party members to be named. Many members of the Labor Party were named and on every single occasion the members of the then Liberal government supported their Speaker; 13 times members of the opposition were named and 13 times the Liberal Party supported the Speaker.

We talked yesterday about the incident involving the then Speaker Graham Gunn, the member for Stuart, who evicted from this parliament Ralph Clarke, the then Leader of the Opposition, for making the comment, as reported in the *Transcontinental* newspaper, that the Speaker was in love with his wig and his gown. I would like to remind the house of something that Stephen Baker, the then Liberal Deputy Premier, said on 16 November 1995 when talking about the responsibility of a member of parliament when referring to the Speaker. This is what Stephen Baker said:

> Every person who had been sitting alongside me said, 'Whatever you do, do not ever go outside and reflect on the Speaker.'
>
> Irrespective of how one feels and how hard done by one feels one may have been, one does not reflect on the Speaker. . . This house cannot operate unless there is a given set of rules and those rules are adhered to.

They are the words of Stephen Baker. He gave the opposition some very sound advice, and it is now ignoring it. We know that the member for Unley was named in this parliament for comments he made about Speaker Norm Peterson, and he was named and evicted from this house.

The reality is that this opposition has been at it now for five months, wanting to undermine this Speaker, this parliament and this government. We are here this week to deal with substantive legislation—legislation that the opposition puts as a lower priority than continuing its crusade and vendetta against the Speaker of this parliament. Five months after the election, one would think that the opposition

would be about good government, about good legislation and about keeping a government accountable. Well, they are not. Their vendetta continues. Their undermining of the Speaker continues. They have been running around collecting information and feeding it to police, to creditors, to criminals, and to whomever they want to feed it to. That is what they have been doing for the past five months. They have not been concentrating on what they are elected to do.

We are a new government and a good government which is giving stability and leadership to this state. We wish that this opposition would accept the fact, as many members opposite—including the member for Bragg, and others—have said, that it is in opposition for four years. Get over it, stop behaving like a mob of sooks with crocodile tears, whingeing, complaining and moaning. Stop playing the man and play the ball. Be a good opposition and get on with what is important for government.

We have to deal with important pieces of legislation. My colleague the Minister for Government Enterprises wants to pass legislation that will do something to protect households from the electricity crisis. We want to pass legislation to reduce the cost of public liability insurance. But the Liberals want to play silly politics and silly games—attack the man and not the ball. They are putting our state at risk. This place can be good theatre, but at some point you are going to have to give up, Rob, and if you are feeling under pressure as the Leader of the Opposition, if the numbers are being counted—

**The SPEAKER:** The leader has a point of order.

**The Hon. R.G. KERIN:** Yes, sir, and if you will take it seriously for a moment, the Deputy Premier referred to me by my Christian name, which you have always ruled out of order in the past.

**The SPEAKER:** Yes, it is out of order, and I do take it seriously. The Deputy Premier has the call.

**The Hon. K.O. FOLEY:** I apologise to the Leader of the Opposition for calling him by his first name. I am getting used to calling him by his first name because he will not be the Leader of the Opposition for very much longer—but I do apologise.

**The Hon. D.C. KOTZ:** I rise on a point of order, Mr Speaker. The motion before the house has not yet been addressed by any speaker on the other side, including the Treasurer.

**The Hon. K.O. Foley:** That's because it is a silly motion.

**The SPEAKER:** I do not uphold the point of order.

**Mr BRINDAL:** I rise on a point of order, Mr Speaker. We are waiting on your ruling on the point of order.

**The SPEAKER:** I gave my ruling, but the unruliness of the chamber meant that it was not heard. I simply said that I do not uphold the point of order.

**The Hon. K.O. FOLEY:** It is hard to address the substance of this motion because it is so silly. It has no substance. The Leader of the Opposition is struggling for relevance. We know that. We know, Rob, that you cannot handle it.

**The SPEAKER:** Order! The Deputy Premier may not refer to the Leader of the Opposition by any other name than his title or electorate name. Likewise, it is inappropriate to address the opposition using the second person pronoun. Just a few minutes ago, the Deputy Premier had me believing that it was me—the chair—upon whom he was reflecting with regard to what had or had not happened, rather than the opposition. When he used the word 'you' I thought he was referring to me, and not the opposition. If the Deputy Premier would simply renovate his vocabulary when addressing the chamber, and refer his remarks through the chair, I am sure that it will somewhat reduce the tension and heat that rises from the other side of the chamber.

**The Hon. K.O. FOLEY:** There is no heat from this side: this is therapy, a bit of fun. As my colleague, the Minister for Police, just said, he had been thinking about reporting the Leader of the Opposition during Missing Persons Week, but thankfully parliament came back.

It is hard to take the Leader of the Opposition seriously, but let us remember this: I sat in this place for eight years. I was sent out of this chamber four times. Ralph Clarke was sent out four or five times. The then Speaker, the member for Stuart, would not allow you to raise an eyebrow. You could not make a comment, you could not interject, you could not do anything or he would have you marched out of this place quickly. That is all right: it is the theatre of the place. We copped it and we did not carry on like sooks as the opposition is now. It is part of the theatre of parliament.

I say this, though: we have had a bit of fun. Clearly the opposition has no questions this week and no issues to raise with the government. You have had your little bit of fun but, when this is all over, can we get back to some serious work in this parliament? Can we return to passing some legislation? I want to pass the public liability bill this week, and the Minister for Energy wants to pass the electricity legislation, so let us get back to the main game and stop playing silly politics.

**The SPEAKER:** I call the Attorney-General.

*Members interjecting:*

**The SPEAKER:** I call whom I see. I see no-one else rising.

*Members interjecting:*

**The SPEAKER:** If I had known who was likely to be speaking I would have been watching. I was looking around the chamber and saw no-one from the opposition benches rise. I apologise to the member for Chaffey, and she has the call.

**Mrs MAYWALD (Chaffey):** There is nothing silly about our Westminster system. It is there to protect democracy. Democracy is not silly. There is nothing silly about lifting the standards of this house. This debate is not about the Liberal Party and the Labor Party. It is not about which party is in government at the moment or how they got there. It is not about legislation. This debate is about striking the balance between rights and responsibilities. They are not mutually exclusive propositions. The Speaker cannot demand one without giving the other. I quote from Erskine May:

> Reflections upon the character or actions of the Speaker may be punished as breaches of privilege.

Further, Erskine May says:

> Confidence in the impartiality of the Speaker is an indispensable condition of the successful working of procedure, and many conventions exist which have as their objective not only to ensure the impartiality of the Speaker but also to ensure that his impartiality is generally recognised.

Protection available to the Speaker through privilege is a right. Impartiality is both a right and a responsibility. This house has a right to demand impartiality. The Speaker has a responsibility to deliver it.

The Speaker has diminished the status of high office. He has clearly not remained impartial, so he has no right to demand protection. If the referee in a boxing match slips one in, he should expect one back. If he gets one back, he cannot then disqualify the contestant. The Speaker has lashed out.

He was clouted back and he should have taken it on the chin. He has not. I will now quote from the *House of Representatives Practice* where it speaks on the impartiality of the chair, as follows:

> One of the hallmarks of good speakership is the requirement for a high degree of impartiality in the execution of the duties of the office. This important characteristic of office has been developed over the last two centuries to a point where, in the House of Commons, the Speaker abandons all party loyalties.

To further quote the same document:

> It is unquestionably of great importance that, as a contribution towards upholding the impartiality of that office, the house chooses a candidate who has the qualities necessary for a good Speaker.

The Speaker has failed us. To enable us to have confidence in the impartiality of this position, it is time for us to choose again.

**The Hon. M.J. ATKINSON (Attorney-General):** Mr Speaker, the motion of no confidence moved in you by the Leader of the Opposition serves to highlight what has now become an obsession amongst those opposite—you and your continuing occupation of the Speaker's seat. It is an obsession that diverts the opposition party from its true vocation and from day-to-day political advantage. Sir, you are a man who has a genuine and deep interest in the workings of parliament. You have been and remain a strong believer in the need to improve the standards of behaviour of members in this place. This has been a consistent theme of your political life since I first met you when I came into this place in 1990. You have sought to apply these principles since your elevation to the position of Speaker. Despite the opposition's efforts, you have been the best Speaker for many years.

In the 13 years that I have been in this place, I cannot recall having served under a Speaker who, as a matter of regularity, refers to and quotes from House of Assembly standing orders in support of his rulings; refers to and quotes, even to the extent of providing page references, from Erskine May's *Parliamentary Practice*, which is of course the fountainhead head of parliamentary procedure in all Westminster parliaments; and refers to previous rulings of other speakers and applies or distinguishes them as his determination in the instant case requires.

Further to that, Mr Speaker, each and every one of your rulings has been about enforcing higher standards, whether it be in raising the level of debate inside or outside this place, or in demanding greater disclosure from ministers of the Crown and consequently greater accountability of them to this chamber and to the South Australian public. Mr Speaker, it is a paradox that members opposite should move a no-confidence motion arising from your ruling yesterday. In naming the Leader of the Opposition yesterday, you were in fact applying a precedent which had been set by a previous Speaker of this house, the member for Stuart. On 16 November 1995, the then Speaker drew attention to an article that appeared in the *Transcontinental* newspaper on the day before.

**Mr Koutsantonis:** He's laughing: he's smiling.

**The Hon. M.J. ATKINSON:** The former Speaker is smiling, as well he might. This is a boomerang that has taken many years to come back. In that article, the then Deputy Leader of the Opposition made a number of comments relating to the performance of the Speaker in his capacity as a local member of parliament. The then Speaker (now the member for Stuart) was so incensed with the article that he said:

> He knows [referring to the then deputy leader] that he may not make any comments while the chair is addressing the house. The honourable member has gone far beyond what is acceptable and has reflected on me as Speaker and on the dignity of the house and the impartiality of the chair. Our system operates effectively only if there is respect for the chair by all members. I refer to Erskine May, as follows:
>
> *Reflections upon the character or actions of the Speaker may be punishable as a breach of privilege.*

The then Speaker went on to say:

> This unprecedented attack—
>
> *Members interjecting:*

**The Hon. M.J. ATKINSON:** No, this is the then Speaker, and you all trooped through the division to support him. He said:

> This unprecedented attack brings the whole parliamentary institution into disrepute and, as Speaker, I do not intend to tolerate this behaviour. During my time as Speaker I have been tolerant with all members because I have endeavoured to ensure that all members have the opportunity to carry out their parliamentary duties. This outrageous attack must be dealt with by the house in a manner to preserve the dignity of the house to ensure there is no repeat by any member of this behaviour.

The then government moved to suspend the Deputy Leader of the Opposition from the service of the house, and all members of the opposition who were here on that day supported that motion.

It so happens that I spoke during that debate, and I expressed my strong view that, unlike the parliament of the United Kingdom, we in this place do not have a tradition of the Speaker being unchallenged in his or her seat and that, therefore, those particular practices of that parliament could not be transposed to this one. I voted against the motion to suspend, but I was opposed by every member of the Liberal Party who spoke during that debate. To your credit, Mr Speaker, you spoke during that debate and expressed the very same views that you applied yesterday. You were consistent; members opposite are not. They voted then to protect the Speaker from reflections made outside of this chamber, but yesterday they did the exact reverse. Mr Speaker, you have my confidence.

**The Hon. I.F. EVANS (Davenport):** I rise—

*An honourable member interjecting:*

**The Hon. I.F. EVANS:** Yes, I wrote this—to support the motion. On his election as Speaker on 5 March this year, the Speaker said:

> Confidence in the fairness of the Speaker is an indispensable condition of the successful working of parliamentary procedures.

Mr Speaker, many members now do not have confidence in your fairness as Speaker and there are many members who do not have confidence in your impartiality as Speaker. I believe that for the good of South Australians it is time for this farce to finish, that it is time for the parliament to vote the Speaker out or for the Speaker to do the decent thing and resign. It is time for the parliament to put the state first—to put the state above both party and individual political interests. In particular, it is very important and it is time that the parliament had a Speaker who wants to be Speaker, and not a Speaker who wants to be the government.

Neither the South Australian economy nor the community can afford the ongoing embarrassment of having the state's future described by the bizarre interpretation of life according to the member for Hammond. If members were honest, they would admit that everywhere they go in South Australia and, indeed, when they talk to political or business people

interstate, all they are asked about is the life and times of the member for Hammond. We are constantly asked, 'What's going on in South Australia?' The fact is that South Australia is now the laughing stock of the nation. It is embarrassing for us as MPs, and I believe it is embarrassing for the parliament. It is indeed embarrassing for the state and, tragically, it is damaging the state in the minds of interstate investors. The Speaker's actions have distracted public debate away from the key issues and put at risk investment in South Australia.

The Deputy Premier raised the point about the public liability issues to be debated before the parliament this week. That is a good example: the public debate has been put aside, because the media are actually talking about the actions of and the reactions to the Speaker. So, public debate is being shifted to one side because of the actions of the Speaker in this house. Since assuming office, it is obvious to the house that this Speaker has attempted to be a House of Commons Speaker in a South Australian parliament and still remain a political operative by actively seeking to be involved in the media.

I pick up the member for Spence's comments about this not being the House of Commons. The House of Commons has 659 members and we have just 47 members. The Speaker in the House of Commons resigns from the party, does not attend party meetings, does not contest elections and continues in the role if the government falls. The Speaker of this chamber, of course, is not required to resign from a party, can attend party meetings, contests the elections and needs to be re-elected after each election.

Due to the large number of MPs in the House of Commons, the Speaker rarely uses a casting vote and rarely decides who will form government. Due to the small numbers in this chamber, the Speaker often uses his casting vote—in fact, he used it twice yesterday—and often decides who will form government. Indeed, this Speaker went to the extent of undertaking a written agreement with the government for it to gain office. The reason I highlight this is that it leads us to the conclusion that the South Australian Speaker will always be involved in the politics of the day.

So, the question arises as to the fairness and impartiality of the Speaker. I put to the house that it is the Speaker himself who has brought the role of Speaker into disrepute by ringing into the radio station and debating the MRI issue, knowing full well that, if the motion about the minister's misleading the house was raised in the house, he would sit in judgment on that. How can you possibly be impartial if you have already publicly expressed your view on a radio station? It is the Speaker himself who has brought the role of Speaker into disrepute by interjecting on the Leader of the Opposition yesterday and making a cheap political point. He said:

> Which one of you is leader?

How is that impartial? It is the Speaker himself who has brought the role of Speaker into disrepute by interjecting from the chair during question time on 15 March, when he said:

> As an aside—I'm astonished—the inference seems to be that someone has misled the house.

How is that being impartial from the chair? It is the Speaker himself who has brought the role of Speaker into disrepute by interjecting from the chair on 9 May during question time, when he said:

> I don't know what you did about it.

How can that be impartial when such an interjection is made from the chair? It is the Speaker himself who has brought the role of Speaker into disrepute by actively seeking out the media and claiming that people associated with the Liberal Party were involved in stealing documents from his car. How is that being impartial? It is the Speaker himself who has brought the role of the Speaker into disrepute by actively seeking out the media and claiming that members of the Liberal Party were bugging his car. How is that being impartial? And the Speaker nods. It is the Speaker himself who has brought the role of Speaker into disrepute by actively seeking out the media and claiming that he is going to sue 17 members of the Liberal Party. If the Speaker is going to sue 17 members of the Liberal Party, how is that being impartial?

I put to the member for Fisher and other members in this house, if the Speaker went out and said he was going to sue the member for Fisher, or if he went and said that the member for Fisher or his supporters were stealing documents from his car, or if he said that the member for Fisher was out there bugging him, that the member for Fisher would believe that the Speaker was not being impartial towards him. So we believe on this side of the house that this Speaker is not being impartial to the house and he is certainly not being impartial to the opposition.

Mr Speaker, these are just a few examples where you as Speaker have not been impartial and have not been fair in relation to your dealing with this house. Even yesterday, that transcript used in yesterday's ruling to throw out the Leader of the Opposition was requested by and supplied by Randall Ashbourne of the Premier's office. That raises some interesting issues about the planning of yesterday's events, and I refer to the email and the time of the request by Ashbourne on the transcript that was given to the house yesterday.

How did I feel yesterday? During yesterday's debate, I asked the Speaker for a copy of the transcript—and, in these comments, I make no criticism of the messenger in this place—but the message I got back from the Speaker was, 'If you want a copy of the transcript, get it from your own deputy.' Since when has the Speaker been allowed to supply a document to only two members in the house? Never before has it happened.

*Members interjecting:*

**The Hon. I.F. EVANS:** That is what happened yesterday. I asked for a copy of the transcript and I was told to get it from the leader. It is not the role of the Speaker to bring the parliament into disrepute, and I believe that you have. I put to the house that it is the behaviour of the Speaker that has been unfair. It is the behaviour of the Speaker that has not been impartial. It is the behaviour of the Speaker that has brought the parliament into disrepute. It is the behaviour of the Speaker that has made South Australia a national laughing stock. It is the behaviour of the Speaker that is hurting South Australia. If the Labor Party supports the Speaker today, it will be clear today to all South Australians that Peter Lewis is indeed Rann's man. A social commentator once described parliament as the only asylum in the world where the inmates are in charge and, in South Australia's case, he may well be right!

**The Hon. M.D. RANN (Premier):** Will the real leader of the Liberal Party please stand up?

*Members interjecting:*

**The Hon. M.D. RANN:** I want to say this.

*Members interjecting:*

**The SPEAKER:** Order! The Minister for Government Enterprises will come to order.

**The Hon. M.D. RANN:** Just cool it and try to act with a bit of dignity. There were schoolchildren in the gallery at the start of this debate, and thankfully they have gone, because parents in this state want members of parliament to act like adults. They actually want us to get on with the job, to do the job they have elected us to do, on your side and our side of parliament. They want the Liberal leadership to act with a bit of dignity and to do what the Prime Minister of Australia told you to do: to get on with the job and stop your obsession. I think it is important for members opposite to realise that they have a job to do that is constructive for this state rather than consistently playing games. I make an appeal to the Leader of the Opposition to play the ball, not the man. Rob, play the ball, not the man. People are sick and tired of all of these games that you are playing. It is time for members opposite to act with a bit of dignity and not turn this parliament into a circus or a sideshow.

I know what happened yesterday. I think it is important for the house to understand exactly what happened yesterday. The Leader of the Opposition has been criticised in recent weeks for his lack of effort or interest in the job. They are saying that members opposite cannot sort out who will take over the Liberal leadership, so he is being parked there until they can sort this out. He was criticised for his lack of performance and his failure to cut the mustard. He has been criticised for not showing leadership. He was advised, we are told, that he had to toughen up and that he had to show a bit of guts, and so he was on the radio trying to flex his new muscles. But, rather than attack me or members of the government or talk about issues, he aimed his attack on the independent umpire—the Speaker.

We saw what happened, and yesterday was a complete stunt which members opposite hoped some of the journalists who were not around in the last parliament or the parliament before might not have noticed. The idea of the stunt—and it was a stunt—was this: all the Leader of the Opposition had to do was to stand up in this parliament—

*Members interjecting:*

**The SPEAKER:** Order! The member for Unley has a point of order.

**Mr BRINDAL:** I want your clarification, sir. Did you not rule that we cannot discuss what happened yesterday and that we should not reflect on the matters that we debated yesterday?

**The SPEAKER:** The member for Unley engages in sophistry. I do not uphold his point of order because my ruling was quite simply that we cannot reflect upon the vote of yesterday and the debate—not the event.

**The Hon. M.D. RANN:** Yesterday was a stunt. The Leader of the Opposition could have come in here and apologised. His apology would have been accepted and we could have moved on and dealt with issues of the day, but it was not convenient. Members opposite turned the parliament into a sideshow. The leader refused to apologise, knowing exactly what the consequences would be in any parliament in the commonwealth of nations.

For those who were not around, let us remember that this occurred 13 times under the previous government. I was thrown out twice, Ralph Clarke was thrown out for something he said in the *Transcontinental* and the Deputy Premier was thrown out four times. We were thrown out even when we apologised. We know there was a stitch on, and what happened yesterday was a deliberate attempt. The Hon. Rob Kerin knew what the consequences could be if he did not apologise.

We have this ludicrous situation where, in the morning, the Leader of the Opposition was apparently saying that the Speaker and I had had a public row, a public spat that needed to be healed in the state's interests. However, by the end of the afternoon, apparently, we were conspiring together. You cannot have it both ways. When the Liberal Party was in office it acted not like a government but a police line-up, so do not talk to us about standards.

Time expired.

*Members interjecting:*

**The SPEAKER:** Order! The member for Bragg has a point of order.

**Ms CHAPMAN:** I did, sir, but you have now dealt with it. Thank you.

The house divided on the motion:

AYES (21)

| | |
|---|---|
| Brindal, M. K. | Brokenshire, R. L. |
| Brown, D. C. (teller) | Buckby, M. R. |
| Chapman, V. A. | Evans, I. F. |
| Goldsworthy, R. M. | Gunn, G. M. |
| Hall, J. L. | Hamilton-Smith, M. L. J. |
| Kerin, R. G. | Kotz, D. C. |
| Matthew, W. A. | Maywald, K. A. |
| McEwen, R. J. | McFetridge, D. |
| Meier, E. J. | Redmond, I. M. |
| Scalzi, G. | Venning, I. H. |
| Williams, M. R. | |

NOES (23)

| | |
|---|---|
| Atkinson, M. J. | Bedford, F. E. |
| Breuer, L. R. | Caica, P. |
| Ciccarello, V. | Conlon, P. F. (teller) |
| Foley, K. O. | Geraghty, R. K. |
| Hanna, K. | Hill, J. D. |
| Key, S. W. | Koutsantonis, T. |
| Lomax-Smith, J. D. | O'Brien, M. F. |
| Rankine, J. M. | Rann, M. D. |
| Rau, J. R. | Stevens, L. |
| Such, R. B. | Thompson, M. G. |
| Weatherill, J. N. | White, P. L. |
| Wright, M. J. | |

PAIR(S)

| | |
|---|---|
| Penfold, E. M. | Snelling, J. J. |

Majority of 2 for the noes.

Motion thus negatived.

## GRIEVANCE DEBATE

### ATTORNEY-GENERAL'S REMARKS

**The Hon. G.M. GUNN (Stuart):** Earlier today, the Hon. Attorney-General, in addressing himself to the house, read from *Hansard*, but he failed to tell the full story.

*An honourable member interjecting:*

**The Hon. G.M. GUNN:** The honourable member can be embarrassed by his own actions as often as he likes, but the facts of the matter are these—

*Members interjecting:*

**The Hon. G.M. GUNN:** The honourable member has again contravened the standing orders of this house.

**The Hon. P.F. CONLON:** I rise on a point of order, Mr Speaker. I may be misguided here, but do I understand that the member for Stuart is making a personal explanation? If he is, he should refrain from debating it.

*Members interjecting:*

**The SPEAKER:** I do not uphold the point of order. The member for Stuart has the call for the grievance debate.

**The Hon. G.M. GUNN:** Thank you, Mr Speaker. I draw to your attention the standing orders in relation to the Hon. Attorney-General and his criticism of former Speaker Trainer and me, which I understand—

**The Hon. M.J. ATKINSON:** I rise on a point of order, sir. I am asking for your ruling on whether it is in order for the member for Stuart to agitate, in a grievance debate, the issues that were canvassed in the debate which has just closed.

**The SPEAKER:** I am unable to rule at this point on that point of order but, if the member for Stuart were to agitate, that would be right. However, I am not sure that he is doing that as I have not yet heard what he is saying. So, for goodness sake, give him a go.

**The Hon. G.M. GUNN:** Thank you, Mr Speaker. I was attempting to indicate to the house that, on the occasion mentioned by the Attorney-General, the then member in question was invited by the Speaker to discuss the matter privately, where his misdemeanours were pointed out to him, and he was advised of a course of action which he could take and which would resolve the issue. The member in question declined that invitation because he needed the publicity; and he was fully aware of what would take place.

*Members interjecting:*

**The SPEAKER:** Order! The member for Stuart may not revisit the subject of the substantive motion or the arguments canvassed in that debate. It was limited by motion of the house to one hour.

**The Hon. G.M. GUNN:** I am not, Mr Speaker; I am just referring to a set of circumstances that took place in this house a number of years ago, and I am bringing the house up to date with the correct—

*Members interjecting:*

**The SPEAKER:** I will allow the member to pursue that line. The member for Stuart has the call.

**The Hon. G.M. GUNN:** All I wanted to do was set the record straight in relation to this particular matter. We know that the Attorney-General must lead a very sad life. He never appears to be happy, he never smiles, he goes around with a chip on his shoulder and it is a wonder that he can even pick up his briefcase, because when he bends down it is a wonder he can ever lift his head. But, nevertheless—

**The SPEAKER:** Order! The member for Stuart is now out of order. He may not attack other members of this chamber in a grievance debate, other than by a substantive motion at another point in the proceedings.

**The Hon. G.M. GUNN:** Quite, Mr Speaker. But I was just referring to the unfortunate disposition of the Attorney-General, who seems to have a rather peculiar outlook on life, and I hope he is happy because most of us ignore him. The other matter that I wanted to raise today was—

**The Hon. M.J. Atkinson:** The boomerang just came back.

**The SPEAKER:** Order! The Attorney-General will not participate by way of interjection in baiting the member for Stuart.

**The Hon. G.M. GUNN:** Let me say to the Hon. Attorney-General that some of us have a life outside this parliament. Some of us have a lot to look forward to because we can make our way without having to be in this place.

Yesterday I had the pleasure of attending the biennial field days at Cleve, an outstanding success, where the rural sector of South Australia was on display. It clearly indicated that the legacy which the previous government left in South Australia, the confidence we gave to those people to go on, improve and invest and the unfortunate things that have happened since—

**The Hon. M.J. Atkinson:** It was a fine field day. It was excellent.

**The Hon. G.M. GUNN:** It was a great occasion, and it would be as well if every member of this house had the opportunity to attend it. I am sure they may, even the Attorney-General, learn something. As difficult as it may be, he may learn something.

Time expired.

## FULHAM NORTH PRIMARY SCHOOL

**Mr CAICA (Colton):** I will attempt to make my grievance a little more relevant. Last Thursday (8 August), the Fulham North Primary School implemented the first planning session of its drug education strategy. I was lucky enough to attend and participated in the session as a parent, a member of the school community and, indeed, as their local MP. Two further sessions are planned by the school. The purpose of these sessions is to develop a whole of school drug education strategy. The school sees drug education as a powerful protective factor and preventative strategy to minimise and reduce drug related harm for young people. The school's teachers and its administration have quite rightly concluded that collaborative partnerships are vital in learning about the complexity of drug related issues; and furthermore, the school administration and its teachers understand that, if the school is to be successful in the development of a drug education strategy, there is a need for the whole school community to work together to learn about the range of approaches that are necessary to make such a strategy successful.

To this end, the Fulham North Primary School newsletter, *North Talk*, dated 26 July, invited interested parents, along with interested staff members, to attend the planning sessions so that a whole of school drug strategy could be completed at Fulham North Primary School in the forthcoming years. As I said earlier, three strategy planning sessions will take place, and those sessions will be jointly conducted by the school and the Department for Education and Children's Services. In congratulating the school on this initiative, can I say that the efforts and commitment of the DECS representative and its presenter, Ms Debbie Daniel (who, I understand, is a member of the DECS drug strategy team) were quite outstanding.

I understand that many schools have developed or are in the process of developing their school drug education strategy, and naturally such strategies cannot stand alone; that is, a school strategy must link to a whole of state education drug strategy system which, in turn, must be linked to a national drug education strategy. Likewise, the inter-relationships between schools, the department and other whole of state strategies for drug education, prevention and early intervention must be linked. I know that some members of this house, along with me, attended the recent Drugs Summit. I was part of a working group that had a focus on young people. While I no longer fall into the category of being a young person, there were many young people in this particular group.

It was agreed by the working group—and I understand other working groups—that the strategy being developed—whether in the area of education, prevention, intervention, or one of the many other approaches that can be taken for drugs and drug use in our community—will fall without the inter-relationships that must exist between the various components

of a whole of government approach. The analogy that I would like to use is the link in a chain and, to that end, many links make up a chain and, if one link comes out the chain, the chain is useless. All these various components of the whole of state drug strategy need to be linked together.

I congratulate the Fulham North Primary School, its staff and its school community and pay special tribute to Mr Peter Hutton, who is a member of the teaching staff and who was the driving force and the core team leader behind the development of the drug education strategy. The one thing that is most constant in each of our lives is that we are attending school, we have children or family at school, or, indeed, we have attended school at some time and, judging from the efforts of some members of this house, I often feel that I am still at school. I would argue that schools have a vital and most important role in tackling drugs and the effects of drugs in our community. In my view, schools are the vital link in the chain. Again I congratulate the Fulham North Primary School, DECS, and indeed the state government on their ongoing efforts to tackle the drug problems that exist in our community.

## INTERNATIONAL BUSINESS WEEK

**Dr McFETRIDGE (Morphett):** I would like to highlight the International Business Week seminars being held this week and sponsored by the University of South Australia. In the pamphlet I picked up this morning at the business breakfast at the Hyatt, Professor Kevin O'Brien explains what the University of South Australia is trying to achieve. In his pamphlet, Dr O'Brien states:

> International business week provides a focus for the state's exporting industries and an opportunity for all involved with the business of exporting to come together and learn from each other.

And how important it is. It is amazing that the University of South Australia has put together such a comprehensive program. There are 10 regional events and 30 metropolitan events. The regional events are being held in such places as Berri, Mylor, Victor Harbor, Whyalla, Port Augusta, Port Lincoln and Tanunda. The subjects covered include 'Progressing Riverland Exports'. An exporting workshop will be held in Port Augusta, and the event 'The World's our Oyster' will be held at Port Lincoln. Some amazing topics and seminars are being organised. I had the pleasure this morning to listen to a chap talking about e-commerce and, more particularly, e-logistics.

Certainly, we are using the internet in the house and enjoying quick communications (I think that the member for Heysen will have a little more to say about that later), but technology is certainly improving business. The seminar in the metropolitan area is sponsored by the University of South Australia. This morning, as I said, I listened to someone talking about e-commerce. I also attended today a luncheon which concentrated on pushing South Australia's exports and optimising South Australia's export network. Other seminars include a 'Wool and Wine Breakfast—Exporting to the USA', which will be held on Thursday. The seminar this afternoon is called 'Exporting to China'.

It is fantastic to see what is happening. It is great to see that exports are booming, and one has to look only at the budget papers to see how the South Australian economy is booming. The luncheon I attended at Enterprise House was about optimising South Australian exports. Sponsored by CITCSA and EFIC, it was a good luncheon, which 200 or 300 people attended. Speakers included the Lord Mayor (Alfred Huang), Dr Roger Sexton, Mr Phil Baker (Managing Director of Adelaide Airport) and Mr Geoff Upton, State Manager, Austrade.

They addressed the meeting and highlighted some of the fantastic things that are occurring in South Australia and some of the opportunities from which, as South Australians, we can benefit. Unfortunately, I had to leave early to return to this place but there were speakers from the Hong Kong Australia Business Association and the Italian Chamber of Commerce and Industry. I noted some of the names of the people who attended. There were people from the Israeli Chamber of Commerce, the Arab Chamber of Commerce and, certainly, representatives of the Asian chambers of commerce, as well as some from the European chambers of commerce.

It is great to see that we have such a diverse range of modern cultural exporters in South Australia all working for the one objective, that is, the good of South Australia. It is so important that the government recognises that exports from South Australia have been pushing this economy along for a long time. I know that at the moment we are a very small part of the total export economy of Australia, but the enthusiasm and attitude of people to whom I have been talking over the past couple of days, and the way in which the University of South Australia is approaching the seriousness of exporting and encouraging exports, is a delight to see.

The University of South Australia has highlighted something which the Lord Mayor mentioned on the weekend, that is, exporting our education intellect to the world. It is amazing to see the numbers of people coming to South Australia to take advantage of not only our fabulous lifestyle and standard of living but also our wonderful education facilities. Professor Kevin O'Brien from the University of South Australia said:

> Education is a significant source of Australia's service export income—approximately $4 billion per annum. The University of South Australia is the largest provider of offshore university education services in Australia, with almost 6 000 students.

I know for a fact that nearly 300 Norwegian students are living in and around Glenelg, and it is fantastic to see. By talking today I want to encourage other organisations, not only CITCSA, EFIC and the University of South Australia, but all the other organisations, such as the chambers of commerce, to get together to keep pushing this state along because it is a great state.

## DETENTION CENTRES

**Ms BEDFORD (Florey):** While at a recent conference in the ACT, I was able to attend the launch of the Academy of the Social Sciences' occasional paper entitled '100 Years of Women's Politics', edited by Marian Simms, one of Australia's outstanding academics and a noted political commentator. Marian is now in New Zealand after accepting a chair at the Otago University. Part of the paper talks about the suffrage movement in South Australia, and it also talks about children in detention, as follows:

> . . . Miss C.E. Clarke to remove neglected or orphaned children from the care of the Destitute Board, thus separating them from the aged and the insane. This campaign had led to the formation of the State's Children Council and by 1890 to the establishment of the first children's court in Australia.

After reading that last night, I began to think about the current status of detention centres, and it was coincidental that the Premier made his statement today about what was going on up at Woomera. It made me think that, if in 1885 or 1886 in South Australia we realised the problems of having children incarcerated in surroundings was not helpful to their development, it was sad that we could not realise that today.

I reported to the house some time ago, at the time of the Beedar case in the Supreme Court, where the mother and family were very distressed when the son was sentenced. I spoke of knowing the family personally. I have since spoken to Mrs Beedar as I knew about her experiences in escaping Afghanistan; how she carried her three children across the mountain ranges and had to leave one behind a rock overnight because she could not carry all three across a certain part of the terrain; and how she returned the following day to collect the child; of how they came to Australia and how difficult it was for them to establish themselves and find employment.

I also remember being involved in trying to assist when the children were being bullied at school, not only by students but also she felt by teachers and staff. That was a sad time for them. We now know that their son became a drug addict who is now in gaol for a serious violent crime. The matter is up for appeal, so it is best that I do not comment on that situation except to say that you wonder what might have happened if life had been different for this young man in his early and formative times. I do not know what will happen with the situation at Woomera, but I sincerely hope that some remedy can be found in the short term.

I go back to the conference in the ACT at the time of the Centenary of Women's Suffrage. The occasional paper talks about the wonderful work that went on to achieve the vote. It also refers to the militancy of the movement in the UK and America where they think that, perhaps because we did not have to struggle so hard in Australia to achieve the vote, we did not appreciate what we achieved. In fact, they say that we were given the vote as the men were involved in making sure that suffrage was granted to us. They draw interesting comparisons about how women fought battles in the UK in perhaps a violent way. It leads me to think about how we might achieve things these days and how might be the best way to get your point across without being violent, or how you attract attention to your viewpoint if no-one is listening.

I refer to what happens in the detention centres and even the plight of our own David Hicks who is incarcerated in Cuba, where no-one wants to take very much notice of what is going on with his set of circumstances. How might we draw attention in order to work through these things? I hope that David Hicks and his family somehow will be able to receive help from the federal government in the not too distant future and that he may be returned to us to go through some sort of judicial process to work out the rights and wrongs of the way his case has been handled and how in the future we might do our best to prevent any Australian citizen being detained in such a way without any assistance.

## ROADS, REGIONAL

**Mr VENNING (Schubert):** I have been a member of this parliament for over 12 years, representing a rural electorate and rural people. I have attempted to be a strong advocate for rural infrastructure and services, particularly roads and rail, the provision of water, and all those other things that people living in Adelaide take for granted. The savage cuts to the state funding of regional roads is of grave concern to me, to my constituency and to country people generally. They will certainly have an impact on road safety in the future for rural communities. For the sealing of major unsealed rural arterial roads there was a $77 million 10-year plan under the previous government, and last year $12.4 million was to be spent on the program.

The Liberal government would have allocated $8.25 million for the sealing of six arterial roads: Hawker to Orroroo; Booleroo Centre to Jamestown; Burra to Eudunda; Lucindale to Mount Burr; Morgan to Blanchetown; and Elliston to Lock. There has been a spending cut to only $2.8 million this year under the Labor government, which will not achieve much at all. It is a disgrace. It is an erosion of our road assets. I cannot believe that we can see a reversal of a trend such as this. With registrations of motor vehicles rising as they are, I cannot believe that this can happen. I drive my little Mini Moke about, and it costs me almost $400 to register that. You could put up with this if you knew that it was going into road infrastructure.

This government trumpets loud and clear about the money going towards road safety, but here we see quite clearly that the government has changed priority; it has taken all its money away from all these roads. Country people need more motor vehicles than city people because they do not have the option of taxis, buses, trains, etc. A motor vehicle is all they have. Often in the family there is one vehicle per each member of the family of driving age. Certainly, they are paying a higher impost.

We see the deferment of the Morgan to Blanchetown and Lucindale to Mount Burr projects. In relation to agreements with the Jamestown and Goyder councils, in a payback situation, a previous commitment is now not being met. The decrease in funding will lead to major delays in the completion of the program. This is a grave disappointment for rural communities because there was a great expectation out there that things would happen with the roads, particularly under the previous government and the previous minister (Hon. Diana Laidlaw), and particularly with the sealing of the Morgan to Burra road.

That was a $19 million project, and country people were saying, 'At last we have a government that is being fair and equitable.' Now these hopes are being dashed, because we are right back to total neglect, where we were prior to 1993. The government has forgotten us completely. Under the new Labor government, the Regional Roads program's funding has been cut from $2.2 million to just $700 000. A four year program shared with local government, involving four regional roads, has now been scrapped. This is an obvious change in policy direction away from regional South Australia.

Only two of the roads will receive funding in 2002-03: the Lower Eyre Peninsula District Council will receive $300 000 for the Bratton Way road instead of $728 000, a cut of more than half; and the Copper Coast District Council will receive $400 000 for the Wallaroo bypass. Two of the roads that have had their funding cut are (under the Mallala District Council) $622 000 for the Dublin road and, one that is pretty close to home, the Port Pirie Regional Council will not get $450 000 for the Koolunga to Brinkworth road; that has gone completely. For those who know the roads in the north, that particular piece of road is the only piece of unsealed road left in a corridor running all the way from Two Wells right through to Blyth and Redhill.

It was natural enough to expect that that piece would be sealed but, now, not so. I congratulate the Port Pirie District

Council for what it has done. It has done its share: the road is sealed now all the way from Koolunga right through to Redhill and also half way down to the boundary of the two councils. I take my hat off to the council, but not to the current government.

We have also had big cuts in tourism roads grants, which will be of detriment to all the infrastructure in the country region. This is the message that the government is putting out there. We wonder what it will do in the next two or three years, and we hope that it will see the folly of its ways.

## DRUGS

**Mr HANNA (Mitchell):** I wish to make a few remarks today about drugs, in the light of the communique from the South Australian Drugs Summit 2002, which was released one or two weeks ago, following the Premier's highly successful Drugs Summit. As the Premier described it, it was one of those rare occasions where members of the community, experts, professionals and politicians came together in a bipartisan forum to work out ways of dealing with one of our community's most difficult challenges.

There was a focus on illicit drugs, particularly amphetamine related drugs, and I must admit that I was concerned that there might be an undue focus in that regard, since there are so many problems which arise from licit and other kinds of drugs. I was also concerned that there might be an undue focus on prison sentences as a means of solving all the problems that might arise from drug abuse. But, in fact, the communique reveals that the complex problems were worked through in a very comprehensive and intelligent manner.

I want to highlight a couple of the recommendations that came out of the summit. I preface my remarks by saying that, when we talk about drugs, there is a very great danger in lumping all kinds of drugs under the one heading because the implications and the consequences of using licit and illicit drugs, highly addictive and slightly addictive drugs, highly intoxicating and slightly intoxicating drugs are very diverse. So, it will necessarily be an overview that I give in the few minutes that I have—and I do not mean to be misleading by making generalisations. I wish to highlight just a couple of points.

There was a recommendation as follows in relation to the treatment, education and rehabilitation of adults and juveniles in custody in South Australia:

> The following services need to be resourced up to the standard of national best practice:
> · psychological services
> · mental health services
> · drug substitution education, training and vocational services.

That was strongly supported by the summit. Recommendations were also made in relation to young people specifically; the notion of building up resilience, self-respect and respect for others was highlighted in the findings and recommendations of the summit, and that is to be applauded. It is about demand management and understanding addiction rather than focusing on punishment, which often has a counterproductive effect.

I also want to highlight one other aspect in the brief time that I have. There were recommendations that some members might find startling. I quote:

> The working group recommends that consideration be given, on the basis of current evidence to:
> · heroin trialling
> · safe injection rooms
> · ecstasy testing (Dutch model)
> · extension of these approaches to other addictive illicit drugs, as part of a holistic approach to treatment and wellbeing.

The rationale included: harm minimisation and a demand reduction approach, which complements supply reduction; treatment of medical condition as the most appropriate response in some instances; reduction of property-related crimes; elimination of organised crime drug provision to heroin addicts; and incorporating addicts within reach of integrated treatment options. These findings and recommendations were given strong support by the summit. As I said before, there was a truly wide representation of different aspects of the community, both what you might call every day members of the community as well as the so-called experts. The focus on harm minimisation, turning lives around and, indeed, saving lives is, in my view, to be commended. The ball is now in the court of our state Labor government to see what action it will take to progress these measures and, at least in one respect, building on the useful select committee into heroin trialling of the previous parliament.

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## MINISTER FOR TOURISM

**Mr HAMILTON-SMITH (Waite):** I seek leave to make a personal explanation.

Leave granted.

**Mr HAMILTON-SMITH:** Earlier today the Minister for Tourism referred to remarks I had made regarding compliance with the ministerial code of conduct. I wish to explain some facts so that the house is clear on what happened. The opposition was approached by the ABC late last night with a copy of the register of members' interests primary returns tabled by the Speaker yesterday in the house. That document lists the Minister for Tourism as having an income source in Adelaide Pathology Partners and a directorship of that company and indicates that that is a directorship and source of income for the next 12 months. That was tabled yesterday, 13 August. The ministerial code of conduct came into force on 1 July. The opposition was asked to comment and did make comment on the facts before it. The minister subsequently advised the house that she has sold that interest, and I note that. In retrospect, I am aware that the information tabled in the house yesterday was inaccurate. I note that clauses 5 and 6 of the Members of Parliament (Register of Interests) Act indicates that—

**Mr SNELLING:** I rise on a point of order, sir. The member is going over again the allegations which he falsely made this morning against the minister. This is not a personal explanation at all; he is simply revisiting allegations which he falsely made.

**The DEPUTY SPEAKER:** Order! I have the thrust of the member's alleged point of order. I do not believe there is a point of order. I am listening very carefully to the member for Waite. It is a personal explanation and he should not stray into debating the issue.

**Mr HAMILTON-SMITH:** I am acknowledging and noting the minister's correction of the facts and I am drawing to the attention of the house that the facts presented yesterday are different from those related by the minister today. The facts related yesterday were quite different; however, the minister has clarified the facts today, and I am bringing to the

attention of the house that the act requires or offers the opportunity for members to correct the information on the register of interest if it has changed. In this case it has changed, and the minister has notified that today. Had that been done before the register was tabled yesterday, the ABC would not have come to us and the matter would not have been raised.

## ECONOMIC AND FINANCE COMMITTEE: AUDITOR-GENERAL'S DEPARTMENT

**Ms THOMPSON (Reynell):** I move:

That the 39th report of the committee, on questions raised in the Legislative Council relating to the Auditor-General's Department, be noted.

You are no doubt aware, sir, that pursuant to subsection 16(1)(b) of the Parliamentary Committees Act 1991 a matter that is relevant to the functions of the Economic and Finance Committee may be referred to the committee by the Governor by notice printed in the *Government Gazette*. On 20 December 2001, pursuant to this section and with the advice and consent of the executive council, the Governor referred to the Economic and Finance Committee the matters raised in a motion in another place on 28 November 2001 relating to the office of the Auditor-General. The chronology of events which led to this is as follows. On 28 November 2001, members in another place voted to support a motion that the Auditor-General respond to questions about the operation of his office.

On 12 December 2001 the committee received correspondence from the Auditor-General requesting the opportunity to appear before the committee at its meeting on 18 December 2001 'to deal with the matters of public importance to the parliament and to the government that have arisen and that, in my opinion, should be addressed as a matter of priority.' Subsequently, it was determined that these matters related to the motion in another place.

At its meeting on 18 December 2001, the committee resolved to invite the Auditor-General to appear before it to discuss the issues raised in his letter. In his evidence to the committee, the Auditor-General indicated that the motion in another place on 28 November 2001 failed to distinguish between the matters of legislative audit independence and auditor accountability, as follows:

The entire debate in the council was based on the premise of auditor accountability. It took no account of the constitutional principles associated with independent audit concepts.

The Auditor-General indicated that the principle at stake is the difference between auditor accountability and audit independence. The Auditor-General sought to appear before the committee because he was firmly of the view that the Auditor-General's accountability is to the parliament, and the parliament itself has established, through the Parliamentary Committees Act, a process whereby the parliament can exact the accountability necessary from all public officers, including the Auditor-General.

The procedure of requiring accountability through the Economic and Finance Committee affirms the longstanding acceptance that in the performance of his duties the Auditor-General is not only independent of the executive arm of government but is also not subject to the direction of one house of parliament. In short, the Auditor-General felt that the appropriate processes had not been followed in relation to the motion in another place. Further, the Auditor-General sought to access the Economic and Finance Committee as the appropriate mechanism for providing the information sought in that motion.

In the period between the Auditor-General's request to appear before the committee and his actual appearance, a meeting between the Premier, the Treasurer, the Attorney-General, the Crown Solicitor and the Auditor-General occurred at which it was agreed that the Governor in Executive Council would direct to the committee a referral to seek answers from the Auditor-General to questions raised in the motion in another place. Because of this agreement, and out of courtesy to the Governor, the Auditor-General did not provide the answers to the committee at his appearance on 18 December 2001. However, he did canvass the issues relevant to auditor accountability and audit independence and, in particular, the mechanisms by which accountability should occur in order to maintain audit independence. In the interim period the 49th Parliament was dissolved. However, the newly appointed Economic and Finance Committee of the 50th Parliament resolved to seek a response from the Auditor-General. As a result, this report, the committee's 39th, contains the Auditor-General's response to the questions posed in another place on 28 November 2001 and referred to the committee by the Governor.

While this process has been tedious, it has been an important exercise for the following reasons: first, to reaffirm awareness of the subtle but critical distinction between auditor accountability and audit independence; second, to highlight the appropriate mechanisms to utilise when ensuring audit accountability in order to maintain and protect audit independence; and thirdly, to provide the house, in the appropriate manner, with the answers to the questions raised in relation to the office of the Auditor-General.

In this speech so far I have only canvassed the issues of procedure in relation to the accountability of the Auditor-General and the processes whereby this parliament can ensure proper relationships and scrutiny of that extremely important office. I have made no reference at all to the questions that were posed firstly by an individual member and then, on his motion, by the whole house in another place, nor have I in any way commented on the answers. I do not feel that it is the role of the Economic and Finance Committee to comment on matters when a member of this house or, indeed, a part of the parliament, seeks to have dialogue with the Auditor-General. It is our responsibility in this instance, where the response is supplied and is included as attachment 1, to simply make available this information to the parliament and thereby to the member and the members who first sought that information.

Motion carried.

## ENVIRONMENT, RESOURCES AND DEVELOPMENT COMMITTEE: HILLS FACE ZONE

**Ms BREUER (Giles):** I move:

That the 46th report of the committee, on the Hills Face Zone, be noted.

The first time the Hills Face Zone was introduced into South Australian planning policy was in the landmark 1962 report on the metropolitan area of Adelaide, prepared by the most esteemed Stuart Hart. The original intention of the Hills Face Zone was to define an area which was unable to be easily serviced with water supply. What we have gained since is the opportunity to provide the scenic back drop to the City of Adelaide which includes significant areas of native and introduced vegetation and a wide range of land use activities.

Today the Hills Face Zone, which is 70 per cent privately owned and 91 kilometres in length, simultaneously provides a number of vital roles for metropolitan Adelaide, including catchment for Adelaide's water supply, farming pursuits, industry, residential housing and tourism. Perhaps most importantly, the Hills Face Zone is an attractive, semi-natural back drop to Adelaide and the plains that has been described as the lungs of the city. It has an environmental quality valued by South Australians and it is widely accepted that it needs to be preserved.

Despite this, many potential housing sites still remain within a zone that is a sought after residential location. As such, the way in which the development policies are drafted and enforced will have far-reaching consequences. Several development plan amendment reports relating to the Hills Face Zone have come before the committee in recent years and, whilst the specific goals are generally achieved, the committee feels the longer-term strategic objectives stated in the development plan are being compromised.

The development plan objectives outline the need for the Hills Face Zone to remain a beautiful, natural back drop to Adelaide and the plains. The policy emphasises the preservation and enhancement of this character while accommodating existing low intensity agriculture and open space. It is the view of the committee that, despite the best efforts of many to maintain a healthy balance, the Hills Face Zone is not being consistently used or conserved in line with these stated objectives. For example, despite the development plan indicating that the Hills Face Zone is not a residential zone, large, conspicuous houses are being built and extended which are eroding the zone's visual landscape. Photographic examples in the report suggests that the current development controls do not adequately protect the Hills Face Zone from development, which is contrary to the stated objectives and principle of development control.

The committee found that inconsistency exists in the assessment of development applications and in the enforcement of development controls and unauthorised development by both local government and the Development Assessment Commission. Indeed, the requirement to remediate sites which have illegal development is very uncommon, despite applicable legislative tools being available under the Development Act 1993. There needs to be regional consistency in the assessment of development applications, the enforcement of breaches of development approval and action against illegal development.

The committee was of the opinion that an increase in certainty for all interested parties could be achieved via a number of routes, including more specific controls in the development plan and/or the Hills Face Zone being the subject of its own legislation. As such, the committee recommended that a number of legislative and non-act based administrative arrangements should be contemplated. The committee has also recommended that the Hills Face Zone be administered by a single regional assessment panel with delegated authority from councils or as determined by regulation.

Additionally, the committee recommends the minister, in conjunction with the Local Government Association, instigate a process to improve enforcement of illegal development, including remediation and development approval conditions. The committee is of the opinion that a number of policy changes to the Hills Face Zone need to be considered, either immediately or through the development plan section 30 review process.

Any plan amendment report policy changes need to be consistent with the planning strategy and, as such, the committee believes that the planning strategy needs to provide a more detailed consideration of the Hills Face Zone which should result in further policy expression to address a number of issues.

One consideration should be the removal from the non-complying list of development of double storey dwellings. The development plan opposes two-storey and two-level houses, yet expert evidence from local government and the Development Assessment Commission suggests that on steep sloping blocks split level homes are often the best way to reduce site cut and fill.

The committee also supports the consideration of policy areas, a common policy mechanism in development plans which facilitates more diverse and locally responsive policy for land within a single zone. For example, central councils are more concerned with viewscape issues, while these concerns are not such a high priority for councils to the north and south. While the policies in the Hills Face Zone are protecting the viewscape, adjacent areas may be compromising the objectives of these policies. Accordingly, the committee is of the opinion that viewscape issues should not be confined to the Hills Face Zone only. Many adjacent areas impact on the presentation of both the Hills Face Zone and the overall backdrop to the city, and these areas need to be identified and considered.

This approach was favoured by the committee over consideration of large scale changes to the Hills Face Zone boundary, as it is commonly recognised that such Hills Face Zone changes would not be accepted by the community. However, the committee believes that a number of possible minor boundary changes could be considered, and recommends that such changes be assessed by state and local government in conjunction with the community.

In terms of understanding the requirements of the development plan, the committee found that people who purchase a block of land in the Hills Face Zone have an expectation that it can be developed, often completely unaware of the applicable controls and possible land uses that can occur in the immediate locality. This expectation raises pressures on authorities to allow a development for social, political and economic reasons. Potential purchasers of land must be made aware that they do not have automatic development rights and that land uses surrounding the property will vary with differing impacts.

Thus the committee has recommended that the minister should implement a buyer beware mechanism that alerts potential purchasers of real estate to applicable development controls for the property and the surrounding area. Notice prior to sale would help address expectations that any site development could occur or that there would be no impacts from other local development. Additionally, development that is more sympathetic to the objectives of the Hills Face Zone can more effectively be achieved by informed owners, planners and developers.

Education needs to be extended to all participants regarding inappropriate development that would be considered contrary to the development plan. The committee recommends that the minister undertake a broad education program with owners, administrators, planners and developers to enhance awareness of the role and function of the Hills Face Zone.

In conclusion, I thank the following people who assisted with this inquiry: those who made submissions and gave

evidence; both the former minister for transport and urban planning and the present Minister for Urban Development and Planning and their staff; and the committee staff. The committee believes that parliament needs to take a strong interest and leadership role in managing the Hills Face Zone to ensure that both South Australians and visitors to our state can continue to enjoy the special natural character of the zone.

The pressure for development of the Hills Face Zone is increasing and will continue to do so in the foreseeable future. As such, the preservation and enhancement of the Hills Face Zone natural character, whilst allowing existing low intensity activities, is more than ever paramount. Policy implementation has not always been successful, with the attrition of the zone evident to both residents of and visitors to Adelaide and the plains. The objectives for the Hills Face Zone must again become central in the development decision process, and it is hoped that the recommendations listed within the report suggest alternatives for the minister to explore.

I acknowledge the former chair of the ERD Committee (who is here today) for his work in the preparation of this report. To do nothing is an option that would see the accelerated attrition of the hills face zone and the gradual loss of one of South Australia's most wonderful and valuable assets; to take action is to make an important investment in Adelaide's future. I look forward to the minister's response to this report.

**Mr VENNING (Schubert):** I congratulate the new Chairman of the ERD Committee, the member for Giles, for getting off to a good start, and I thank her for her kind remarks. This is a very good committee which I had the honour of chairing for six years. This briefing was begun under the previous committee, and the current committee has finished it off very well. I also congratulate the new members of the committee. I think they have a challenging job but, if they get on as well as we did, I am sure they will have a very meaningful and valuable time in experiencing the parliamentary process in a very different way, particularly where, hopefully, there are no politics, no personal chagrin and a very apolitical stance. I also pay tribute to the staff of the ERD Committee: Mr Knut Cudarans and Mr Steven Yarwood, with whom I enjoyed working, and Mr Phillip Frensham, who also had an input into the committee.

I think the matter before the house is very relevant, and I hope that things settle down for the new committee because it has a valuable role to play. I appreciate the bipartisan support given by the current chairman. I am only too happy at any time to give advice on this reference or any other that comes before the committee. I am aware of the argy-bargy that goes on in this chamber, but I appreciate the work that we can do collectively on committees. I congratulate the committee, I fully support this motion, and I wish the committee all the very best in the future.

Motion carried.

## PUBLIC WORKS COMMITTEE: NORTH TERRACE REDEVELOPMENT

**Mr CAICA (Colton):** I move:

That the 179th report of the committee, on the North Terrace Redevelopment—Stage 1, be noted.

The Public Works Committee has examined the proposal for the North Terrace redevelopment—stage 1 project. In February 2002 the Public Works Committee (in an interim report) reported to parliament on the North Terrace redevelopment—stage 1 project. This report detailed a proposal to improve facilities along both sides of North Terrace between Kintore Ave/Gawler Place and Frome Road/Street, portions of University of Adelaide and University of South Australia land on the northern side of North Terrace, and the area between Gawler Place and Rundle Mall.

At that time, the committee was told that the budget for the project was $16.386 million with the state government providing $8.193 million and an additional $500 000 to be held as a project expenses liability cap. The committee had significant reservations about the project when the interim report was tabled, including: the choice of spotted gums to replace a number of existing trees along the northern side of the carriageway; the removal of large sections of lawn from the road reserve and its replacement with granite paving; the nature and extent of the community consultation conducted in relation to the project; and the aesthetic impact of LED message boards to be integrated into the landscape.

In July 2002, the committee received further evidence relating to the proposal which contained several amendments to the original plan. The committee was told that in June 2002, following a reduced financial commitment by the state government, a revised stage 1 was identified as the area generally between Kintore Ave/Gawler Place and the eastern side of Pulteney Street. The Adelaide City Council has agreed to match equally funding for the revised stage 1 areas.

The revised proposal excludes the following elements from the original plan: the War Memorial forecourt; the area from Gawler Place to Rundle Mall; the section of North Terrace between the Pulteney Street intersection and Frome Road (including portions of University of Adelaide and University of South Australia land on the northern side of North Terrace); alterations to the street frontages of the University of Adelaide grounds; and the water feature at the corner of Frome Road and North Terrace and a major lighting installation in front of the Ligertwood Building.

In response to the committee's concerns contained in the interim report, additional community consultation was held in April and May 2002, involving two advertised public displays on North Terrace, questionnaires for visitors to the displays, focus groups and market research.

In response to public opinion, and in consultation with the Adelaide City Council, English elms will replace the proposed spotted gums on the northern side and the plane trees on the southern side of North Terrace. Lawned areas on the northern side have been extended twice, initially in response to the committee's concerns and again when public consultation showed a majority in favour of a further increase. LED messages will be situated adjacent to the Art Gallery and will consist of four pillars facing south, ensuring that they are neither visually intrusive nor unsafe for vehicular traffic.

The committee was also told that more trees on the northern side of the carriageway have been nominated for protection, namely, a large plane tree situated within the State Library forecourt, three pittosporums adjacent to the inner footpath within Goodman Crescent and two plane trees adjacent to Bonython Hall. The total cost to the government of the revised stage 1 project is $6.193 million, comprising the $6.125 million contribution to the joint project and $68 000 for public consultation and associated design changes. In addition, the council has committed a further $2.068 million to undertake additional works adjacent to the shared funding area of stage 1 described above.

The committee has been advised that construction is expected to commence in November 2002 and will be completed in June 2004. The committee has been told that a deed of conditions of grant will formalise the responsibilities, obligations and relationships between the state government and the Adelaide City Council in undertaking the shared scope of stage 1. The deed transfers responsibility for implementation of the agreed works to the council, with the state government providing its half share of the project cost through quarterly reimbursement of actual expenditure up to the grant cap of $6.125 million.

The committee accepts that redevelopment of North Terrace Boulevard is necessary and that the proposal as presented does, in the main, provide an effective and appropriate plan for the enhancement of this significant cultural precinct. However, the committee does have concerns about aspects of the proposal, such as the LED displays to be erected adjacent to the Art Gallery. The committee notes that they will be primarily used to provide an interactive and distinctive interface with the cultural institutions along the terrace. However, on the information presented to it, the committee is not convinced that the LED displays are consistent with the heritage character of North Terrace. Further, the committee is concerned that the proposed pedestrian lighting plans, involving a combination of universal poles along the roadside and shorter contemporary lighting poles adjacent to the inner walkway, to be incorporated alongside existing heritage-style lighting facilities, are inconsistent with the heritage character of the precinct.

The committee notes that the proponents considered the possibility of stormwater re-use systems being incorporated into the North Terrace redevelopment but rejected them for logistical, cost and horticultural reasons. The committee is disappointed that more intensive efforts to resolve these problems were not pursued and recommends that with future proposals the capacity for stormwater retention and re-use be thoroughly investigated and, where appropriate, implemented.

The committee notes with disappointment the approach of the University of Adelaide regarding the revised plans to retain the wall separating the university from the North Terrace road reserve and the retention of three pittosporums in Goodman Crescent. The committee is of the opinion that neither the wall nor the pittosporums are sufficiently important to warrant their retention and the consequent obscuring of the facades of and access to the university, which in the committee's opinion is the primary reason for the whole redevelopment project.

The committee is concerned that no consideration appears to have been given to moving the statue of King Edward VII at the corner of North Terrace and Kintore Avenue, or to ameliorating its obstructive impact on pedestrians by removing the plinth. Further, the committee is concerned that in a project seeking to expressly enhance the cultural significance of the boulevard no consideration was given to incorporating an acknowledgment of the prior occupation of the North Terrace precinct by the Kaurna people.

The committee notes that the proposed redevelopment will bring an aesthetic consistency to the stage 1 zone. To augment this, the committee encourages cooperation between the Adelaide City Council and private building owners on the southern side of North Terrace to ensure that private street frontages, including potential renovations and/or commercial signage, are consistent with the redevelopment. Pursuant to section 12C of the Parliamentary Committees Act 1991, the Public Works Committee recommends the proposed public works.

**Mr VENNING (Schubert):** I rise to support this motion. I have appreciated being on this committee in order to support the member for Colton, who has got off to a very good start as its presiding member.

*Members interjecting:*

**Mr VENNING:** I am happy to be quite impartial about that. The member has certain talents, and one of those is cooperation to get the best out of members. After being the chairman of the ERD Committee for six years, the change to the Public Works Committee has been an enjoyable and interesting one. I was not happy at the time I got drafted, although the change has been quite refreshing and interesting. The committee has settled down very well and is doing what it is supposed to do: that is, to sit in judgment on public projects in excess of $4 million, and to do this in a bipartisan sort of way, keeping out the politics. However, if politics do become involved, we discuss them openly. I think we will have a very interesting and rewarding time together, and, hopefully, serve the parliament well.

An interesting reference has been the North Terrace redevelopment, a project sourced with the previous government, but which has now been pruned as the member for Colton said. I welcome the redevelopment. As you walk down the terrace, as the committee members did, and use your critical eyes, you will see things that you have not seen before. We have all grown up with it and have come to accept it like it is, but when you see it with critical eyes, you can see glaring anomalies and problems, and you will notice what you have not noticed before.

The trees, mainly plane trees, are certainly all over the place. They are at a different stages of pruning, all of different heights and all of different ages. Other types of trees are not in fitting with either the streetscape or commonsense with respect to raising the pavement or dropping leaves, etc. Some are placed in an inconsistent line by the road, and some are back by the buildings. There are several different types of lighting along there, and it is inconsistent.

The statue of King Edward VII stands abutting onto the footpath and is really in people's way. There are several different types of paving of all different qualities, generally in fairly rough condition, and that is probably one of the worst things. There is very little consistency in relation to the signs in North Terrace. As the member for Colton has just said, Stage 1 is a $6.193 million project, and involves quite extensive works. I will not list them all, but I highlight particularly the upgrade of the South Australian Museum, the State Library and the War Memorial forecourt spaces, which is state government owned, and the upgrading of Gawler Place to Rundle Mall and part of Kintore Avenue, which is Adelaide City Council's responsibility. Also, there is the upgrade of North Terrace reserve between Kintore Avenue, Gawler Place and Frome Street, which again is Adelaide City Council's responsibility, and portions of the Adelaide University and the University of South Australia—land forming part of the 25 metre dual footpath area on the northern side of North Terrace. Obviously this is a joint project with the Adelaide City Council and I believe that the two levels of government have got on pretty well.

As the member for Colton said, we did highlight several concerns in our investigation. The one that comes immediately to my mind is the LED display, a very modern fandangle construction of an electronic high tech totem pole which was

to be built somewhere in front of the art gallery. Certainly, it is not in character with North Terrace at all. In fact, I cannot believe that this could be considered in a precinct that is very much period Adelaide; it would be way out of character. I also question its value to the people, because it would have to be studied hard to work out what it was trying to tell you. Even though we have seen the pictures that have been provided of the lighting, we are still not happy because particularly the smaller, lower heritage style of light is not heritage—in fact, I think that style of light is still out of character with the precinct.

This committee has taken particular interest in the question of stormwater retention in respect of all these projects, because it is a major problem and one that moves from suburb to suburb, and problems end up in the Patawalonga, Barcoo, the Torrens and so on. In projects such as these the committee will always consider stormwater retention and the use of stormwater on the project site. There is no reason at all why some of the water cannot be retained, particularly under gravelled areas and areas where the water can be funnelled in. If there were a reserve, it could be pumped out and reused during the summer months.

When we went down by the university, we noticed the wall and the pittosporum trees. We are all tree lovers on the committee, particularly the members for Norwood and West Torrens. The pittosporums, which are not very romantic or glamorous, are out of character and should go, as they hide a wonderful streetscape and the magnificent facade of these buildings, and so I would happily see them go.

Regarding the King Edward VII statue, it was obvious to the committee that the plinth at the bottom could be cut, creating a further two metres of footpath. Its removal would be extremely expensive. The Public Works Committee, which comprises generally pretty ordinary people with a lot of commonsense, can see something that perhaps an architect cannot. The project engineers supplied the committee with samples of the pavement, and it will be a beautiful green.

**The Hon. R.B. SUCH (Fisher):** I would like to make some brief comments. I questioned whether we needed to spend a lot of money on upgrading North Terrace. One of the big issues is the amount of traffic that flows through North Terrace, but no-one seems to have come up with a solution.

I would like to draw attention particularly to the question of the trees. I am a lover of trees, and on my own property I have both exotics and natives. Some of the discussion that has revolved around this upgrade I think has been based largely on ignorance. The spotted gum (eucalyptus maculata) has been portrayed as some sort of baddy or public enemy number one, which is quite inaccurate and quite unfair, because that tree is represented in the Botanic Gardens, and no-one has had a problem coexisting with those magnificent eucalypts. Some bad press has been given to that species, and I think probably some people confuse it with its close cousin, the lemon-scented gum (eucalyptus citriodora), which does have a habit of dropping the odd bough or three.

I am not arguing that there should be native trees all along North Terrace; I think that would be silly. Someone asked me the other day whether the jacaranda is a native tree. Well, it certainly is, coming from the mid-north coast of New South Wales, and North Terrace has one or two magnificent specimens. If any member has the opportunity to travel to South Africa, Pretoria has 8 000 jacarandas as street trees, and they are a magnificent sight. So, there has been a bit of misrepresentation of the poor old spotted gum.

I point out to members that there are close to 900 species of eucalypts alone before you even get into other categories of natives. People need to broaden their horizons a bit and not just think of one or two candidates for planting. There are some magnificent specimens with all different types of leaf formations, colours, and so on. We need to move beyond the one or two trees that were focused on 10 or 20 years ago.

With regard to the issue of what trees to plant, the member for Schubert referred to stormwater. One of the unfortunate consequences of planting cold climate trees is that they are very bad for creek and riverine environments. I have been trying to influence the Adelaide City Council to bear that in mind, because it reaps the whirlwind every year in the Torrens Lake. The trees do tremendous damage, as they kill a lot of the aquatic life. They are very much unlike the warm weather indigenous tree leaves that we have here. It is not simply a question of my being anti-exotic, because they can be grown in places where their leaves will not end up in the waste water streams and creeks—and in this case not in the Torrens.

If members have any doubts about that advice, they should talk to Dr Tim Flannery, the Director of the Museum. He shares my view on this issue that we need to bear in mind the consequence for aquatic life of planting cold climate trees such as plane trees. Plane trees can be magnificent trees, and we can see them in Frome Road. However, there is a danger that Adelaide will become hooked on plane trees. (They are sometimes called London plane trees, and there is also an eastern plane tree. Indeed, there is a lot of confusion about the difference between the two—if there is any.) The big issue I raise is whether we want Adelaide to look like an Australian city or just like another cloned European city.

We still suffer from an ecological cringe here, just as we have in the past in relation to other activities. We should seek to make Adelaide retain—in its streets as well as in its parklands—some distinctive aspects which to tourists will identify us as being an Australian city and not just a replication of something they can see in other places of the world.

I read recently that in the parklands it is believed that only three significant trees remain from the early days of European settlement. If that is correct, that is an appalling statistic—and I have no reason to doubt it, because it was one of the officers of the Adelaide City Council who provided that statistic. There are supposedly only three significant trees in the parklands from the days when Europeans were let loose in this country. The pioneers did a lot of good things, but they also did many things out of ignorance or lack of understanding. However, we do not have that excuse anymore.

I would not have rated this project as a top priority. However, given that it will happen, let us make the most of it. It is a pity that we could not have had a bit more Australiana in terms of the vegetation on North Terrace, although not exclusively so. I was very disappointed when the National Trust I believe betrayed its charter further up on North Terrace and undertook the chainsaw massacre in a vain attempt to do something in relation to Ayers House. That got a quick community reaction, but it was too late to save some of the magnificent trees that it destroyed.

I hope this project adds to and enhances the good aspects of our city. We are all proud to live here. We can always make it better. I hope that we can use some imagination without being silly in some aspects which, as the member for Schubert pointed out, would be inappropriate on North Terrace. But I ask members, the wider community and, in particular, the councils, including the Adelaide City Council,

to think seriously about their street tree planting programs. I commend them for what they do in the parklands but point out that in respect of our tree scape in the City of Adelaide, we are looking more and more like a replication of Europe rather than a part of Australia.

**Dr McFETRIDGE (Morphett):** I have a few words of encouragement to the committee to continue their good work. North Terrace is a heritage boulevard, and I remember walking from the railway station to Adelaide University on many occasions, both in the rain and on very hot days, and appreciating the shade and protection from the trees that were there. Plane trees are certainly not plain, and I noted one of the concerns in the report was that the spotted gum—corymbia maculata—will provide significant shade cover to pedestrians as they mature. I am not sure whether that is as the trees mature or the pedestrians mature, because I would have thought that it would take a fair while to get significant amounts of shade.

The member for Fisher is right when he says that we should not shy away from putting Australian trees, eucalypts as well as other native species, there to give a little bit of an Australian flavour. The current paving needs upgrading in some way, but replacing it with green granite, or I think it was slate of some sort, is not as desirable as was initially thought. I think the extensive paving that I was told about would have been a nightmare for pedestrians in summer.

It is important that we retain North Terrace not only as a boulevard, a thoroughfare for both traffic and pedestrians, but also as a sanctuary for people coming out of the buildings during lunch breaks and other times and wanting to sit somewhere shady with a bit of ambience; and there is nothing like a lawn to give that coolness and ambience. It may cost more to maintain lawn than it does to maintain green granite or slate, but I certainly know where I would rather be on a hot summer's day: sitting on a piece of lawn.

The shelter provided by the trees along there should not be dismissed. I had to walk back from Ayers House a few evenings ago when it was, unfortunately, raining, and trying to get back from there without getting thoroughly soaked was just about impossible. I am not sure what has been proposed, but certainly on the southern side by the buildings some shelter from the rain for pedestrians should be considered.

As to the heritage of the buildings that we have in South Australia—and living in a state heritage listed home myself I appreciate this in a huge way—it is very important that we do not compromise it. It may be European heritage, but let us not denigrate that and try to replace it with something that looks almost plastic, with slabs of concrete being replaced by slabs of granite.

It is important that the committee is mindful of the cost. I am blown away by the $16.386 million that is being spent on these sorts of developments; and that is not to denigrate the fact that we need quality developments. It really amazes me every time I look at budget statements of any sort, whether they are from a committee or from the budget as a whole, how much money is spent. It seems to defy the comprehension of the normal punter out there as to how $16.386 million could be spent on a couple of kilometres of road.

When I go to Paringa Park Primary School—and the house will hear a lot more about that in the next few weeks, as it has in the past—I feel that I would rather spend the money on the Paringa Park Primary School than on North Terrace; but we do need to spend something on North Terrace to tidy things up a bit—it is just amazing that it is $16.386 million. So, I hope the Public Works Committee has done its homework properly and has paid attention to detail (I am sure it has), and I do support this report.

**Ms THOMPSON (Reynell):** I commend the new Public Works Committee on the work that it has done in reviewing this project and I also commend the new minister on his prompt response to the recommendations contained in the report of the previous Public Works Committee. Mr Acting Speaker, you may be aware that the Public Works Committee of the 49th parliament took the unusual step of coming back in the interim period after parliament was prorogued in order to deal with this matter because we considered it to be of such importance.

One of the issues that concerned us was the lack of public consultation. I know that the decision of the new minister to undertake a formal process of public consultation attracted criticism from some members opposite, so I thought that it was important that we explained why we considered the public consultation to have been inadequate up to that time. The original submission to the Public Works Committee identified in the risk management area that the consultation could be one of the risk issues and indicated:

> The principal focus of public consultation for the project has been with major stakeholders. This may lead to some comment about opportunities for broader community involvement. To some extent, this has been addressed through a number of public displays and information sessions where the community have had the opportunity to attend and view the plans.

In the submission, the public displays were detailed. The explanation of 'community and stakeholder consultation and approvals' in this document states:

> At the commencement of the project in 1999, a number of focus groups were held on North Terrace with interested parties invited. These groups resulted in the production of an issues paper updating community feedback on North Terrace.

We learnt later that the community feedback was undertaken in 1994. The committee driving the North Terrace project was relying largely on community consultation undertaken seven years previously for its basis for consultation with the public. The submission to the Public Works Committee of the 49th parliament further states:

> The endorsed concept design was displayed for public information and consultation on the following occasions:
> · Rundle Mall on Friday 17 December 2000; Saturday, 18 December 2000; and Sunday, 19 December 2000. This manned display was preceded by advertisements in publicly circulating newspapers.

There was also a display on South Australia Day, on 4 May in Local Government Week in Rundle Mall, and one panel of the state government major projects display at the Royal Adelaide Show in 2001. It said that a community information display is proposed following the unveiling of the project. The committee undertook considerable dialogue with the various witnesses who came before us on this matter. On 7 November, I think just about every member of the committee raised some aspect of the consultation process with the witnesses. I think that the views of the committee were well summed up by the Acting Presiding Member, the member for MacKillop, who, after considerable discussion with the witnesses said:

> It is this committee's experience that community consultation is not always easy, because it is not easy to get the community to consult with you. It is our experience that, once a project begins, the community starts to see what is happening and at that point becomes anxious about what is happening and what should be happening and

wants to have a say. That occurs quite regularly. The committee would advise proponents of any of these types of projects, particularly with such land considered by the community to be their land, that they need to do everything possible to bring not only the community but also the immediate stakeholders or identifiable stakeholders on board.

We did note that stakeholders, that is, the organisations resident along the north side of North Terrace, had been consulted in the process, but we were very much aware of public reaction to other projects. I believe that the response to the formalised community consultation project undertaken this year clearly justified the committee's concerns and view that a concept plan is not enough for the community to feel that it is worth responding to. The community needs to know what is definitely proposed and have the ability to have input at a stage when there is an ability to change the proposals if they do not reflect the community demand.

The committee did ask witnesses about the scope for change after discussion about the community display. I suppose it would be fair to say that the witnesses did not readily respond to that question. The committee certainly had the impression that, at that time, there was really no ability to change the plan. I personally found that there was an illusion of much green in the concept plan put forward and the photographs in the press gave the community a false sense of security about the proposed plan. When we drew the community's attention to the fact that the shade cover would be much reduced for many years until the eucalypts maculata could grow to provide a suitable shade cover, the community indicated that it shared the concerns expressed by members of the former committee.

I consider the fact that approximately 1 000 members of the South Australian community took the opportunity to have input into the plans for the North Terrace redevelopment indicated just how strongly this community feels about its public icons. It recognised that in the debate on the radio, as well as through that process of 1 000 people deliberately having a say. This community does want to be consulted and it does want to have a say about how its institutions look. I can only commend the minister for being so responsive to organise a simple system of public consultation—not some vague discussion about focus groups of stakeholders, looking back at what people said in 1994 and not giving the community a genuine opportunity to have an input into the plans for the redevelopment of one of our major assets.

I would like, again, to commend the committee of the Fiftieth Parliament for its work. I indicate that I share its concerns about the LED display. I have not been able to grasp the benefit of it and its appropriateness in that location. I understand the minister has been advised that it is a work of art and that he is therefore cautious about imposing his artistic judgment on others. However, I think it is very interesting that there is a common concern among the members of the Public Works Committee about the appropriateness of that display and concern that it is just another large amount of money that may not benefit our community, and I would urge the minister to think again about that. However, I commend the minister very much on his response to the report of the committee of the Forty-Ninth Parliament and wish the current committee well in its continued deliberations.

**Ms CICCARELLO (Norwood):** I will be brief in my comments, because I think that my colleagues—certainly the Presiding Member, the member for Colton—have covered most of the salient points with regard to the redevelopment of North Terrace. I certainly do support the redevelopment but I would like to address a couple of issues. The member for Fisher has made some comments about the trees. I do think that in Australia we are a little precious about the idea that we must have European trees planted on our main roads and that only trees that are symmetrical in shape are appropriate for our streets.

I point out that Norwood Parade has ironbarks in the centre of the road, and we deliberately chose those trees when celebrating the sesquicentenary of South Australia, thinking that it was an appropriate tree to plant in the street. I certainly think it has enhanced The Parade in terms of the beauty of the trees. Obviously we have to take into consideration that beauty is in the eye of the beholder and, while some of us think that those trees are very attractive, others think they are ugly. When I was the mayor of Norwood I had a lot of pressure put on me from certain elements of the community who felt that the trees should be removed, but if anyone comes down The Parade they will see a lot of bird life in those trees. We have the rainbow lorikeets, which live in the trees and add a lot of colour to the street. Don Dunstan made a comment many years ago that it is unfortunate that we think that a tree has to have a very symmetrical shape before it can be considered beautiful.

*Members interjecting:*

**Ms CICCARELLO:** I take the minister's point that the member for Reynell has a fair complexion, but the trees on The Parade provide quite a bit of shade, and maybe the member for Reynell needs to walk around with a parasol to protect her complexion, as did people in the early days of settlement.

**Ms Thompson:** It is still hot without shade.

**Ms CICCARELLO:** I invite the member for Reynell to visit Norwood Parade on a hot summer's day, and she will find that it is an attractive environment to be in. We will not go on with that.

I am a little disappointed with the lack of provision for a separate bicycle path. I asked the architects and planners about a bicycle path because in the early plans I understood that there was to have been a separate bicycle path. That has not eventuated and bicycles will now be sharing a bus lane which, in theory, seems fine. However, many years ago on North Terrace, outside John Martin's, I was hit from behind by a bus, flew about 35 metres and was badly injured. It was about three years before I got back on a bike.

North Terrace is very much like an obstacle course. We recently had Mr Jan Gehl in South Australia. In his recommendations he agreed that to put people on bicycles in the city of Adelaide almost condemns them to a very uncertain future. I thought it may have been appropriate to use the path just in front of government house as it could have been continued down the length of North Terrace, affording cyclists a greater measure of safety.

The LED display has been mentioned by most of the speakers, and we are a little nervous as to how they might look in the streetscape. My particular concern is with the street frontages. I raised this issue in the committee. It is all very well for us to spend a lot of money improving the road and the footpath but, if some emphasis is not given to the idea that the buildings themselves also need some work on them, the money might be wasted.

Many years ago when upgrading Norwood Parade we put in place some guidelines, particularly heritage guidelines, for the owners of buildings. When buildings changed hands

through sale or when people were looking to upgrade their frontages, they were given the guidelines, and heritage architects were made available to make some suggestions on how they might develop their street frontages so they would take into consideration the history and heritage of the area. With those points, I commend the report to the parliament and look forward to the work commencing very soon, to see one of our principal boulevards upgraded.

**Mr RAU (Enfield):** I will speak very briefly on this. I am very pleased that the minister is in the chamber today, because I know that he is very keen on issues relating to the city of Adelaide. As part of any project to improve the North Terrace area, we have to consider traffic flow issues and, in particular, the fact that the city of Adelaide seems to be a major route for semitrailers and other large vehicles, which should not be coming through the city at all. They should not be coming down North Terrace or King William Street and, if there is going to be any proper development that is sympathetic to the people and to the use of the city as a place where people can congregate and enjoy themselves, traffic issues must be dealt with.

I noted a few weeks ago that the minister was reported as having received a report from some eminent overseas expert on all things relating to traffic, to the effect that the way forward for Adelaide was to have a big ring road system around the inner part of the city, perhaps peripheral to the parklands, similar to those in many European cities. The effect of that would be to divert all major traffic around the city, which would achieve a number of things, not least of which is faster transit from north to south in the city of Adelaide. It would also mean that all this traffic could be removed from the city of Adelaide proper and from North Adelaide, and this would have the other effect that we could get on with fixing up Victoria Square and turning it into a place where people congregate instead of motor vehicles passing through it and having asphalt everywhere.

I know that the minister has been paying great attention to what I have just been saying: I see him making notes. Obviously, he is keen immediately to translate these excellent ideas into action as part of his enthusiastic drive to improve North Terrace and make it a people-happy place, where people from all over the world will want to come to stroll and enjoy the great cultural feasts that are there for all to see. I know he will want to spill that over into Victoria Square, to pull up the asphalt, make it a place where people want to congregate and fill it with magnificent trees—Australian, European or otherwise. I just have this vision, and I am pleased to say that—

**The Hon. J.W. Weatherill:** You have a dream.

**Mr RAU:** I have a dream! I haven't quite been there yet, but I have seen it. I may not get there with you but, at the end of the day, I have seen it. I have seen a beautiful Victoria Square, I have seen a beautiful North Terrace and I have seen a beautiful city of Adelaide, with large unpleasant, smelly vehicles driving some kilometres away around the outside of the city, outside the parklands, annoying the goodness out of everyone out there; and pedestrians, cyclists and other happy souls strolling up and down these magnificent boulevards in the inner city. As the minister nods, I feel comforted and I now sit down.

Motion carried.

## STATUTES AMENDMENT (SUPERANNUATION ENTITLEMENTS FOR DOMESTIC CO-DEPENDENTS) BILL

**Mr SCALZI (Hartley)** obtained leave and introduced a bill for an act to amend the Parliamentary Superannuation Act 1974, the Police Superannuation Act 1990, the Southern State Superannuation Act 1994 and the Superannuation Act 1988. Read a first time.

**Mr SCALZI:** I move:

That this bill be now read a second time.

This bill seeks to amend the provisions of the Parliamentary Superannuation Act 1974, the Police Superannuation Act 1990, the Southern State Superannuation Act 1994 and the Superannuation Act 1988, and to refocus legislation in this important and controversial area of human rights. The aim of this bill is to broaden the eligibility criteria for superannuation entitlements and to reduce discrimination against significant groups of contributors without imposing a large additional cost impost upon future generations. It is of immense importance that we strike the right balance with the reform of this area.

On 6 July and 26 October 2000, the member for Florey introduced the Statutes Amendment (Equal Superannuation Entitlement for Same Sex Couples) Bill into the House of Assembly. As is the case with the bill currently before the house today, that bill also sought to amend the provisions of the Parliamentary Superannuation Act 1974, the Police Superannuation Act 1990, the Southern State Superannuation Act 1994 and the Superannuation Act 1988. In general terms, the member for Florey's bill extended the definition of putative spouse (which defines a de facto relationship between a heterosexual couple) to embrace same sex relationships, and proposed to grant state superannuation entitlements to same sex couples.

The bill would allow the surviving partner in a same sex relationship to receive the same benefits in relation to state superannuation as the surviving partner in a heterosexual relationship. As is the case with the bill before the house today, that bill does not pre-suppose any alteration to other legal entitlements. Under current law in South Australia, same sex partners do not qualify as putative spouses and therefore are not eligible for the same superannuation entitlements as marital or putative heterosexual spouses. The bill introduced by the member for Florey sought to address this perceived inequity between different categories of contributors to the state's superannuation scheme, but it does not embrace all the groups who might claim to be disadvantaged.

Throughout Australia there have been various attempts at reforming this area. In Western Australia under the premiership of Geoff Gallop, the Acts Amendment (Lesbian and Gay Law Reform) Act of 2002 recognised same sex partners as beneficiaries under an amendment to the State Superannuation Act. Similarly, in New South Wales under the Carr government, the Superannuation Legislation Amendment (Same Sex Partners) Act 2000 empowers same sex partners to claim benefits granted by the public sector superannuation acts. In Victoria, under the Steve Bracks Labor government, the Statute Law Amendment (Relationships) Act 2001 recognises the rights of partners in domestic relationships irrespective of gender, and the State Employees Requirement Benefits Act 1979 now recognises a domestic partner as a beneficiary.

In Tasmania the De Facto Relationship Act has not yet been amended. However, the Joint Standing Committee on Community Development Report on Legal Recognition of Significant Personal Relationships recommended 'the amendment of the De Facto Relationship Act 1999 to extend its scope to include same sex and other significant relationships (such as carers)'. It is important to note that carers are recommended by that committee. In Queensland, the Property Law Amendment Act 1999 facilitates settlement at the end of de facto relationships, regardless of gender.

There is no question that as a state we have to legislate in this important area of eligibility. We cannot ignore the need for reform. To date, however, no jurisdiction has broadened eligibility criteria to include relationships other than those based upon sexual relationships. I consider that this approach limits the scope of our attempts to remove real discrimination from such areas. Members might wish to consider some statistics from *Marriages and Divorces Australia 2001*.

Based on the 1997-99 nuptuality table, the average man can expect to live singly for 42 years of an expected 76 year life, while the average woman can expect to live singly for 40 years of an expected life span of 82 years. Clearly, people today must not be viewed as necessarily living in sexual relationships, especially when their whole lifetime is considered. Clearly, entitlements cannot be based solely on such models. A further ramification is that, in a lifetime involving perhaps several changes to relationship status and several significant relationships, pension style entitlements are perhaps less appropriate than the lump sum entitlement which the current bill envisages.

This bill adds to the existing eligible groups of legal spouse, putative spouse and dependent children the wider grouping of domestic co-dependents. The Statutes Amendment (Superannuation Entitlement for Domestic Co-dependents) Bill 2002 put forward today takes a broader perspective on the issue of inequity between different groups of state superannuation members and proposes to extend the superannuation entitlements to all individuals who meet the criteria of domestic co-dependents. The bill provides a definition of domestic co-dependents under clause 7(a) as follows:

(1) For the purposes of this act, two persons, whether of the opposite sex or same sex, were, on a certain date, the domestic co-dependents one of the other if the District Court has made the declaration under this section that they were, on that date, cohabiting with the other in a relationship of dependence and that they—

(a) had so cohabited with each other continuously for a period of five years immediately preceding that date; or

(b) had during the period of six years immediately preceding that date so cohabited with each other for periods aggregating not less than five years.

(2) A relationship of dependence is a relationship between two persons where—

(a) the parties to the relationship care for and contribute to the maintenance of the other; or

(b) one of the parties to the relationship cares for and contributes to the maintenance of the other.

(3) A person whose rights depend on whether—

(a) he or she and another person; or

(b) two other persons

were, on a certain date, domestic co-dependents one or the other may apply to the District Court for a declaration under this section.

In thus defining the eligibility for superannuation entitlement, the bill before you today places the emphasis not upon sexual preference of the individuals concerned but, rather, focuses on their contribution to each other's life. For those who have doubts as to the efficacy of an approach to eligibility based upon the notion of co-dependent relationships, I refer to section 6 of the Inheritance (Family Provision) Act 1972 which provides:

Persons entitled to claim under this act include:

(i) a parent of the deceased person who satisfies the court that he cared for or contributed to the maintenance of the deceased person during his lifetime; and

(j) a brother or sister of the deceased person who satisfies the court that he cared for or contributed to the maintenance of the deceased person during his lifetime.

And is not superannuation a form of inheritance?

Unlike the bill introduced by the member for Florey, the Statutes Amendment (Superannuation Entitlements for Domestic Co-dependents) Bill 2002 proposes to limit the superannuation entitlements of persons living in a domestic co-dependent relationship to lump sum benefits. This option would significantly reduce long-term costs to the state and at the same time guarantee equitable outcomes for members of the scheme.

The bill seeks to insure against undue claims and large additional costs to taxpayers via:

- the five year qualifying period, as under the previous bill, for such relationships to be deemed eligible; and
- the limitation of entitlements, as I have said, to lump sum payouts rather than ongoing pension entitlements.

It is my understanding that these measures should result in the bill being close to cost neutral and, should there be a small cost increase, I believe that such a small increase is justified by the central aim of the bill, which is to address inequities which are clearly evident under the current law.

In conclusion, I recommend that the house consider rejecting the Statutes Amendment (Equal Superannuation Entitlement for Same Sex Couples) Bill 2000 in favour of a new approach to this issue. The bill proposed by the member for Florey, while addressing some areas of discrimination in relation to superannuation benefits, does not embrace all the disadvantaged groups, preventing a significant number of persons in long-term, loving relationships bequesting their superannuation benefits to their loved ones.

In refocussing legislation on the long-term and inter-dependent relationships as the basis for superannuation entitlements rather than the sexual orientation of the contributor, the Statutes Amendment (Superannuation Entitlements for Domestic Co-Dependents) Bill 2002 offers an innovative perspective and a workable solution towards removing all levels of legislative discrimination in terms of eligibility for superannuation entitlements. I believe it is a matter, as others have said, of human rights and entitlements for members who have made a contribution to superannuation schemes and I believe that this bill will address those inequities in a much more comprehensive way than those measures proposed in other states and, indeed, proposed in this state by past bills. I commend this bill to the house. I seek leave to have the explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

PART 1

PRELIMINARY

*Clause 1: Short title*

This clause is formal.

*Clause 2: Commencement*

This clause provides that this Act will come into operation 6 months after assent.

*Clause 3: Interpretation*

This clause is formal.

PART 2

AMENDMENT OF PARLIAMENTARY SUPERANNUATION ACT 1974

*Clause 4: Amendment of s. 5—Interpretation*

This clause amends section 5 of the principal Act by inserting two new definitions. "Domestic co-dependent" is defined in section 7A (inserted by clause 5). A "domestic co-dependent benefit" is a benefit payable to a domestic co-dependent under Division 3 of Part 5 of the principal Act (inserted by clause 9).

*Clause 5: Insertion of s. 7A*

Section 7A, inserted by this clause, provides a definition of "domestic co-dependent". Under this section, the District Court may declare that two persons, whether of the same sex or the opposite sex, were, on a particular date, domestic co-dependents of each other if they cohabited with each other on that date in a relationship of dependence (see below) and had so cohabited continuously for a period of five years or, during the immediately preceding period of 6 years, had so cohabited for periods aggregating at least 5 years.

A relationship of dependence is a relationship between two people where the parties care for and contribute to the maintenance of each other, or one of the parties cares for and contributes to the maintenance of the other.

Subsection (3) provides that a person whose rights depend on whether a relationship of domestic co-dependence existed on a certain date may apply to the District Court for a declaration. Under subsection (4), the Court must make a declaration if the persons in relation to whom the declaration is sought fulfil the necessary requirements.

Subsection (5) qualifies subsection (4) by prohibiting the Court from declaring that a person who is a spouse of a member or member pensioner, or eligible child in relation to a member or member pensioner, is a domestic co-dependent of that member or member pensioner.

Subsection (6) provides that a declaration may be made by the Court whether or not one or both of the persons are, or have been, domiciled in South Australia and despite the fact that one or both of them are dead. Subsection (7) prohibits the making of an inference from the fact that two persons were the domestic co-dependents of each other on a particular date that they were in that relationship at a prior or subsequent time.

*Clause 6: Amendment of s. 22A—Other benefits under the new scheme*

Section 22A of the principal Act deals with the lump sum benefit payable to a new scheme member who, when he or she ceases to be a member, is not entitled to a pension or other benefit. Subsection (5)*(d)* provides that if a former member dies before being paid a preserved component of his or her benefit, that component is to be paid to the spouse of the former member or, if there is no spouse, to the former member's estate.

The amendment made by this clause to subsection (5)*(d)* has the effect of extending this entitlement to a domestic co-dependent of the former member, so that a domestic co-dependent who survives a former member is entitled to payment of the preserved component or, if the former member is survived by more than one spouse or domestic co-dependent, a share in that component.

*Clause 7: Amendment of s. 23—Provision where contributions exceed benefits*

The amendment made to section 23 of the principal Act by this clause is consequential on the broadening of the group of persons entitled to benefits under the Act to include domestic co-dependents.

*Clause 8: Substitution of heading*

This clause repeals the heading to Part 5 of the principal Act and substitutes a new heading necessitated by the inclusion in that Part of a new Division dealing with benefits payable to domestic co-dependents.

*Clause 9: Insertion of Division 3 of Part 5*

This clause inserts a new Division into Part 5 of the principal Act. Part 5 Division 3 deals with benefits payable to domestic co-dependents of deceased members and member pensioners. Section 31AA provides that a domestic co-dependent of a deceased member or member pensioner is entitled to a lump sum. The amount of the lump sum payable to a domestic co-dependent is equivalent to the amount a spouse of the member or member pensioner would receive if he or she commuted the whole of his or pension.

*Clause 10: Amendment of s. 31A—Benefits payable to estate*

Section 31A of the principal Act provides that a lump sum is payable to the estate of a member who dies in circumstances where no pension or other benefit is payable to a spouse or child of the member. The amendment to that section effected by this clause is consequential on the broadening of the group of persons entitled to benefits under the Act to include domestic co-dependents. A lump sum will not be payable to the estate if a domestic co-dependent of the deceased is entitled to a benefit.

*Clause 11: Amendment of s. 36A—Division of benefit where deceased member is survived by more than one spouse or domestic co-dependent*

This clause amends section 36A of the principal Act, which concerns the division of benefits payable under the Act where a deceased member or member pensioner is survived by a lawful spouse and a putative spouse. The section, as amended by this clause, provides that if a deceased member or deceased member pensioner is survived by a lawful spouse and a putative spouse, or a spouse (whether lawful or putative) and a domestic co-dependent, any benefit payable to the surviving parties is to be divided between them in a ratio determined by reference to the relative length of the periods for which each of them cohabited with the deceased as spouse or domestic co-dependent.

Under the existing subsection (4), a putative spouse is not entitled to a benefit under the section unless he or she was putative spouse of the member or member pensioner at the time of death. The subsection, as amended by this clause, provides that a domestic co-dependent is not entitled to a benefit under the section unless he or she and the deceased were domestic co-dependents as at the date of the member or member pensioner's death.

*Clause 12: Amendment of Sched. 3—Commutation Factors for Spouse Pensions and Domestic Co-dependent Benefits*

This amendment makes clear that the commutation factors contained in Schedule 3 apply in relation to benefits payable to domestic co-dependents under section 31AA (inserted by clause 9).

PART 3
AMENDMENT OF POLICE SUPERANNUATION ACT 1990

*Clause 13: Amendment of s. 4—Interpretation*

This clause amends section 4 of the principal Act by inserting a definition of "domestic co-dependent", which is in fact defined be reference to section 4A (as inserted by clause 14).

*Clause 14: Insertion of s. 4A*

Section 4A, inserted by this clause, provides a definition of "domestic co-dependent". Under this section, the District Court may declare that two persons, whether of the same sex or the opposite sex, were, on a particular date, domestic co-dependents of each other if they cohabited with each other on that date in a relationship of dependence (see below) and had so cohabited continuously for a period of five years or, during the immediately preceding period of 6 years, had so cohabited for periods aggregating at least 5 years.

A relationship of dependence is a relationship between two people where the parties care for and contribute to the maintenance of each other, or one of the parties cares for and contributes to the maintenance of the other.

Subsection (3) provides that a person whose rights depend on whether a relationship of domestic co-dependence existed on a certain date may apply to the District Court for a declaration. Under subsection (4), the Court must make a declaration if the persons in relation to whom the declaration is sought fulfil the necessary requirements.

Subsection (5) qualifies subsection (4) by prohibiting the Court from declaring that a person who is a spouse of a contributor, or eligible child in relation to a contributor, is a domestic co-dependent of that contributor.

Subsection (6) provides that a declaration may be made by the Court whether or not one or both of the persons are, or have been, domiciled in South Australia and despite the fact that one or both of them are dead. Subsection (7) prohibits the making of an inference from the fact that two persons were the domestic co-dependents of each other on a particular date that they were in that relationship at a prior or subsequent time.

*Clause 15: Amendment of s. 14—Payment of benefits*

This clause adds "domestic co-dependent" to the list of persons in relation to whom payments under the Act must be made out of the Consolidated Account.

*Clause 16: Amendment of s. 22—Resignation and preservation*

Section 22 of the principal Act provides that a new scheme contributor who resigns may elect to preserve his or her accrued superannuation benefits. If a contributor dies, a payment must be made to his or her spouse or, if there is no spouse, to the contributor's estate.

This clause amends section 22 by providing that, in the event of a new scheme contributor's death, any preserved payment or benefit is payable in the first instance to the spouse of the deceased *or* a domestic co-dependent of the deceased.

*Clause 17: Amendment of s. 26—Death of contributor*

This clause amends section 26 of the principal Act, which provides for payment of a lump sum to a spouse of a deceased contributor.

The amendment has the effect of extending this entitlement to domestic co-dependents of the deceased contributor.

*Clause 18: Amendment of s. 32—Benefits payable on contributor's death*

Section 32 of the principal Act falls within the part of the Act dealing with the entitlements of old scheme contributors and their dependents. Currently, a lawful spouse or husband or wife de facto of a deceased contributor is entitled to a payment comprising a pension and, in certain cases, a lump sum. This clause amends section 32 so that provision is made for a domestic co-dependent of a deceased contributor to receive a lump sum. Under subsection (3a), the lump sum payable to a domestic co-dependent is equivalent to the amount that would be paid to the domestic co-dependent if he or she were entitled to a benefit as a spouse of the contributor and elected to commute the whole of the component of the benefit comprised of a pension.

*Clause 19: Amendment of s. 33—Benefits payable to contributor's estate*

The amendment made by this clause to section 33 of the principal Act, which pertains to the lump sum to be paid to the estate of an old scheme contributor who is not survived by a beneficiary, or survived only by an eligible child, is consequential on the widening of the group of potential beneficiaries under the Act to include domestic co-dependents.

*Clause 20: Amendment of s. 34—Resignation and preservation of benefits*

Section 34 of the principal Act concerns the preservation of benefits on the resignation of an old scheme contributor. The amendments made by this clause ensure that a domestic co-dependent of a deceased contributor has the same entitlements as a spouse. However, where the spouse of a deceased contributor is entitled to a pension, a domestic co-dependent is entitled to a lump sum equal in value to the amount payable to a spouse who elects to commute the whole of the pension.

*Clause 21: Amendment of s. 37—Effect on pension of pensioner's re-employment*

This clause amends section 37 of the principal Act to ensure that a lump sum is payable to the domestic co-dependent of a deceased contributor whose pension has been suspended as a consequence of a permanent employment in the public service (following retrenchment or a period of invalidity).

*Clause 22: Amendment of s. 38E—Benefits*

The amendment made by this clause to section 38A of the principal Act, which pertains to the provision by a contributor of additional benefits for him or herself or his or her dependants, is consequential on the widening of the group of potential beneficiaries under the Act to include domestic co-dependents.

*Clause 23: Amendment of s. 41—Division of benefit where deceased contributor is survived by more than one spouse or domestic co-dependent*

This clause amends section 41 of the principal Act, which concerns the division of benefits payable under the Act where a deceased contributor is survived by a lawful spouse and a putative spouse. The section, as amended by this clause, provides that if a deceased contributor is survived by a lawful spouse and a putative spouse, or a spouse (whether lawful or putative) and a domestic co-dependent, any benefit payable to the surviving parties is to be divided between them in a ratio determined by reference to the relative length of the periods for which each of them cohabited with the deceased as spouse or domestic co-dependent.

Under the existing subsection (4), a putative spouse is not entitled to a benefit under the section unless he or she was putative spouse of the contributor at the time of death. The subsection, as amended by this clause, provides that a domestic co-dependent is not entitled to a benefit under the section unless he or she and the deceased were domestic co-dependents as at the date of the contributor's death.

*Clause 24: Amendment of s. 44—Special provision for payment in case of infancy or death*

Section 44(2) of the principal Act provides that where a person to whom money is payable under the Act dies, the Board has a discretion to pay the money to the deceased's personal representative, spouse or children. This clause amends this subsection to enable the Board to pay the money to a domestic co-dependent of the deceased.

*Clause 25: Amendment of s. 46A—Termination of the Police Occupational Superannuation Scheme*

*Clause 26: Amendment of s. 48—Power to obtain information*

The amendments made by these clauses are consequential on the widening of the group of persons entitled to benefits under the Act to include domestic co-dependents.

PART 4
AMENDMENT OF SOUTHERN STATE SUPERANNUATION ACT 1994

*Clause 27: Amendment of s. 3—Interpretation*

This clause amends section 3 of the principal Act by inserting a definition of "domestic co-dependent", which is in fact defined by reference to section 3A (as inserted by clause 28).

Section 3 is also amended by the insertion into subsection (5)*(a)*(ii) of the words "or domestic co-dependent". This amendment has the effect of providing a benefit for the domestic co-dependent of a deceased member who is employed on a casual basis.

*Clause 28: Insertion of s. 3A*

Section 3A, inserted by this clause, provides a definition of "domestic co-dependent". Under this section, the District Court may declare that two persons, whether of the same sex or the opposite sex, were, on a particular date, domestic co-dependents of each other if they cohabited with each other on that date in a relationship of dependence (see below) and had so cohabited continuously for a period of five years or, during the immediately preceding period of 6 years, had so cohabited for periods aggregating at least 5 years.

A relationship of dependence is a relationship between two people where the parties care for and contribute to the maintenance of each other, or one of the parties cares for and contributes to the maintenance of the other.

Subsection (3) provides that a person whose rights depend on whether a relationship of domestic co-dependence existed on a certain date may apply to the District Court for a declaration. Under subsection (4), the Court must make a declaration if the persons in relation to whom the declaration is sought fulfil the necessary requirements.

Subsection (5) qualifies subsection (4) by prohibiting the Court from declaring that a person who is a spouse or child of a member is a domestic co-dependent of that member.

Subsection (6) provides that a declaration may be made by the Court whether or not one or both of the persons are, or have been, domiciled in South Australia and despite the fact that one or both of them are dead. Subsection (7) prohibits the making of an inference from the fact that two persons were the domestic co-dependents of each other on a particular date that they were in that relationship at a prior or subsequent time.

*Clause 29: Amendment of s. 12—Payment of benefits*

This clause adds "domestic co-dependent" to the list of persons in relation to whom payments under the Act must be made out of the Consolidated Account.

*Clause 30: Amendment of s. 32—Resignation*

*Clause 31: Amendment of s. 35—Death of member*

The amendments made to sections 32 and 35 have the effect of providing for payment of a lump sum to a domestic co-dependent of a deceased member.

*Clause 32: Amendment of s. 43—Division of benefit where deceased member is survived by more than one spouse or domestic co-dependent*

This clause amends section 43 of the principal Act, which concerns the division of benefits payable under the Act where a deceased member is survived by, as it currently stands, a lawful spouse and a putative spouse. The section, as amended by this clause, provides that if a deceased member is survived by a lawful spouse and a putative spouse, or a spouse (whether lawful or putative) and a domestic co-dependent, any benefit payable to the surviving parties is to be divided between them in a ratio determined by reference to the relative length of the periods for which each of them cohabited with the deceased as spouse or domestic co-dependent.

Under the existing subsection (4), a putative spouse is not entitled to a benefit under the section unless he or she was putative spouse of the member at the time of death. The subsection, as amended by this clause, provides that a domestic co-dependent is not entitled to a benefit under the section unless he or she and the deceased were domestic co-dependents as at the date of the member's death.

*Clause 33: Amendment of s. 44—Payment in case of death*

Section 44(1) of the principal Act provides that where a person to whom money is payable under the Act dies, the Board has a discretion to pay the money to the deceased's personal representative, spouse or children. This clause amends this subsection to enable the Board to pay the money to a domestic co-dependent of the deceased.

PART 5
AMENDMENT OF SUPERANNUATION ACT 1988

*Clause 34: Amendment of s. 4—Interpretation*

This clause amends section 4 of the principal Act by inserting a definition of "domestic co-dependent", which is in fact defined by reference to section 4A (as inserted by clause 35).

*Clause 35: Insertion of s. 4A*

Section 4A, inserted by this clause, provides a definition of "domestic co-dependent". Under this section, the District Court may declare that two persons, whether of the same sex or the opposite sex, were, on a particular date, domestic co-dependents of each other if they cohabited with each other on that date in a relationship of dependence (see below) and had so cohabited continuously for a period of five years or, during the immediately preceding period of 6 years, had so cohabited for periods aggregating at least 5 years.

A relationship of dependence is a relationship between two people where the parties care for and contribute to the maintenance of each other, or one of the parties cares for and contributes to the maintenance of the other.

Subsection (3) provides that a person whose rights depend on whether a relationship of domestic co-dependence existed on a certain date may apply to the District Court for a declaration. Under subsection (4), the Court must make a declaration if the persons in relation to whom the declaration is sought fulfil the necessary requirements.

Subsection (5) qualifies subsection (4) by prohibiting the Court from declaring that a person who is a spouse of a contributor, or eligible child in relation to a contributor, is a domestic co-dependent of that contributor.

Subsection (6) provides that a declaration may be made by the Court whether or not one or both of the persons are, or have been, domiciled in South Australia and despite the fact that one or both of them are dead. Subsection (7) prohibits the making of an inference from the fact that two persons were the domestic co-dependents of each other on a particular date that they were in that relationship at a prior or subsequent time.

*Clause 36: Amendment of s. 20B—Payment of benefits*

This clause adds "domestic co-dependent" to the list of persons in relation to whom payments under the Act must be made out of the Consolidated Account.

*Clause 37: Amendment of s. 28—Resignation and preservation of benefits*

*Clause 38: Amendment of s. 28A—Resignation pursuant to voluntary separation package*

*Clause 39: Amendment of s. 32—Death of contributor*

*Clause 40: Amendment of s. 32A—PSESS benefit*

Sections 28, 28A, 32 and 32A fall within the Part of the principal Act dealing with benefits payable to new scheme contributors and their dependents. The amendments made by these clauses have the effect of ensuring that benefits currently payable to a spouse of a deceased member are also payable to a domestic co-dependent. The benefit payable to the spouse or domestic co-dependent of a new scheme member is a lump sum.

*Clause 41: Amendment of s. 38—Death of contributor*

*Clause 42: Amendment of s. 39—Resignation and preservation of benefits*

*Clause 43: Amendment of s. 39A—Resignation or retirement pursuant to a voluntary separation package*

Sections 38, 39 and 39A fall within the Part of the principal Act dealing with benefits payable to old scheme contributors and their dependents. The amendments made by these clauses have the effect of ensuring that a domestic co-dependent of an old scheme contributor is entitled on the death of the contributor to a benefit determined by reference to the pension payable to a spouse of the contributor. Where a spouse would be entitled to a pension, a domestic co-dependent is entitled to a lump sum only. The lump sum is equal in value to the amount that would be payable to the domestic co-dependent if he or she were a spouse of the contributor and elected to commute the whole of his or her pension.

*Clause 44: Amendment of s. 46—Division of benefit where deceased contributor is survived by more than one spouse or domestic co-dependent*

This clause amends section 44 of the principal Act, which concerns the division of benefits payable under the Act where a deceased contributor is survived by a lawful spouse and a putative spouse. The section, as amended by this clause, provides that if a deceased contributor is survived by a lawful spouse and a putative spouse, or a spouse (whether lawful or putative) and a domestic co-dependent, any benefit payable to the surviving parties is to be divided between them in a ratio determined by reference to the relative length of the periods for which each of them cohabited with the deceased as spouse or domestic co-dependent.

Under the existing subsection (4), a putative spouse is not entitled to a benefit under the section unless he or she was putative spouse of the contributor at the time of death. The subsection, as amended by this clause, provides that a domestic co-dependent is not entitled to a benefit under the section unless he or she and the deceased were domestic co-dependents as at the date of the contributor's death.

*Clause 45: Amendment of s. 49—Special provision for payment in case of infancy or death*

Section 45(2) of the principal Act provides that where a person to whom money is payable under the Act dies, the Board has a discretion to pay the money to the deceased's personal representative, spouse or children. This clause amends this subsection to enable the Board to pay the money to a domestic co-dependent of the deceased.

**Mrs GERAGHTY** secured the adjournment of the debate.

## SUMMARY OFFENCES (MISUSE OF MOTOR VEHICLES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 10 July. Page 687.)

**Mr MEIER (Goyder):** I am very pleased to speak to this bill on the misuse of motor vehicles. It is surprising, I guess, that the parliament has not had a similar bill before it before today. It is high time that something was done about the larrikin behaviour—the undesirable behaviour—that we see so much of in our streets today. It is not only in the metropolitan area; it is also in country areas. In fact, in the town where I live, Wallaroo, we have had real problems with the misuse of motor vehicles over some years. They are problems that particularly affect locals and tourists, and it is the tourists who usually will let others know, and, if it is too bad, they will not come back again.

I will highlight a particular example. Wallaroo has a very attractive jetty, and the lead up to that includes some accommodation houses and a caravan park. There is a particular corner there, and a particular car park, where many young people have, over a period of years, hung out in their motor vehicles. There is nothing wrong with that. People are allowed to park there, and tourists park there. But it is when they rev up their engines and squeal their tyres, often leaving rubber on the road, that the problems begin.

It is very disturbing that when a report is made, perhaps from the caravan park proprietor or from someone else, there is usually a payback. So, if the police do come and the persons are asked to move on, you can almost guarantee that, in the very early hours of the morning, these young hoons will make sure that people in the caravan park do not get any sleep. It has been reported to me that on one occasion the noise was so great that at 3 a.m. one caravan owner, together with his wife and family, packed up and left Wallaroo because, they said, they could not stand the noise from the hoons in the motor vehicles.

What is being done about it? As the local member, I have been contacted on more than one occasion and I have certainly asked the police to be more vigilant. I compliment the police because they have sought to be more vigilant. In our particular area, however, we have a mobile patrol for Wallaroo, Kadina right through to Paskeville, and often it has to patrol Moonta. It can be in only one place at one time and these young lads, I suspect, have knowledge of where the police are and, if they know that the police are at Moonta or even Kadina, and certainly at Paskeville, they can do what they like in Wallaroo and probably get away with it.

I have also called meetings where the police have spoken with the local traders and the local people. The police have,

in fact, attended meetings of the Tourism and Business Association of Wallaroo on more than one occasion. I have had chief inspectors come. The chief inspector for the Barossa/Yorke region—not only the present one but also the previous one—has come on more than one occasion. I even had the then minister for police (Hon. Robert Brokenshire) come to a breakfast meeting arranged for the people of Wallaroo so that they could detail their grievances to him personally. The Chief Inspector was also present at that meeting. So, a lot has been done to try to curb this sort of behaviour.

I saw at one of the local garages the result of excessive tyre spin, and it is interesting to see what happens to a tyre that has undergone extreme speed, leaving rubber behind. It is literally left in shreds. Amazingly, the tyre seems to hang together enough so that the young lads can still travel in their cars, but it looked like a threaded tyre that one would not think could hold any air, and it does not do so in the end. I asked one of the local garage operators how these people can afford new tyres because it grieves me every time I have to replace them. I do a very high mileage and I try to keep my tyres going as long as possible, so I have been pleased with the fact that I generally get between 60 000 and 70 000 kilometres out of a set of tyres. It is not cheap to replace them, and I just wonder what enjoyment these lads get out of disintegrating tyres.

This bill seeks to address the issue of noise from motor vehicles and the issue of leaving rubber on the road in such a manner as to cause grievance to other people. I refer particularly to new section 58D, pertaining to misuse of a motor vehicle, which provides:

A person misuses a motor vehicle for the purposes of this part if the person—

(a) drives a motor vehicle, in a public place, in a race between vehicles, a vehicle speed trial, a vehicle pursuit or any competitive trial to test drivers' skills or vehicles; or

(b) operates a motor vehicle in a public place so as to produce sustained wheel spin; or

(c) drives a motor vehicle in a public place so as to cause engine or tyre noise, or both, that disturbs persons residing or working in the vicinity; or

(d) drives a motor vehicle onto an area of park or garden (whether public or private) so as to break up the ground surface or cause other damage.

I have particularly addressed paragraph (c), but I now move on to paragraph (a), which relates to races between vehicles. Deaths have occurred as a result of such activities, and we all saw only recently the results of a court case, which had gone on for a couple of years, concerning the absolute tragedy of a young father and husband who was killed by two people having a race on Anzac Highway. We also see it in country areas, and I have witnessed it occasionally, thankfully not too often. It sometimes scares me, particularly if I go up a multi-lane road and the lads decide that they are going to stick together. Invariably they speed off, so I am not held up by them, but it is somewhat intimidating. I have also mentioned the other damage.

This bill seeks to impose major penalties on people who do these things, and it is high time that such a measure was introduced. I understand young lads wanting to have a little bit of fun, and that will always occur. The tragedy is when it gets out of hand and people are killed, and often innocent people are killed. The tragedy occurs when these drivers put at risk the lives of other people who are often travelling with them in their car, and this bill seeks to tackle it very definitely with penalties up to $2 500, and with impounding of vehicles and similar penalties. I hope that parliament agrees to this bill as soon as possible because, as I said at the beginning of my speech, we should have addressed this issue years ago, as it is long overdue.

The member for Mawson, who introduced this bill, is a former police minister, and he has seen first hand what needs to be done. As I have said, he was in Wallaroo—I identified the one meeting only but he was there on more than one occasion. He has seen first hand what needs to be done. It will not stop this happening altogether, but it gives the police real power. At present, the police can simply say, 'Move on.' Of course, John Trainer has suggested that he could throw pollution fines at them, but I do not think that is the long-term answer. I commend this bill to the house, and I trust that it will have the support of the house.

**Dr McFETRIDGE (Morphett):** I rise to support this bill. Unfortunately, dangerous driving is something that I see far too frequently. Jetty Road, Glenelg is a haunt for many a young testosterone-fuelled lad in his hotted-up car. Unfortunately, they seem to ignore the 40 km/h speed zone there. But it is not only Jetty Road. Glenelg is a tourist area that attracts thousands of people, and many young lads come down there. I should not be sexist, because there are some young women as well. Unfortunately, though, it is mainly young lads who come down in their worked-up vehicles. They have spent many thousands of dollars to make their cars look absolutely fantastic. However, every now and again, they get a rush of testosterone, they screech off and drive erratically. In many cases, they drive extremely dangerously.

The member for Goyder mentioned the burn-outs that some of them do in the car park at Colley Reserve. A number of trees have been removed there to try to get the area lit up, because it is a site where people do burn-outs. How these young drivers can afford to do this amazes me, because they leave half their tyres on the bitumen. I should mention, though, that Holdfast Bay council has recently introduced legislation so that it can penalise under the graffiti laws people who are driving dangerously. That is a fairly novel way of punishing these drivers and making them realise that their driving and behaviour are totally unacceptable. It is a problem for not only the Holdfast Bay council but also for the state government, and we should support the introduction of this type of legislation.

A motor vehicle is not just a piece of metal on four wheels that gets you from point A to point B. As I have said, in many cases it is the pride and joy of many younger drivers—and, unfortunately, they do tend to be younger drivers. This bill provides the ultimate penalty for misuse of a motor vehicle, that is, confiscation of the motor vehicle. That is a penalty that should be there. It is the ultimate penalty for these young drivers, because their car is their pride and joy. However, it will have to be toned down a bit in country areas where drivers might need their motor vehicles for some genuine reason, such as getting to work or sporting activities, driving family members around or going from one property to another, and a dispensation may be required. But it is certainly very important that the provision for the impounding of motor vehicles is included. There is provision for disqualification from driving in a way that allows drivers to get to work or to undertake some specific activities, and I am sure that this will happen with the impounding of motor vehicles. But to weaken in any way the law in relation to dangerous driving or not to improve the law is something that we have to be very careful about.

South Australia Police do a magnificent job, but they cannot be everywhere at once. It is a shame that they are criticised for not turning up or not being on every corner and every footpath, but the police do a terrific job. In fact, I wrote to the police minister recently asking him to increase the frequency of patrols in Glenelg, only because it is a particular hot spot: it is a tourist zone. It is not because the police are not doing a magnificent job down there. It perhaps just needs a little more incentive on the part of the minister to send more patrols down there at specific times.

Tourism in Glenelg is affected by dangerous driving, especially speeding motorists and the erratic behaviour of many. Sometimes driving with loud music in the car can be considered dangerous driving. The member for Colton, being a firefighter, would know that some drivers listening to loud music in their car cannot hear emergency vehicles. That may be another aspect of this dangerous driving legislation that could be extended to include driving with music that obliterates all other sounds so that drivers are unaware of what is going on around them.

Perhaps everyone does not drive in the way they should, but it is important that we educate our young drivers. Driver safety is something we cannot overlook. I refer not only to drivers on Jetty Road. Recently we saw the media report of the fatality on Anzac Highway, when a young man had been driving at 130 kilometres an hour and cleaned up an innocent driver who was doing a U-turn, resulting in his death, leaving two orphaned kids. That is the extreme of dangerous driving. There is just no excuse for that sort of irresponsible behaviour.

It is very important that this bill be allowed to pass, giving police the power to arrest people who are driving dangerously. Looking at some of the clauses of the bill, one could ask: what is dangerous driving? Apart from speed, you would have to include erratic behaviour and doing burnouts. I know that everyone is conscious of drink driving. The dangerous driving we are talking about is not always due to speed. You do get those clowns driving down Anzac Highway at a million miles an hour. But sometimes dangerous driving is just the result of showing off.

When a person owns a motor vehicle, they must realise the consequences of their actions. Owning a motor vehicle carries with it a responsibility, not just a right. You have some huge obligations as a driver of a motor vehicle. Once you get behind the wheel, you literally have the power to kill. It is a bit like owning a gun: it is a loaded weapon the moment you turn the key. It is very important that people are made to realise their obligations. Sometimes you need penalties to make people realise their obligations. Certainly the penalties included in the bill, such as a maximum penalty of $2 500 under proposed section 58D, is appropriate. In anyone's language, that is a lot of money. As I said before, the ultimate penalty is the order to impound a vehicle. That will only be on conviction for an offence following the misuse of a motor vehicle. It is not just at the whim of a police officer who decides that you can do without your vehicle for a while for being a bit stupid.

I would strongly urge all members to allow this legislation to be enacted as soon as possible. Every day there are people out there driving dangerously. It is rather sad that, because we do not have that many cars on the roads in South Australia, in most cases we are not very polite drivers. Because there are not that many cars, we think we own the road. As parents, often we do not do the things that we should, such as being courteous to other drivers on the road. We do hand down that type of behaviour to our offspring.

I am very lucky that both my children are very safe drivers. My son did have one crash, but that was when a drunk driver hit him. That was the only occasion, and fortunately he was not hurt. The car was badly damaged, but I must point out that that drunk driver was an executive of a company. He was not a young person, so it is not just young people as I was saying before. It is very important that dangerous driving be recognised as an affliction affecting the whole community. Unfortunately I have perhaps gone on a little about the younger people.

I worry about young people, because often they do not realise the consequences of their actions. I always worried when my kids were getting into cars with other people, because there is nothing worse than losing a child in any way, let alone in a motor vehicle accident. I know the member for Mawson had the horrible experience of coming across a road crash where two people were killed and, in one case, I know the victim was an only child. The crash, I believe, was due to erratic and excessive speed.

I urge all members to support this bill. It is vital that we protect people from themselves, even if it means implementing fairly severe penalties for actions. It is very important that we do that, and I support this bill.

**Mr HAMILTON-SMITH (Waite):** I rise to support the bill on behalf of the people of Mitcham and all the constituents of Waite. This bill deals with the issue of misuse of motor vehicles and provides fairly stiff penalties for young people and others who unlawfully misuse their vehicle to the detriment of ordinary citizens going about their day-to-day business. I welcome the measures in this bill to rein in this antisocial use of vehicles by some irresponsible elements of the community. It is totally unacceptable to be screeching around the streets of Adelaide in vehicles laying rubber; speeding down the street; driving off the road; doing doughnuts; circling around ovals and parks, ripping up the grass; and annoying people's amenity through noise, through dangerous driving and through visual obstacle. All of those are simply unacceptable. Enough is enough, and this bill seeks to bring this behaviour to an end by giving the police additional powers.

The bill will introduce laws to create new offences—in particular, the offence of serious misuse of a motor vehicle, which will cover the operating of a vehicle in a public place or an authorised place so as to produce excessive and sustained wheel-spin; driving a car or motor vehicle in a public or private place so as to cause excessive and sustained engine or tyre noise that disturbs persons residing or working in the vicinity; driving a vehicle into an area of park or garden, whether public or private, so as to break up the ground surface or cause damage; and driving in unauthorised races, speed trials of vehicle pursuits on a public road or place.

In my electorate, these offences are of serious concern. In particular, the area of Windy Point at the top of Belair Road has been a real problem. Hoons gather there at all hours of the day and night, but particularly at night, and interfere with the amenity of others enjoying the views and enjoying the lookout. They carry on in a dangerous and offensive manner and, in many cases, the police are powerless to take effective action to stop that behaviour. We have also had problems at McElligott's quarry in Mitcham and in the roads leading up to McElligott's quarry. It seems that, wherever we block off

a lookout or a quarry, the problem simply moves to another location and it is often referred from one council district to another.

It is quite clear that new laws are needed to address the core problem, so that it simply does not shift from neighbourhood A to neighbourhood B, and I think these laws will achieve that. They will empower police to issue on-the-spot fines to the driver who misuses a motor vehicle and they will empower the court to order, after a hearing, the impounding for up to six months of a vehicle used for repeat offences and to order that the offenders pay the cost of reinstatement and repair of the damage caused. The bill also heralds the examination of the New South Wales scheme under which police are given the power to impound vehicles that are involved in misuse. To people of whatever age who choose to roar around peaceful neighbourhoods carrying on in this manner with their vehicle, in regard to the possible confiscation of their motor vehicle I say, 'Too bad.'

I simply say to those who will feel outraged at having their private property confiscated, 'Too bad! If you want to enjoy the privileges of living in this wonderful community of Adelaide, it carries with it certain responsibilities. If you want to enjoy the privilege of having a motor vehicle licence and driving on a public road, you had better expect to conduct yourself in a responsible manner.' Lives are at risk, and in Brownhill Creek in my electorate we have had fatalities as a consequence of irresponsible driving behaviour. More recently, there was the tragic death on Anzac Highway as a result of speeding and stupid behaviour by a young driver.

All these incidents have resulted in loss of life, as well as serious disruption to the amenity of local residents. It is time for this parliament to simply say, 'Enough is enough.' We should send a signal to all drivers in South Australia that we will not tolerate irresponsible driving behaviour that damages property, risks lives, interrupts people's amenity and peaceful enjoyment of their homes, and wakes up people at all hours of the night as people screech out of a hotel and up a hill, with modified engines and exhausts on their vehicles, deliberately creating tyre and engine noise so as to get some sort of buzz while the rest of the community suffers the consequences.

I am particularly pleased with clause 58(d) which specifies very clearly the nature of offences that will no longer be tolerated and the maximum penalty of $2 500 and $500 as an expiation. I am delighted by clause 58(e), which talks about impounding vehicles for a period not exceeding six months. I note with relief that, should a vehicle not be claimed at the end of that period, say, three months after the six month impoundment has ended, the vehicle will simply be sold off and the money returned to the public purse where it can be put into roadworks, safety measures and other devices designed to help the community overcome these sorts of abuses.

We simply do not need this sort of irresponsible behaviour from young drivers or drivers of any age in our community. We simply do not need rubber all over the roads of Adelaide. We simply do not need vehicles presenting a danger to themselves and others. We need to protect not only the occupants of these vehicles but also the innocent members of the community. I am delighted at the introduction of the bill. It is a great initiative of the former Liberal government. I hope that the government supports the bill and recognises its worth and that it passes all stages in both houses expeditiously.

**Mrs GERAGHTY** secured the adjournment of the debate.

*[Sitting suspended from 5.59 to 7.30 p.m.]*

## STATUTES AMENDMENT (STRUCTURED SETTLEMENTS) BILL

**The Hon. K.O. FOLEY (Deputy Premier)** obtained leave and introduced a bill for an act to amend the District Court Act 1991, the Magistrates Court Act 1991 and the Supreme Court Act 1935. Read a first time.

**The Hon. K.O. FOLEY:** 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.

At present, it is not possible for our civil courts to make a final award of damages for personal injury except in the form of a lump sum. Until now, there has been no need to change this situation because the tax disadvantages of receiving the settlement as a periodic payment would have made structured settlements unattractive to plaintiffs. However, the Commonwealth Government has now introduced the *Taxation Laws Amendment (Structured Settlements) Bill 2002*. This Bill would provide a tax exemption for structured settlements which meet certain eligibility criteria. This may mean that such settlements become more attractive to personal injury litigants in the future. The States and Territories have therefore agreed with the Commonwealth to legislate to remove barriers to such settlements. That is the purpose of this Bill.

This Bill permits the courts, with the consent of the parties, to award personal injury damages in the form of a structured settlement. In essence, the defendant, instead of paying a lump sum to the injured party, purchases an annuity from an insurance company. The annuity pays the injured party a set amount at regular intervals, either for life, or up to a set date. The Commonwealth Bill sets out in detail the criteria which the annuity must meet in order to be tax-exempt.

The Government's consultation on an early draft of these provisions has resulted in changes, but no submission indicated any opposition to the proposal to permit structured settlements by consent. The measure will simply give the parties another option.

I commend the Bill to the House.

Explanation of Clauses

This Bill provides for matching amendments to each of the *District Court Act 1991*, the *Magistrates Court Act 1991* and the *Supreme Court Act 1935* to provide that, in an action for damages for personal injury, the court has the power to make, with the consent of the parties, an order for damages to be paid (in whole or in part) in the form of periodic payments (by way of an annuity or otherwise) instead of in a lump sum.

The Bill is set out as follows:

PART 1—PRELIMINARY

*Clause 1: Short title*

*Clause 2: Commencement*

*Clause 3: Interpretation*

PART 2—AMENDMENT OF DISTRICT COURT ACT 1991

*Clause 4: Insertion of s. 38A—Consent orders for structured settlements*

PART 3—AMENDMENT OF MAGISTRATES COURT ACT 1991

*Clause 5: Insertion of s. 33A—Consent orders for structured settlements*

PART 4—AMENDMENT OF SUPREME COURT ACT 1935

*Clause 6: Insertion of s. 30BA—Consent orders for structured settlements*

**Mr BROKENSHIRE** secured the adjournment of the debate.

## RECREATIONAL SERVICES (LIMITATION OF LIABILITY) BILL

**The Hon. K.O. FOLEY (Deputy Premier)** obtained leave and introduced a bill for an act to provide for limitation of liability of providers of recreational services; and for other purposes. Read a first time.

**The Hon. K.O. FOLEY:** 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 is part of a package of measures to address the problem now faced by individuals, small businesses and not-for-profit organisations throughout the State in obtaining affordable liability insurance. It provides a mechanism whereby participants in a recreational activity (as defined) can agree with a provider on the extent of liability for any injury to the participant in the course of the activity.

The Bill has to be read in the context of pending Commonwealth amendments to the *Trade Practices Act 1975* (TPA). Currently, section 74 of the TPA provides that, in every contract for services supplied by a corporation to a consumer, there is an implied warranty that the services will be rendered with due care and skill. Section 68 of the TPA provides that it is not possible to contract out of a warranty implied by the TPA. A contract for services includes a contract for the provision, or the use or enjoyment, of facilities for amusement, entertainment, recreation or instruction.

The Commonwealth's amending legislation (the *Trade Practices Amendment (Liability for Recreational Services) Bill 2002*) (the Commonwealth Bill) varies this position in the case of a contract for recreational services. It would allow the parties to such a contract to agree to exclude or modify the statutory warranty that would otherwise apply; that is, suppliers of recreational services would, by contract, be able to limit their liability for death or personal injury arising from the supply of those services. The Commonwealth Bill does not apply to liability for other types of loss.

The Commonwealth Bill defines recreational services as services that consist of participation in—

(a) a sporting activity or a similar leisure-time pursuit; or

(b) any other activity that—

(i) involves a significant degree of physical exertion or physical risk; and

(ii) is undertaken for the purposes of recreation, enjoyment or leisure.

The effect of the Commonwealth Bill will, therefore, be to open the way for participants in these activities to be able to agree to reduce or exclude the service provider's liability for damages if the participant suffers injury or death due to the provider's failure to use proper care and skill.

The *Recreational Services (Limitation of Liability) Bill 2002* provides the mechanism that participants in a recreational activity are to use if they wish to limit the provider's legal liability for personal injury. The mechanism is designed to give some certainty to the provider as to just what the law requires of him or her, and to the consumer as to just what safety measures he/she can expect.

The Bill proposes that a provider of recreational services may register an undertaking to comply with a registered code. The registered provider may then enter into a contract with a consumer whereby the parties agree that any liability of the provider is limited to the case where injury is caused by failure to comply with the code. There is no entitlement to damages for any personal injury which is not due to a breach of the code.

Any person may apply to the Minister to register a code of practice governing the provision of recreational services of a particular kind. The code must set out the measures to be taken to ensure a reasonable level of protection for consumers. The Minister may require the person to obtain a report on the adequacy of the proposed code from a nominated person or association (for example, an expert in the field, or a peak body within the industry). The Minister is not obliged to register any code, and may refuse to do so if he/she is not satisfied as to its adequacy, or for any other reason. If the Minister decides to register the code, it will also be published on the Minister's website. Any person who provides recreational services may then register with the Minister an undertaking to comply with the code.

Recreational service providers who register an undertaking to comply with a registered code must make the code available for inspection at their places of business. Before entering into a contract with a consumer, the provider must give the consumer a notice, as required by the regulations, setting out the effect of the agreement. It is then up to the consumer to decide whether he/she wishes to deal with the provider on these terms.

The Bill also proposes that a registered provider who provides recreational services gratuitously may limit his/her liability by prominently displaying a notice to the effect that the duty of care is governed by a particular registered code. The notice must comply with the requirements of the regulations. If the consumer avails himself/herself of the recreational services, he/she will be taken to have agreed to a modification of the duty of care so that it is governed by the code.

The benefit of registering codes is certainty. Where the common law of negligence applies, it can be difficult for a person to know in advance whether he/she has met the applicable standard of care. This makes it difficult for providers to know how they should act, and for insurers to assess risks. If liability is limited to breaches of a published code, the provider knows what he/she must do, and the consumer knows what he/she can expect. This should assist insurers in accurately assessing risks and setting premiums at a realistic level reflecting actual risks, rather than the less predictable risk of being found negligent.

Of course, the Bill deals only with a provider's civil liability. There is no intention to affect criminal liability, such as liability to prosecution for a breach of applicable regulations. Some recreations are governed by detailed statutory or regulatory provisions which provide criminal penalties for breach. Providers who breach these duties remain liable to prosecution.

The consultation draft of this Bill contained provisions permitting parents and guardians to contract to modify the duty of care owed to their children when participating in recreations covered by the Bill. This aspect of the Bill was criticised by several commentators who feared that children could lose their rights due to poorly considered parental decisions. The Government has taken this criticism into account by providing that a consumer means a person "other than a person who is not of full age and capacity".

The Bill, then, takes up the opportunity presented by the Commonwealth legislation to allow participants in some recreational activities to decide for themselves whether to assume the risks of injury, relying on the protections offered by the applicable codes. The Bill reflects the Government's view that adult consumers of recreational activities should be able to take responsibility for their own safety in this way. In general, comment received on the Bill was supportive of this underlying concept.

The Government is concerned that, unless a measure of this kind is implemented, providers of recreational activities will be unable to afford liability insurance. If that happens, they will either close their doors or make a decision to trade without any insurance. Either result is undesirable. The Government has received representations from numerous sporting and recreational groups, as well as others in the community, urging that something be done. The Government agrees, and I commend this bill to the House.

Explanation of Clauses

*Clause 1: Short title*

*Clause 2: Commencement*

These clauses are formal.

*Clause 3: Interpretation*

This clause contains definitions of words and phrases used in the measure. In particular—

a consumer is a person (other than a person who is not of full age and capacity) for whom a recreational service is, or is to be, provided;

recreational activity is defined as—

- a sporting activity or a similar leisure-time pursuit; or
- any other activity that involves a significant degree of physical exertion or physical risk and is undertaken for the purposes of recreation, enjoyment or leisure;

recreational services is defined as any one or more of the following services:

- a service of providing facilities for participation in a recreational activity; or
- a service of training a person to participate in a recreational activity or supervising, guiding, or otherwise assisting a person's participation in a recreational activity.

*Clause 4: Registration of code of practice*

This provides that the Minister be given discretion to register, or refuse to register, a code of practice (code) on application by the provider of a recreational service. A code submitted for registration must comply with the regulations as to its form and content and registration is effected by notice in the *Gazette*. The Minister may refuse to register a code if the Minister is not satisfied as to its adequacy or for any other reason.

The Minister incurs no liability for or in respect of the code as a result of it being registered.

*Clause 5: Registration of provider*

The provider of a recreational service may apply to register with the Minister an undertaking to comply with a registered code (thus becoming a registered provider). Information about the registered provider and the provider's undertaking will be entered on the Minister's website.

*Clause 6: Duty of care may be modified by registered code*

A registered provider may enter into a contract with a consumer modifying the provider's duty of care to the consumer so that the duty of care is governed by the registered code. Before entering into such a contract, the provider must give the consumer notice as required by the regulations as to the effect of the contract.

If a registered provider provides recreational services gratuitously and displays notices prominently (in a manner and form required by the regulations) notifying consumers that the provider's duty of care is governed by the registered code, a consumer who avails him/herself of the services will be taken to have agreed to a modification of the provider's duty of care so that it is governed by the code (and not by any other law).

*Clause 7: Modification of duty of care*

If a consumer to whom this clause applies suffers personal injury, the provider is not to be liable in damages unless the consumer establishes that a failure to comply with the registered code caused or contributed to the injury.

This clause applies to a consumer who—

- has entered into an agreement with a registered provider modifying the provider's duty of care to the consumer; or
- is taken to have agreed to a modification of the provider's duty of care under clause 6(3).

*Clause 8: Application of this Act*

This Act operates to modify a duty of care under any other Act or law but does not affect—

- a liability of a manufacturer of goods; or
- a liability in respect of the sale of goods; or
- criminal liability.

*Clause 9: Other modification or exclusion of duty of care not permitted*

A duty of care owed by a provider of recreational services to a consumer may not be modified or excluded in relation to liability for damages for personal injury except as provided by this measure.

*Clause 10: Regulations*

The Governor may make regulations for the purposes of this measure.

**Mr BROKENSHIRE** secured the adjournment of the debate.

## WRONGS (LIABILITY AND DAMAGES FOR PERSONAL INJURY) AMENDMENT BILL

**The Hon. K.O. FOLEY (Deputy Premier)** obtained leave and introduced a bill for an act to amend the Wrongs Act 1936. Read a first time.

**The Hon. K.O. FOLEY:** 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 is part of a package of measures to address the problem now faced by individuals, small businesses and not-for-profit organisations throughout the State, in obtaining affordable liability insurance.

Treasurers and officials have engaged in national discussions to identify effective legislative and other solutions to the problem. While statistics show that the cost of claims is far higher in New South Wales than in other jurisdictions, Ministers agreed that a national response is desirable. On 30 May 2002, Ministers published a joint communique setting out plans for legislative and other reforms designed to reduce the cost of insurance claims and so reduce premiums. Trowbridge consulting produced a report dated 30 May 2002 (the Trowbridge report) on possible strategies to deal with the problem.

This Bill addresses the public liability problem by capping damages for all kinds of personal injury actions, and by making some special rules about liability in certain cases.

The Bill is based on the existing provisions of section 35A of the *Wrongs Act 1936*, which deals with the damages to be awarded for personal injury arising out of motor vehicle accidents. Members will recall that the provision includes thresholds for damages for non-economic loss, a points scale for the assessment of such damages, a cap on awards for future loss of earning capacity, a prescribed discount rate to be applied to the multiplier for future losses, rules about damages for gratuitous services and other measures. In keeping with the recommendations of the Trowbridge Report, the Bill proposes to extend that scheme to injuries resulting from other situations.

The Bill applies in relation to damages for personal injury arising from an accident (which includes a motor accident) if the relevant accident was caused wholly or partly by negligence, or some other unintentional tort, or by the breach of a contractual duty of care. It does not apply to injuries caused by an intentional tort, such as an assault.

As to non-economic loss, the thresholds now applying to motor accident cases will apply to all cases. That is, the injured person must show that his/her ability to lead a normal life was significantly impaired for at least 7 days or, if it was not, that he/she incurred medical expenses of at least the prescribed minimum amount (currently $2 750). This provision aims to exclude damages for non-economic loss in very minor claims. Further, the points scale currently applicable to the calculation of damages for non-economic loss in motor accident cases is applied to all other cases covered by the Bill.

The Bill also proposes a significant change to the way in which the points scale works and the amounts that can be awarded. At present, each of the points is of equal value; that is, there is 1 fixed multiplier which applies to all cases in a given year. Experience suggests that this scale tends to over-compensate minor injuries but under-compensate the more serious cases. The Government, therefore, proposes to vary the scale so that the less serious injuries are compensated on the basis of a lower value multiplier and the more serious cases are compensated on the basis of a higher value multiplier.

Whereas, at present, the maximum that a person may receive for non-economic loss in the most serious cases is $102 600, as a result of the Government's proposal, the maximum, in the future, will be $241 500. This is a very substantial increase which, the Government believes, will better recognise the devastation which the most serious kinds of injuries can bring about in people's lives. On the other hand, at the low end of the scale, injuries attracting up to 10 out of the possible 60 points will be compensated at $1 150 per point, as against the present $1 710. The Government considers this to be adequate in the case of more minor injuries.

The current rule in motor accident cases that damages for mental or nervous shock may only be awarded in limited circumstances is carried over to other personal injury cases. In essence, the claimant must have been physically injured in the accident, or present at the scene at the relevant time, unless the claimant is the parent, spouse or child of someone killed, injured or endangered in the accident.

Similarly, the current rule that there are to be no damages for loss of earning capacity for the first week of incapacity is to be applied to all accident cases. Again, the Government is proposing a significant change to the cap on damages. The cap that currently applies to damages for future economic loss, ($2.2M) is now to be applied to all loss of earning capacity; that is, past and future. The law as it is now allows the cap to be somewhat manipulated by delaying finalisation of the case. As there is currently no cap on past loss of earning capacity, a loss which would have been capped if it related to the future becomes uncapped as time passes as it becomes a past loss instead of a future loss.

Currently, in relation to motor accidents, the law provides that if an injured person is to be compensated by way of lump sum for loss of future earnings, or other future losses and an actuarial multiplier is used, then, in determining the multiplier, a prescribed discount rate is to be used. That prescribed rate is 5 per cent, unless some other figure is fixed by regulation. The Bill makes the same provision in respect of all accidents, including motor accidents.

A question relating to the discount rate was raised by His Honour Justice Gray in the case of *Hillier v Hewett*, (Judgment No. [2001] SASC 225]). In this context, it may be useful to make clear that the Government does not intend that the courts be at liberty to reduce the discount rate fixed in the Bill. In particular, there is no intention that it should be open to further reduction to allow for notional tax on notional investment income of the lump sum. The High Court in *Todorovic v Waller* (1981-82 50 CLR 402) indicated that a discount rate should take into account the effect of taxation on notional income of the invested fund. The Government believes that all relevant factors, including taxation, are reflected in the 5 per cent discount rate fixed in this Bill.

The Bill provides that there is to be no interest on either future or non-economic losses. Instead, interest is limited to past economic losses, such as medical treatment costs and lost earnings.

As at present, there are to be no damages to compensate for the cost of the investment or management of the amount awarded. The present rules about damages for gratuitous services are also extended to cover other personal injury claims.

All of these provisions relate to the calculation of the award of damages to the injured person.

However, the Bill also deals with some issues relating to the issue of liability; that is, the entitlement of the injured person to recover damages at all.

First, under the Bill, liability for damages is excluded if a person is injured in the course of committing an indictable offence. This provision is based on a provision found in the present *Criminal Injuries Compensation Act* and repeated, in substance, in the *Victims of Crime Act 2001*. Of course, the exclusion only applies if the injured person's conduct contributed materially to the risk of injury. In case this should work injustice, the Bill gives the court a discretion to award damages in such a case, if the circumstances are exceptional and the principle would, in the circumstances, operate harshly and unjustly. In general, however, the Government believes that persons who sustain injury while committing indictable offences (that is, more serious offences) should bear their own losses.

The Bill also makes special provision for the case where a person is injured while intoxicated. In that case, contributory negligence is presumed, and damages must be reduced by at least 25 per cent or more if the court thinks it appropriate. This again applies the current rule in motor accident cases to a wider range of cases. The special rule dealing with drivers who are incapable of exercising effective control of the vehicle, or have a blood alcohol reading over 0.15 per cent, remains unchanged. The rationale behind these provisions is that the community is entitled to expect people who choose to consume intoxicants to bear the responsibility for the consequences. Of course, the Bill does not intend to visit these consequences on a person whose intoxication was not self-induced or had nothing to do with the accident. In those cases, the presumption of contributory negligence is rebutted. Similar rules apply to a person who chooses to rely on the skill and care of a person he/she knows to be intoxicated.

The existing laws about failure to wear a seatbelt or helmet where these are required by law are retained in substance, although somewhat differently expressed.

Proposed new section 24N sets out in some detail how the court is to deal with the case where the plaintiff's damages must be reduced because he/she is contributorily negligent in more than one respect. This clarifies a possible ambiguity in the present law and is intended to assist courts as to what is intended.

The present evidentiary provisions and provisions relating to the territorial application of the statute have been reworded but are substantially similar in their effects.

The Bill also includes 2 further provisions. The first one deals with the protection of a person who voluntarily renders aid in an emergency, the so-called "good samaritan". If the person is acting without expectation of payment or other benefit, he/she is not liable in damages for an act or omission in good faith and without recklessness. The immunity does not excuse the person for the consequences of negligent driving, nor help him/her if he/she was intoxicated. The other addition provides that, after an incident out of which injury arises, a party may express regret for what has happened, without this being used against him/her in court. In essence, this allows a party to say "sorry". This is often helpful, especially in matters involving medical or professional negligence, in which the relationship between the parties is important. Saying "sorry" may help both parties deal with what has occurred and, perhaps, assist in reaching an earlier resolution of their dispute.

The draft measures published for consultation also included a provision amending the *Volunteers Protection Act 2001*. The intention was to permit the Minister to agree to indemnify volunteers who provide services to Government. This provision has not been included because it now appears that it is not necessary. As the *Volunteers Protection Act* stands, the Crown can itself be a "community organisation". This means that a volunteer who renders services to the Government can already be covered by the Crown under that Act subject, of course, to the statutory exceptions to that rule. In the case where the volunteer is working for some other community organisation which is assisting the Government, nothing prevents the Minister from agreeing to indemnify that organisation for the liabilities incurred by its volunteers. Accordingly, the absence of the provision from this Bill should not be taken to indicate any change in policy. In some cases, indemnity will apply automatically and, in others, it may be achieved by agreement.

Finally, Members should be made aware of the fact that this Bill does not operate retrospectively. It will only apply to accidents that occur in future. It is important to stress this because the Government received submissions on behalf of asbestos disease victims who were exposed to asbestos fibres (perhaps many years ago) but who have yet to bring claims. and, in some cases, may not yet have developed any symptoms of disease. Under this Bill, the right to claim in respect of injury caused by an asbestos exposure which has already happened is preserved unchanged. However, a person who is exposed to asbestos or some other noxious substance in the future and is injured thereby will be covered by the law as amended by the Bill. I hope this clarifies the position for those persons and puts their minds to rest.

The Government believes that this Bill is a practical measure that will help in containing claim costs. This should be reflected in containment of premium costs, thereby assisting in ensuring that affordable liability insurance remains available to the public.

I commend this Bill to the House.

Explanation of Clauses

*Clause 1: Short title*

*Clause 2: Commencement*

These clauses are formal.

*Clause 3: Insertion of new Part 2A*

New Part 2A is to be inserted in the principal Act after section 23C. It contains much that is similar to current section 35A but its application is extended to personal injuries arising from all accidents (as defined in new section 24).

*PART 2A: DAMAGES FOR PERSONAL INJURY*

*DIVISION 1—PRELIMINARY*

*24. Interpretation*

This new section provides for the interpretation of the new Part. In particular, it defines an accident as an incident out of which personal injury arises and includes a motor accident.

*24A. Application of this Part*

New Part 2A applies where damages are claimed for personal injury—

- arising from a motor accident (whether caused intentionally or unintentionally); or
- arising from an accident caused wholly or in part by negligence, some other unintentional tort on the part of a person other than the injured person or a breach of a contractual duty of care.

*DIVISION 2—ASSESSMENT OF DAMAGES*

*24B. Damages for non-economic loss*

Damages may only be awarded for non-economic loss if the injured person's ability to lead a normal life was significantly impaired by the injury for a period of at least 7 days or medical expenses of at least the prescribed minimum have been reasonably incurred in connection with the injury.

The proposed section sets out in detail the manner in which damages for non-economic loss are to be assessed.

*24C. Damages for mental or nervous shock*

Damages may only be awarded for mental or nervous shock if the injured person was physically injured in the accident or was present at the scene of the accident when the accident occurred or is a parent, spouse or child of a person killed, injured or endangered in the accident.

*24D. Damages for loss of earning capacity*

No damages are to be awarded for the first week of work lost through incapacity and total damages for loss of earning capacity are capped at the prescribed maximum (*see* new section 24).

*24E. Lump sum compensation for future losses*

If an injured person is to be compensated by way of lump sum for loss of future earnings or other future losses and an actuarial multiplier is used for the purpose of calculating the present value of the future losses, then, in determining the actuarial multiplier, a prescribed discount rate (*see* new section 24) is to be applied.

*24F. Exclusion of interest on damages compensating non-economic or future loss*

Interest is not to be awarded on damages compensating non-economic or future loss.

*24G. Exclusion of damages for cost of management or investment*

Damages are not to be awarded to compensate for the cost of the investment or management of the amount awarded.

*24H. Damages in respect of gratuitous services*

Damages are not to be awarded—

- to allow for the recompense of gratuitous services except services of a parent, spouse or child of the injured person; or
- to allow for the reimbursement of expenses, other than reasonable out-of-pocket expenses, voluntarily incurred, or to be voluntarily incurred, by a person rendering gratuitous services to the injured person,

and are not to exceed an amount equivalent to 4 times State weekly earnings (*see* new section 24). The court has a discretion to make an award in excess of this amount in certain circumstances.

*DIVISION 3—SPECIAL PROVISIONS IN REGARD TO LIABILITY*

*24I. Exclusion of liability in certain cases*

Liability for damages is excluded if the court—

- is satisfied beyond reasonable doubt that the accident occurred while the injured person was engaged in conduct constituting an indictable offence; and
- is satisfied on the balance of probabilities that the injured person's conduct contributed materially to the risk of injury.

The court may award damages despite this exclusionary principle if satisfied that the circumstances of the particular case are exceptional and the principle would, in the circumstances of the particular case, operate harshly and unjustly.

*24J. Presumption of contributory negligence where injured person intoxicated*

If the injured person was intoxicated at the time of the accident, and contributory negligence is alleged by the defendant, contributory negligence will be presumed unless rebutted.

The injured person may rebut the presumption by establishing, on the balance of probabilities, that the intoxication did not contribute to the accident or was not self-induced.

Damages to which the injured person would be entitled in the absence of contributory negligence are to be reduced, on account of contributory negligence, by at least 25 per cent. In the case of a motor accident, if the injured person was the driver of a motor vehicle involved in the accident and the evidence establishes that—

- the concentration of alcohol in the injured person's blood was .15 grams or more in 100 millilitres of blood; or
- the driver was so much under the influence of intoxicating liquor or a drug as to be incapable of exercising effective control of the vehicle,

the minimum reduction is to be increased to 50 per cent.

*24K. Presumption of contributory negligence where injured person relies on care and skill of person known to be intoxicated*

If—

(a) the injured person—
- was of or above the age of 16 years at the time of the accident; and
- relied on the care and skill of a person who was intoxicated at the time of the accident; and
- was aware, or ought to have been aware, that the other person was intoxicated; and

(b) the accident was caused through the negligence of the other person; and

(c) the defendant alleges contributory negligence on the part of the injured person,

contributory negligence will, unless rebutted, be presumed.

The injured person may only rebut the presumption by establishing, on the balance of probabilities, that the intoxication did not contribute to the accident or the injured person could not reasonably be expected to have avoided the risk.

Where contributory negligence is to be presumed, the court must apply a fixed statutory reduction of 25 per cent in the assessment of damages.

If, in the case of a motor accident, the evidence establishes that—

- the concentration of alcohol in the driver's blood was .15 grams or more in 100 millilitres of blood; or
- the driver was so much under the influence of intoxicating liquor or a drug as to be incapable of exercising effective control of the vehicle,

the fixed statutory reduction is increased to 50 per cent.

*24L. Evidentiary provision relating to intoxication*

A finding by a court that there was present in the blood of a person, at or about the time of an accident, a concentration of alcohol of .08 or more grams in 100 millilitres of blood is to be accepted, for the purposes of new Part 2A, as conclusive evidence of the facts so found and that the person was intoxicated at the time of the accident.

A finding by a court that a person was at or about the time of an accident so much under the influence of alcohol or a drug as to be unable to exercise effective control of a motor vehicle is to be accepted, for the purposes of new Part 2A, as conclusive evidence that the person was, at the time of the accident, so much under the influence of alcohol or a drug as to be unable to exercise effective control of the motor vehicle.

*24M. Non-wearing of seatbelt, etc.*

Contributory negligence will be presumed unless rebutted if injury occurs to a person above the age of 16 years while not wearing a seatbelt or a safety helmet as required by law. Where contributory negligence is to be presumed, a fixed statutory reduction of 25 per cent must be applied to any damages assessed.

*24N. How case is dealt with where damages are liable to reduction on account of contributory negligence*

New section 24N sets out the manner in which a court is to proceed if damages are liable to reduction on account of actual or presumed contributory negligence.

*DIVISION 4—TERRITORIAL APPLICATION*

*24O. Territorial application*

New Part 2A is intended to apply to the exclusion of inconsistent laws of any other place to the determination of liability and the assessment of damages for personal injury arising from an accident occurring in this State.

*Clause 4: Repeal of Division 10 of Part 3*

This Division (comprised of section 35A) is to be repealed as a consequence of new Part 2A.

*Clause 5:Insertion of Divisions 13 and 14 of Part 3*

*DIVISION 13—GOOD SAMARITANS*

*38. Good samaritans*

A good samaritan (as defined in this new section) incurs no personal civil liability for an act or omission done or made in good faith and without recklessness in assisting, or giving advice about the assistance to be given to, a person in apparent need of emergency assistance.

A medically qualified good samaritan incurs no personal civil liability for an act or omission done or made in good faith and without recklessness in assisting, or giving advice about the assistance to be given to, a person in apparent need of emergency medical assistance.

However—

- the immunity does not extend to a liability that falls within the ambit of a scheme of compulsory third party motor vehicle insurance; and
- the immunity does not operate if the volunteer's capacity to exercise due care and skill was, at the relevant time, significantly impaired by alcohol or another recreational drug.

*DIVISION 14—EXPRESSIONS OF REGRET*

*39. Expressions of regret*

In proceedings in which damages are claimed for a tort, no admission of liability or fault is to be inferred from the fact that the defendant or a person for whose tort the defendant is liable expressed regret for the incident out of which the cause of action arose.

*Clause 6: Transitional provision*

New Part 2A will operate prospectively.

**Mr BROKENSHIRE** secured the adjournment of the debate.

## SHOP TRADING HOURS (MISCELLANEOUS) AMENDMENT BILL

**The Hon. M.J. WRIGHT (Minister for Industrial Relations)** obtained leave and introduced a bill for an act to amend the Shop Trading Hours Act 1977 and to make a related amendment to the Retail and Commercial Leases Act 1995. Read a first time.

**The Hon. M.J. WRIGHT:** 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 represents a balanced and reasonable approach by the South Australian government to provide increased flexibility in shop trading arrangements in this state.

The bill increases the hours available for retailers to trade and provides additional Sunday trading opportunities to all retailers in the metropolitan area.

It provides increased amenity to working families through the ability to do their shopping for extended periods during the week. Additionally, the needs of families and tourists are catered for in the provision of additional Sunday trading arrangements over the summer holiday period.

Importantly, this bill retains protection from unfair practices by landlords for small retailers in the sector through complementary amendments to the *Retail and Commercial Leases Act 1995*. The effect of these amendments is to protect retail tenants in enclosed shopping centres from being required to open more than 54 hours per week or on any Sunday. It should be noted that advice has been received from the industry that 54 hours per week relates to the current hours that most shops trade in South Australia.

The needs of proprietors, retail workers and their families also were considered in the development of this bill. The bill represents a measured response to those who call for complete deregulation of shop trading hours in this state with the resultant negative impact such an approach would have on family life for those who have made a career in this industry.

Another key feature of the bill is a significant increase in penalties for those retailers who seek to break the law and trade outside the confines of the Act. The government has noted the propensity for some large high profile organisations to try to mount a case for public disobedience and flout the will of the Parliament.

The introduction of penalties of up to $100 000 for those who break the law should ensure that the provisions of the Shop Trading Legislation in this state can be adequately enforced regardless of the financial resources available to those who seek to break the law.

Specifically the bill will introduce the following reforms:

- access to 5 days of Sunday trading prior to Christmas and 5 days of Sunday trading after Christmas to retailers in the wider metropolitan area;
- an extension of week-night trading within the wider metropolitan area to 9.00 p.m.;
- electrical stores within the metropolitan area will be allowed to access Sunday trading arrangements on the same terms as those currently provided to hardware and furniture shops;
- the implementation of a "prohibition notice" regime where breaches of the Act are detected and supported by significant penalties. Additionally, penalties for a range of other offences in the Act, such as hindering an inspector in an investigation, are to be significantly increased;
- outmoded and irrelevant definitions are to be removed from the Act. For example, the definition which seeks to use employee numbers as a measure to decide if an exemption is warranted, is identified as not relevant and can be seen to limit employment within the sector and has been removed. Similarly, s15(1), which allows a "shop keeper of a shop situated in a shopping district outside the metropolitan area" to sell goods to a person "who resides at least 8 kilometres from the shop", provides a loophole within the Act that is virtually impossible to enforce and is to be removed;
- the current complex system of exemptions contained within the Act are to be streamlined and criteria are to be specified for assessing applications;
- exemption powers are to be moved to the Minister, rather than the Governor, in line with approaches adopted in more recent Acts; and
- the bill contains complementary changes to the *Retail and Commercial Leases Act 1995*.

The bill has been developed after continuous and extensive consultation with all relevant stakeholders including:

- Australian Retailers Association;
- State Retailers Association;
- Consumer representatives;
- Company representatives from chain and department stores;
- Business SA;
- Property Council;
- Productivity Council; and
- Shop Distributive and Allied Employees Association.

This government is committed to consultation and has heard and taken account of the views of all contributors to the debate on shop trading hours. This bill represents a reasonable balance of the needs of all stakeholders and I commend it to the House.

Explanation of Clauses

*Clause 1: Short title*

*Clause 2: Commencement*

These clauses are formal.

*Clause 3: Amendment of s. 4—Interpretation*

This clause amends section 4 of the principal Act—

- to remove any requirements in the definition of "exempt shop" relating to the number of persons employed in a shop;
- to remove from that definition the paragraph relating to shops having a Ministerial certificate of exemption (consequentially to the proposed substitution of section 5 of the principal Act discussed below);
- to insert a definition of the "Greater Adelaide Shopping District";
- to remove the definition of "normal trading hours" (which will no longer be used).

*Clause 4: Substitution of s. 5*

This clause repeals section 5 (which empowers the Minister to issue certificates of exemption to shopkeepers) and substitutes new provisions as follows:

*5. Exemptions*

This clause gives the Minister power to grant or declare exemptions from the operation of the Act, or specified provisions of the Act. An exemption may relate to a specified shop or class of shops or to shops generally. This power is, however, subject to the following limitations:

- An exemption that relates to a class of shops or shops generally or that applies generally throughout the state or to a specified shopping district or part of a specified shopping district, cannot operate in respect of a period greater than 14 days (unless, in the case of an exemption granted in respect of a particular shopping district or part of a shopping district, the Minister is satisfied that a majority of interested persons desire the exemption to be declared for a period greater than 14 days (or indefinitely) and gives a certificate to that effect or the exemption relates to a group of shops in respect of which each shopkeeper has made a separate application for the exemption or the regulations prescribe circumstances in which the exemption need not be limited to 14 days).
- An exemption cannot enable all shops, or a majority of shops, in the Metropolitan Shopping District to open pursuant to the exemption.
- An exemption cannot operate in a manner contrary to a Ministerial notice under section 5A.
- An exemption cannot operate with respect to section 13A.

The clause also sets out matters the Minister is to have regard to in considering an application for an exemption and provides for the imposition of conditions on the exemption and for the variation of revocation of exemptions or conditions. Failure to comply with a condition is an offence with a maximum penalty of $100 000.

*5A. Requirement to close shops*

This clause gives the Minister power to issue Ministerial notices requiring the closing of a specified shop or class of shops or shops generally over a period not exceeding 14 days. Such a notice may be varied or revoked by subsequent notice. Contravention of a notice is an offence punishable by a maximum fine of $100 000.

*Clause 5: Amendment of s. 6—Application of Act*

This clause is consequential to new section 5.

*Clause 6: Amendment of s. 8—Powers of Inspectors*

This clause amends the powers of inspectors under the Act to clarify those powers and to make them correspond more closely with inspectors powers under other legislation. The penalty for failing to comply with the requirements of an inspector is increased to $25 000 and the offence has been broadened (consistently with other legislation) to encompass hindering or obstructing an inspector or using abusive or threatening language.

*Clause 7: Amendment of s. 9—Inspector not to have an interest, etc.*

This clause increases the penalty in section 9 of the Act (which requires inspectors to disclose financial interests) from $500 to $5 000.

*Clause 8: Substitution of s. 10*

This clause substitutes a new provision protecting inspectors from liability consistently with the protection given to inspectors or officers under other legislation.

*Clause 9: Amendment of s. 11—Proclaimed Shopping Districts*

This clause is consequential to the introduction of a definition of "the Greater Adelaide Shopping District".

*Clause 10: Amendment of s. 13—Hours during which shops may be open*

This clause amends section 13 of the Act to remove the proclamation making power under that section, to alter the trading hours for the Metropolitan Shopping District, to allow motor vehicle traders to trade until 5 p.m. on a Saturday (without the need for a proclamation), to add shops in the Greater Adelaide Shopping District the business of which is the retail sale of electrical goods to the list of shops that, under subsection (5e), are allowed additional trading hours and to make various minor consequential amendments.

Proposed subclauses (2) and (3) deal with the new shopping hours for the Metropolitan Shopping District. Under the proposed changes shops in this District will be able to open—

- until 9.00 p.m. on every weekday; and
- until 5.00 p.m. on a Saturday; and
- from 11.00 a.m. to 5.00 p.m. on each of the five Sundays immediately preceding Christmas day in each year and—
  - if Christmas day falls on a Saturday in a particular year—on each of five Sundays in a row beginning on 2 January of the following year;
  - if Christmas day falls on a Sunday in a particular year—on each of five Sundays in a row beginning on 8 January of the following year;
  - if Christmas day does not fall on a Saturday or Sunday in a particular year—on each of five Sundays in a row beginning on the first Sunday after 26 December of that year (however, when 26 January falls on a Sunday, this series will be broken and a shopkeeper may not open the shop on that Sunday but may open the shop on 2 February in that year).

*Clause 11: Amendment of s. 13A—Restrictions relating to Sunday trading*

This clause extends the current restrictions applying to Sunday trading in the Central Shopping District and the Glenelg Tourist Precinct to Sunday trading in the Metropolitan Shopping District.

*Clause 12: Amendment of s. 14—Offences*

This clause increases the maximum penalties in section 14 of the Act from $10 000 to $100 000, and adds a defence to such offences, consequentially to the introduction of exemptions under proposed new section 5.

*Clause 13: Amendment of s. 14A—Advertising*

This clause increases the maximum penalty in section 14A of the Act from $10 000 to $100 000.

*Clause 14: Amendment of s. 15—Certain sales lawful*

This clause amends section 15 of the Act to remove the exemption for shops situated outside the metropolitan area selling goods to persons who reside at least 8 km from the shop.

*Clause 15: Amendment of s. 16—Prescribed goods*

This clause increases the maximum penalty in section 16 of the Act from $10 000 to $100 000.

*Clause 16: Insertion of ss. 17A and 17B*

This clause inserts new provisions as follows:

*17A. Prohibition notices*

If the Minister believes, on reasonable grounds, that a person has contravened the Act in circumstances that make it likely that the contravention will be repeated, the Minister may issue a notice requiring the person to refrain from a specified act, or course of action.

Contravention of a notice is an offence punishable by a maximum penalty of $100 000 plus $20 000 for each day on which the offence is committed.

A person to whom a notice is directed may, within 14 days, appeal to the Administrative and Disciplinary Division of the District Court.

*17B. Power of delegation*

This clause inserts a power for the Minister to delegate functions and powers under the Act.

*Clause 17: Amendment of s. 18—Procedures*

This clause inserts an evidentiary provision relating to the measurement of the floor area of a shop.

*Clause 18: Amendment of s. 19—Regulations*

This clause inserts a regulation making power dealing with the service of notices under the Act (consequentially to other changes included in the measure) and increases the maximum penalty that may be set for contravention of a regulation from $500 to $10 000.

*Clause 19: Amendment of Retail and Commercial Leases Act 1995*

This clause amends section 61 of the *Retail and Commercial Leases Act 1995* to set a maximum of 54 hours (which does not include any time on a Sunday) as core trading hours in retail shop leases relating to shops in enclosed shopping complexes.

**Mr BROKENSHIRE** secured the adjournment of the debate.

## RADIOACTIVE WASTE

**The Hon. J.D. HILL (Minister for Environment and Conservation):** I seek leave to make a ministerial statement.

Leave granted.

**The Hon. J.D. HILL:** I have sought leave to make a statement in relation to radioactive waste storage in South Australia. During debate on the Nuclear Waste Storage Facility (Prohibition) (Referendum) Bill 2002, I gave the following undertaking to the parliament, on 9 July 2002:

> . . . I think the public does have the right to know where radioactive waste and other waste is stored in our state, not down to the street basis, but I think which suburbs in a general sense. I think the public has an absolute right to have that knowledge, and I will request the information from my officers and I will provide what I can to the member. This bill, if it goes through, will eventually go to the upper house, and I will make sure that the information is provided to him before it is dealt with by the other place.

Subsequently, the Hon. Iain Evans wrote to me, on 1 August this year, requesting the following information: (a) the location, by suburb, of where radioactive waste is stored in South Australia; (b) the type of waste stored and each location; and (c) the volume of each type of waste stored at each location.

In consideration of section 19 (the secrecy provision) of the Radiation Protection and Control Act 1982, the EPA sought crown law advice on whether the Minister for Environment and Conservation would breach the act if he were to name in parliament the suburbs where radioactive waste is stored. Crown law advised that parliamentary privilege (that is, section 38 of the state Constitution Act 1934) would allow the minister to do so, even if the minister is bound to the secrecy provisions of the Radiation Protection and Control Act in other circumstances, for example, such as releasing specific details of the owners of waste outside of parliament. Such information should not be released without an FOI request and determination—hence my statement tonight.

In the light of this, I sought the information from the Radiation Protection Branch of the EPA. I point out to the house that I sought similar information on a number of occasions as shadow minister. The information was not

provided to me. I am now pleased to inform the house that I am advised of the following (and I quote from the EPA):

In 2000, the Radiation Protection Branch conducted a survey of predominantly sealed radioactive sources that were considered by their owners to be waste. The purpose of the survey was to establish the quantities of sealed radioactive waste that would be suitable for disposal in a low level waste repository, or would require long-term storage. The 2000 survey did not involve a site inspection by branch officers of all radioactive material. The information from the survey has therefore not been validated. Furthermore, the survey involved owners of sealed radioactive material in the form of sealed sources, not owners of unsealed radioactive material. Details of the quantities and the volumes of waste reported to the government following the 2000 survey were only estimates.

In July 2002, the branch was requested to conduct an audit of all radioactive material stored in South Australia including radioactive waste. As the audit has not been completed, the branch is unable to answer the three questions raised by the Hon. Iain Evans with accuracy at the present time. Even on the basis of the 2000 survey results, and information provided by owners of the waste subsequent to the survey, the branch cannot provide accurate details of the volume, type and location of all radioactive waste stored in South Australia at the present time.

The following table gives the locations where the branch believes radioactive waste to be currently held. In many cases the waste comprises only small numbers of unwanted sealed radioactive sources. I seek leave to insert a table in *Hansard* without my having to go through the detail of it. I can assure you, sir, that it is of a statistical nature. It has a list of suburbs and locations, then a column headed 'Low level and short-lived immediate level waste', a further column headed 'Intermediate level waste' and then ticks according to whether or not each of those types of waste is stored in that location.

Leave granted.

Provided by the Radiation Protection Branch EPA (August 2002)

| Location | Low level and short lived intermediate level waste | Intermediate level waste |
|---|---|---|
| Adelaide | ✓ | ✓ |
| Angaston | ✓ | |
| Bedford Park | ✓ | ✓ |
| Birkenhead | ✓ | |
| Burra | ✓ | |
| Camden Park | ✓ | |
| Daw Park | ✓ | |
| Elizabeth West | ✓ | |
| Glenside | ✓ | |
| Highbury | | ✓ |
| Kent Town | ✓ | ✓ |
| Lonsdale | ✓ | |
| Loxton | ✓ | ✓ |
| Mawson Lakes | ✓ | ✓ |
| Mount Barker | ✓ | |
| North Adelaide | ✓ | |
| Norwood | | ✓ |
| Nuriootpa | | ✓ |
| Olympic Dam | ✓ | |
| Osborne | ✓ | |
| Regency Park | | ✓ |
| Roseworthy | | ✓ |
| Snuggery | ✓ | ✓ |
| Thebarton | ✓ | ✓ |
| Urrbrae | ✓ | ✓ |
| Whyalla | ✓ | ✓ |

**The Hon. J.D. HILL:** My government has the following policy:

Labor will also give the Environment Protection Authority the power to regulate the storage and disposal of South Australia's own radioactive waste. There will be a complete audit of where radioactive waste is currently stored in South Australia and its condition.

The EPA is planning the audit now. It will be conducted by departmental officers, who will undertake site inspections throughout South Australia. The sites include approximately 120 companies and also laboratories and hospitals. In addition, uranium mines will be audited where waste storage practices and products and use will be examined. I expect the audit will be completed before the end of this financial year. The fact that waste is stored in metropolitan suburbs and regional areas is well known to the house. In fact, the member for Davenport mentioned a number of these locations previously, including the specific sites of the Royal Adelaide Hospital, the University of Adelaide and the Waite Agricultural Research Institute and also the suburbs of Bedford Park, Mile End and Norwood.

Further, the Hon. Dean Brown provided a list of radioactive waste sites to the Environment, Resources and Development Committee on 16 October 2000. These sites include Millicent, Whyalla, Mile End, Mawson Lakes, Olympic Dam, Adelaide, Frewville, Osborne, Bedford Park, Norwood and Loxton. I have been advised that this list was compiled before the results of the 2000 audit were completely known. The presence of this waste highlights the need for South Australia to develop a strategy to deal with our own waste. This is not an argument for adding waste from other states to that already held in our state.

## ESSENTIAL SERVICES COMMISSION BILL

In committee.

(Continued from 13 August. Page 1002.)

Clause 28.

**The Hon. W.A. MATTHEW:** Clause 28 in total covers part 4 of the bill, entitled 'Industry codes and rules'. It is essentially one page of the bill, with eight subclauses. The opposition has no trouble supporting this clause, for a very simple reason. If one goes back to the Independent Industry Regulator Act 1999, one sees that part 4 of that act is entitled 'Industry codes and rules' and covers one page. In this case, section 23 is entitled 'Codes and rules' and has eight subsections. My assessment of this clause is that, other than the word 'commission' replacing the words 'industry regulator,' the clause appears to be identical to section 23 of the 1999 bill. I ask the minister whether he concurs in my assessment and, if not, where else the clause may differ.

**The Hon. P.F. CONLON:** I am not sure what point the member for Bright has, if any. If the member for Bright wants to whack on about there being no difference, members opposite are the only people in the world who believe that. There is a substantial body of difference in this and in its brother legislation, the Electricity Act. I will not waste any more of the parliament's time talking about that. Given the intellectual challenges faced on the opposition benches, I am prepared to concede that, despite my best efforts, you cannot put in what God left out.

Clause passed.

Clause 29.

**The Hon. W.A. MATTHEW:** Clauses 29 and 30 together form part 5 of the bill and go over some 1¼ pages. Part 5 of this bill is entitled 'Collection and use of information'. When it is compared with part 5 of the Independent Industry Regulator Act 1999 we find that that act has a part 5 with exactly the same title, being 'Collection and use of information'. There are titles given to each of the clauses. Clause 24 of that bill is entitled 'Industry regulator's power to require information'; clause 29 of this bill is entitled 'Commissioner's power to require information'. Clause 25

of the 1999 bill is headed 'Obligation to preserve confidentiality'; clause 30 of this bill has the same heading. On my reading of clauses 29 and 30, the only difference appears to be the words 'requirement of commission' inserted in subsection (4) of section 30, and the maximum penalty has been lifted from $10 000 to $20 000, an increase with which the opposition agrees.

I make two comments in relation to this. Yesterday evening I put to the minister that, if he desires to consider during the debate in this chamber or in another place regulating rather than specifying the maximum penalty within the act to give him greater flexibility for the future, the opposition is amenable to including such regulatory powers. So, if the minister believes that the $20 000 fine or the imprisonment term of two years (which are identical to the provisions in the 1991 bill) are sufficient, and if he wants the ability to regulate for that in the future, we are amenable to discussing that, if not in this committee then in another place, and it can be brought back here. I ask the minister whether he concurs with my observation that, apart from increasing the maximum penalty from $10 000 to $20 000 and inserting the words 'requirement of commission', there are no differences between this bill and the 1999 bill.

**The Hon. P.F. CONLON:** I think the closest thing to a question is the issue of penalties. The procedure in this measure and in almost any other act that we can think of is always to set a maximum penalty. We see no reason to depart from the usual practice.

Clause passed.

Clause 30 passed.

Clause 31.

**The Hon. W.A. MATTHEW:** Clause 31 is the first clause of part 6 of this bill headed 'Reviews and appeals'. Part 6 consists of three clauses (31, 32 and 33) and they span 2⅓ pages. It is interesting to observe when comparing this bill with the Independent Industry Regulator Act 1999 that that act also has a part 6 entitled 'Reviews and appeals' and it also spans 2⅓ pages. Part 6 of that act also contains three clauses (26, 27 and 28). By an interesting coincidence, the titles of each of those clauses bear interesting similarities. Clause 31 of this bill is headed 'Review by commission'; clause 26 of the 1999 bill is headed 'Review by industry regulator'. Clause 27 of the 1999 bill is headed 'Appeal'; clause 32 of this bill is also headed 'Appeal'. Clause 33 of this bill is headed 'Exclusion of other challenges to price determinations'; clause 28 of the 1999 bill is headed exactly the same.

When examining the content of each clause, one sees a number of minor changes. Indeed, those changes are so minor that it takes close reading to find them. The words 'licensed entity' have sensibly being changed to read 'regulated entity'. The industry minister has been included as another responsible minister. Last night the Minister for Energy explained to the committee that there would be at least two and possibly more ministers who would have responsibility under this bill, so the reasons for that are appreciated, and there is a number one placed next to the word 'schedule'. Again, they are very minor changes, but I think it is important to point out to the committee that this is a bill that the Labor Party has challenged the Liberal Party on. This is a bill that has been declared of special importance. This is a bill that only today in this chamber the energy minister challenged the Liberal Party to reject. The energy minister knows full well the reason we would not reject this bill which is, essentially, that the whole basis of this bill is the Independent Industry Regulator Act 1999.

Mr Chairman, you are an academic who is privileged to have received degrees from each of our three fine universities in this state and I know that you, like I, have a very dim view of plagiarism, but if you or I or the minister during our university studies had presented an essay that was so heavily dependent on someone else's work it would be termed plagiarism. Of course, plagiarism does not apply to legislation: it is commonplace across various jurisdictions to harness good ideas. And if, in fact, the bill that we are debating, instead of being introduced as a new bill, had been introduced as an amendment to the existing legislation—the Independent Industry Regulator Act 1999—and the government had been upfront and honest with the South Australian people and said, 'There are some changes and here is where the changes are', it would be a little more acceptable to present such a bill to this chamber.

It does not matter how the minister tries to dress it up: this bill is largely a copy of the Independent Industry Regulator Act with some changes. Those changes are: to replace the Independent Industry Regulator with an Essential Services Commission; to increase the level of some of the fines; and to provide extra powers. With the exception of the change in title, that reads very much like the pre-election commitment of the former Liberal government. That is why the energy minister knows there will not be a brawl over the clauses in this bill—because the drafting of this bill was undertaken principally by a Liberal government. This is a Labor Party amendment to Liberal government legislation. That is the fact of the matter, and I am disappointed that the minister does not have the good grace to acknowledge that.

Clause passed.

Clauses 32 and 33 passed.

Clause 34.

**The Hon. W.A. MATTHEW:** Clause 34 is, in fact, the first clause of Part 7 of the Essential Services Commission Bill 2002, and it is entitled 'Inquiries and Reports'. I refer members to Part 7 of the Independent Industry Regulator Act 1999 which is also headed 'Inquiries and Reports'. Clause 34 of this bill is headed 'Inquiry by Commission', while the first section of Part 7 of the 1999 legislation is headed 'Inquiry by Industry Regulator'. The second section of Part 7 of the 1999 legislation is headed 'Notice of Inquiry', while the second clause of Part 7 of this bill, clause 36, is headed 'Notice of Inquiry'. The third clause of this bill is headed 'Conduct of Inquiry', while the third section of Part 7 of the 1999 legislation is also headed 'Conduct of Inquiry'. The fourth section of the 1999 legislation is headed 'Reports', while the fourth clause of this bill is headed 'Reports'.

Indeed, on examining the content of Part 7, there are, in fairness, a few more amendments than there have been in the previous parts to which I refer tonight. There are more widespread references to other ministers who are brought within the auspices of this bill. For example, clause 38 includes the definition of 'relevant minister' in order to provide for other ministers to be involved in the administration of this bill. The words 'relevant minister' are seen throughout it. There are a couple clarifying clauses, as well as some additions that I would argue essentially streamline the process of the bill.

The opposition has examined each of the minor changes proposed by the government and, again, we can find no fault with those minor changes. They do make sense, and are consistent with the establishment of a commission as distinct

from a single, independent industry regulator. So, for those reasons, and, given that this part was largely drafted by a Liberal government, we clearly have no difficulty in supporting all of part 7.

Clause passed.

Clause 35 to 39 passed.

Clause 40.

**The Hon. W.A. MATTHEW:** Mr Chairman, it is this clause which really gets to the meat of the changes to the bill by the government. In fact, it is fair to say that most of the first two pages of part 8 are new inclusions in this legislation, as is a third of the third page. Part 8 spans over four and a half pages of the bill. Other than the first component, the remainder of that reads almost identically to the 1999 bill, including the headings of clauses. Clause 39, to which the committee has just agreed and which is headed 'Annual Report' is exactly the same as the heading of the first clause in part 8 of the 1999 bill.

Essentially, the additional clauses, clauses 40, 41 and 42, provide for the government's change regime that the minister flagged during his second reading explanation. As I indicated, the opposition supports the government's change regime. As I understand it, these clauses provide for a series of warning stages that the commission can provide to the participants in the electricity market. It provides, for example, for warning notices to be given and for assurances to be received by the commission. It also enables action to be specified in such warning notices by the commission to rectify a contravention, and that might include action to remedy adverse consequences of the contravention. That can involve a range of things such as the refund of amounts that were wrongfully paid to a person as a result of the contravention, payments of compensation, the disclosure of information or even publication of advertisements relating to the contravention.

It also gives the circumstances under which the commission can proceed against a person in respect of a contravention. It provides for a register of warning notices as well as for injunctions in the District Court, providing that:

> If the District Court is satisfied, [effectively] on the application of the minister, the commission or any other person, that a person has engaged or proposes to engage in conduct which constitutes or would constitute a contravention of this act, the court may grant an injunction in such terms as the court determines to be appropriate.

I do not mind handing out praise where it is due, and I commend the government for these changes. I believe that they are sensible. I believe that the phased warning system is a sensible one. As I have said to the minister before (I am not sure if I have put it on record in this forum or not, but I have certainly conversed with him and his advisers on this subject), I was of the view that the existing Independent Industry Regulator Act provided an all or nothing approach. It provided for an up-front fine of $250 000, which in my view was not enough, and there was not a big enough punch in any warning system, and I believe that this goes a considerable way to enforcing that.

I am particularly supportive of the register of warning notices and my first question on that relates to clause 41. Subclause (2) provides that a person may, without payment of fee, inspect a register kept under this section. I welcome that, it is an accountable process, but there are a number of inclusions in this bill that were not in the Independent Industry Regulator Act that make things available publicly on the internet, and I ask the minister again whether it is his view that this information should be publicly available in that way so that any such warnings, whether private or company related, are easily accessible by any member of the public.

Clause passed.

Clause 41.

**The Hon. P.F. CONLON:** The next time I see Lew Owens, I will not have any difficulty raising with him whether there is any reason why these matters cannot be put on the net. I am quite happy to do that. I do not see any reason on the face of it why he should not. As I understand it, it is a practice that he engages in as industry regulator, and I am confident that he will do it.

**The Hon. W.A. MATTHEW:** It is a minor point and I agree with the minister that Lew Owens engages in that practice presently and, like him, I expect that is what he intends. However, I ask the minister to take back to his government the fact that there has been some endeavour in the preparation of this bill to tidy up public notification of things so that the internet is referred to specifically. The legislation that has been through this place over a number of years has rarely been that explicit, and I just put to the minister a request to take back to his colleagues my view and that of the opposition that it is worth while doing that which has been commenced in this bill, so that right through, wherever public information is involved, the legislation states that it goes on the internet. Then we do not have to worry about the calibre of anyone who might follow Lew Owens five years hence, but I agree that he will probably do that anyway.

Clause passed.

Clause 42 passed.

Clause 43.

**The Hon. W.A. MATTHEW:** I do not apologise for sounding like an old broken gramophone record on this measure, but this clause and the remaining clauses in part 8 of the bill are a mirror image of those in the 1999 legislation, the Independent Industry Regulator Act. The titles of each of the sections are identical and the word 'commission' has been interchanged with the words 'industry regulator'. There are two changes that I will note on the record. One is a maximum penalty of $20 000 or two years where it was $10 000 previously, so that has been lifted, and the opposition has no dilemma with that. There has also been a tidying up of words under clause 51 so, where the old act referred to Corporations Law, the bill refers to the Corporations Act 2001 of the commonwealth (if applicable to the person). The opposition has no problems with these provisions because, again, this is a section of the bill that the Liberal Party authored.

**The Hon. P.F. CONLON:** I have been sitting here patiently, but on this issue I draw your attention, sir, to standing order 128. It requires a member not to engage in tedious repetition in the substance of the debate and that you as the Chairman may call the attention of the committee to that fact. I am not suggesting that you do it now, but the honourable member should at least learn some shorthand for what it is he is saying instead of saying it over and over again so that I do not have to listen to it.

In relation to the earlier point made by the shadow minister about plagiarism, I do not have a dictionary with me but it is my understanding that plagiarism is not, in fact, the reproduction of someone else's work: it is the reproduction of someone else's work without acknowledgment, and we have said all along that it is the Independent Industry Regulator, plus additions. I just wanted to assist the shadow minister with that in case—as I think may well be necessary—he ever returns to education.

Clause passed.

Remaining clauses (44 to 53) and schedule 2 passed.

Schedule 2.

**The Hon. W.A. MATTHEW:** This schedule is effectively the transitional provision of the bill. It is through this schedule that the bill to which I have been referring so fondly tonight—the Independent Industry Regulator Act 1999—is referred. I know that my colleague the Hon. Robert Lucas in another place will probably shed a quiet tear when he sees that name vanish from the statutes, because he put so much effort into bringing that bill through this parliament at the time it was debated in 1999.

This schedule has a number of transitional provisions, and I seek a point of clarification from the minister so that there can be absolutely no doubt. I seek an assurance for all those who are presently working for the Independent Industry Regulator. As I understand it, the consequences of this transitional provision mean not only that we are seeing the old Independent Industry Regulator Act go but that, essentially, all appointments and any delegations made under that act carry through. That also applies to employment conditions, including remuneration and other packages and locale of working; and it means that, to the best of his knowledge, the minister is not aware of any existing employee likely to be disadvantaged through any transitional provision.

**The Hon. P.F. CONLON:** As I have said, that is the intention of the transitional provision. I rely on the ordinarily extremely reliable Parliamentary Counsel in that regard. Much has been made of the rebadging, but I would have thought that the member for Bright would accept—especially as he has made so many points about making information widely available, particularly on the internet—that the move to name the new bigger regulator the Essential Services Commission is a positive one. I am absolutely certain that ordinary punters out there would have no idea what a South Australian Independent Industry Regulator deals with and that it is far clearer what an Essential Services Commission deals with, that is, essential services. That it is a positive step. If the member has no further questions, I thank him for his contribution so far.

Schedule passed.

Schedule 3 and title passed.

Bill reported without amendment.

Bill read a third time and passed.

**The DEPUTY SPEAKER:** In declaring the vote on the third reading, I remind the house that it was resolved yesterday that this is a bill of special importance pursuant to section 28A of the Constitution. I inform the house that the message transmitting the bill to the Legislative Council will contain a certification to that effect.

## ELECTRICITY (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 17 July. Page 891.)

**The Hon. W.A. MATTHEW (Bright):** I stand on behalf of the opposition to support this bill. It is the partner bill to the now passed Essential Services Commission Bill 2002 that has been facilitated through this house. Unlike the Essential Services Commission Bill, this bill is at least more open in its intent in that the bill is what it purports to be, and that is an amendment to the existing electricity bill.

**The DEPUTY SPEAKER:** Order! If I can just interrupt the member for Bright. Can I point out to the member for Heysen that, whilst we pass no judgment on whether your back faces us rather than your front, I do point out that the microphones here are very sensitive and are picking up some of your conversation and causing some problem for Hansard. So I trust that you did not reveal too many family secrets. But I remind members that the microphones in here are very sensitive and can pick up material which can be embarrassing in certain circumstances. I also remind members that it is preferable to join guests in the gallery rather than have a conversation with them across the barrier. The member for Bright.

**The Hon. W.A. MATTHEW:** Thank you, Mr Deputy Speaker. I am sure the member for Heysen appreciates your gentle guidance. This bill, as with the other bill, has been made necessary through the introduction of full retail competition, from 1 January 2003, which will mean that all South Australian small electricity customers will be able to choose their electricity retailer. The minister's second reading speech had the touch of the overt political as well, but I think the reply that I gave to the minister's customary light touch was explained in full enough detail in my second reading speech to the Essential Services Commission Bill, and there is certainly no need for me to occupy the time of the house in going back over that ground. If there are any people reading *Hansard*, I refer them to that particular address.

This whole change is a very fundamental one for South Australians. It means that some 730 000 customers with an electricity consumption of less than 160 megawatt hours—that is essentially domestic households and small businesses—will change the way they take the supply of electricity. It will mean a fairly significant learning exercise for South Australians. But it is not a learning exercise to which they are unaccustomed. There have been many changes in a lot of markets over the past few years, and South Australians certainly have shown how well they have taken to changes in the telecommunication market. Be it through fixed telephony or mobile communications, South Australians certainly have embraced those changes well. They happily choose their telco company, and they happily change companies when the service or the price are not to their liking.

In discussing this issue with a number of friends, associates and constituents, there is no doubt that South Australians relish the opportunity to change their telco company if they are not happy with the service. It is their way of saying to the telco company that they do not like the way the company is doing business with them, and so they change carriers. That is the wonderful advantage of such flexibility.

But such was not the attitude when these changes first occurred. Initially, no doubt many people were confused about the telco changes. In fact, they did not like the change and they were a little slow to do so. The allegiance to the old Telstra, or Telecom as it was previously known, is still there, but more and more people are moving around and experimenting with other companies. New companies are starting up and price advantages are now available. It will be a long way down the track before any of that happens with electricity, and no-one in opposition or in government has said anything that would lead me to think that anyone is endeavouring to pretend otherwise.

Inevitably, increases in price are likely, and changes made via this bill will assist in addressing the way in which those occur. Essentially, the bill makes changes to protect both

customers who decide to shift electricity retailers and also those who decide to stay put. Aspects of this bill are overseen by the Essential Services Bill that we have just debated. Certainly, a lot of the amendments are not foreign to me—in fact, they are amendments that I saw in draft form prior to the last election. The logic is not dissimilar—

*The Hon. P.F. Conlon interjecting:*

**The Hon. W.A. MATTHEW:** I will not stand here and pretend that the bill was drafted, because it was not. So, if the minister is challenging me to suggest that that is what I am saying, I am not for one minute saying that. The bill was not in that advanced stage of drafting. It was the logic and the changes that needed to be drafted that were being addressed, and the minister knows that full well. The drafting was not that advanced and, in fact, when the government could no longer be involved in the drafting during the caretaker period in February this year, it did not need to be that advanced in its drafting, and that is difficult to dispute.

Nevertheless, the logic of the change was being worked through, and the logic that the government has addressed in this bill is one with which the opposition has no difficulty. The logic is not dissimilar to that which has been used in New South Wales and in Victoria. During my time as minister responsible for electricity—in the four short months that I had the privilege of holding that portfolio—I put on the record numerous times that we in South Australia would be learning from the lessons of Victoria and New South Wales. This government has done just that, and that makes good sense. Why else would it embark unnecessarily upon a walk down a new and unknown path?

The bill makes a number of minor changes. As I see it, there are two significant changes to the Electricity Act. The first of those changes is through clause 17 of the bill, which inserts a new division 3AA of Part 3, putting in place special provisions relating to small customers. This change provides for standing contracts to small customers, including a standing contract price and standing contract terms and conditions. It also provides for default contracts for small customers, including default contract prices and default terms and conditions.

That is a very sensible approach. Even with the best will and intent in the world and even if the government has a perfect advertising campaign—and I sincerely hope that it does—the waters can still be muddied by eager participants in the market who may wish to grab market share. If people decide to bide their time, to not make any decision to change, to sit back and wait to see how the market develops, they are provided for through these changes. Indeed, that makes good sense. In fact, the bill provides that AGL, as the incumbent retailer, is obliged to offer a standing contract to small customers, be they existing or new, as at 1 January 2003. The opposition has some questions in relation to that, and I will pose those questions during the committee stage of the bill. They are procedural questions, and I am sure the minister will find them none too arduous. The provision regarding AGL essentially, therefore, leaves people to opt for the status quo, and we have no quibble with that. It is a logical step to take, and it has been taken in other jurisdictions.

The bill also picks up the issue of a customer's moving into a new premises where electricity is provided by a particular retailer or a customer's being in a fixed term contract that subsequently expires without their having negotiated another contract. Again, regardless of whether there is a new contract in place, it effectively places the onus on the electricity retailer to continue to supply under a default contract. Again, such provisions are included in New South Wales and in Victoria, and are, again, commonsense.

This bill provides for the application of a series of penalties. A primary code or licence breach attracts the maximum penalty of up to $1 million. I have referred in part to that quantum in my address to the Essential Services Commission Bill which we have just debated. The existing quantum is $250 000. I said during my time as minister that that amount is nowhere near high enough. It needs to be a minimum of $1 million. We flagged before the state election that that was to be a change. That change is here, and we have no problem with it.

However, if the minister wanted to avail himself of regulation now or in the future in this house or another, we are quite comfortable with that flexibility being applied, because it is important that the quantum of penalty is an effective one. I make that offer so that, if there are difficulties in the future, the minister has that flexibility with our support if he so desires.

The second significant inclusion to the bill is clause 18, which essentially inserts a new section for warning notices and assurances. I have made some reference to those in the debate on the preceding bill and have already indicated that the ability to take out injunctions in the District Court be provided if necessary. That is a tiered structure that has merit, and I congratulate the government for bringing it forward, as I did with the previous bill. The opposition will watch with interest to see how it develops. However, in theory it looks to be a process that will provide an appropriate deterrent.

There is a series of other amendments to the act. There are a number of procedural measures to tidy up the wording in some sections. In its wisdom, Parliamentary Counsel, on looking at any bill for another time, will come up with a number of tidying-up measures to a bill. Those measures are derived from personal viewpoint or have been held onto for some time. There are a number of those there. There is also a tidying-up provision dealing with the expiry of cross ownership rules and to remove references to non-contestable customers, as customers will be contestable from 1 January. They are procedural and make sense. Clearly, we cannot have any issue with those.

As the opposition sees it, that is the major thrust of the bill. We have no problem with its passage. It goes hand in glove with the Essential Services Commission Bill. As I said, I take issue with some of the overtly political comments by the minister in his second reading speech, but I have covered them exhaustively in my response to the Essential Services Commission Bill. We have a number of areas on which we will require clarification during the committee consideration of the bill but the opposition, as I indicated to the minister earlier tonight, is keen to expedite this bill swiftly through the parliament tonight so that it can be ready for debate in another place.

**The Hon. P.F. CONLON (Minister for Government Enterprises):** There are some matters with which I would take issue but, in the interests of expediting the legislation, I shall not do that. The legislation does make the changes necessary for full retail contestability and, to paraphrase what we said earlier, it adds substance and muscle to the functions of the Essential Services Commission.

It is our best effort to give South Australians the best regulatory regime they can have in the first instance coming up to full retail contestability in electricity and, in the long term, in the regulation of essential services. I thank the

member for Bright for his contribution and I am keen now to move on and send this bill off to the upper house in order to see it back soon and have in place all that is necessary for the proper entry of South Australians into the fully contestable electricity market.

Bill read a second time.

In committee.

Clauses 1 and 2 passed.

Clause 3.

**The Hon. W.A. MATTHEW:** I have a question in relation to clause 3(g) which provides the definition of 'small customer'. The definition reads:

> 'small customer' means a customer with an annual electricity consumption level less than the number of MW.h per year specified by regulation for that purpose, or any customer classified by regulation as a small customer.

I was a little surprised that the actual definition was not included in full and I ask the minister what the definition of 'small customer' in toto will be as applied by regulation, and specifically what number of megawatt hours per year he proposes to include within that definition.

**The Hon. P.F. CONLON:** The intention, of course, is to protect, to the extent that the regulatory system can, all sub-160 megawatt customers. What this provision does is allow the flexibility to also protect customers that might be in a subset of customers who are especially vulnerable and suffer special difficulties. All it does is give us the flexibility by regulation to protect a greater range of customers than simply the sub-160 megawatt customers—the 730 000 that you referred to. Given that the member has suggested before that the government needs flexibility in other matters, I am certain it is a positive provision.

**The Hon. W.A. MATTHEW:** As the minister knows, I do have a very flexible approach to these things and I am certainly not going to criticise the flexibility. However, I would like to hear from the minister what other group of customers he or his advisers may have determined could be adversely affected if they were not included within the small customer group and would have a consumption that is greater than the 160 megawatt hours.

**The Hon. P.F. CONLON:** There is no forecast group at present. To allow ourselves flexibility into the future, nothing is identified at present. It may be that we do not want to regulate everything according to some 160 megawatt customers at some point into the future. It may be that one day, with hope in our hearts, full retail contestability will start to deliver some benefits for customers. All it does is allow us flexibility into the future.

Clause passed.

Clauses 4 to 10 passed.

Clause 11.

**The Hon. W.A. MATTHEW:** As I understand this clause applied to the principal act, effectively, this takes away the exclusivity (for want of a better term) that AGL presently has as the sole retailer. Is there any intent that I have not been able to determine from this clause beyond that removal of the exclusivity for AGL and its present modus operandi?

**The Hon. P.F. CONLON:** The member is talking about clause 11(a). The intention is as the member has identified.

Clause passed.

Clause 12 passed.

Clause 13.

**The Hon. W.A. MATTHEW:** Essentially, this clause updates the present penalty level again from $250 000 to $1 million. Again, I want to put on the record that the lack of flexibility concerns me somewhat. We support the quantum leap. If the minister wants to avail himself of the opportunity to be flexible with this through regulation, in the same way that he is seeking flexibility with the definition of small customers, the opposition, either in this place or another, is happy to look at this. I think it is important that we continue to reflect upon the amount of money that is made by these electricity companies in a very short period of time: they can make or lose $1 million within a minute or two. While I acknowledge that, in parts of this bill (and the previous one), there are rolling provisions to continue to add incremental amounts of $1 million plus $1 million plus $1 million, which is an attractive proposition, I would not want to see a situation where some of these retailers still find themselves in a position where it is easier to cop the penalty than it is to do the right thing. That is certainly the situation at the moment; I freely acknowledge that.

**The Hon. P.F. CONLON:** I understand the proposition. What I have said before and I will say again is that, when you look at the $1 million penalty in conjunction with not only the provisions you have identified but also the injunctive provisions and others of the act requiring the disgorgement of profits made in contravention of an order or the act, you then see that, if you require the disgorgement of profit, the $1 million penalty becomes a real and meaningful penalty. I point out that it has been hard to convince people at a national level, where the profits from gaming in the market are potentially enormous, to move to a penalty of this size. This is a much tougher regime than in the past and much tougher regime than the national market generators face in manipulating the market, so we are pretty comfortable with it at present. I can give you an undertaking that, if it does not prove to be effective in frightening people, we will come back and consider it again.

Clause passed.

Clauses 14 to 16 passed.

Clause 17.

**The Hon. W.A. MATTHEW:** This is the clause to which I alluded during my second reading contribution as being the first of the significant changes to the Electricity Act, because it provides the special provisions relating to small customers. They are provisions with which the opposition is essentially comfortable. This provides for the preservation of existing rights both for companies and also for consumers. Subclause (6) of the proposed new clause 36AA makes reference to a standing contract price. I understand that this standing contract price is one that needs to be advised some time this year so that it is out in the marketplace well before the contestable market commences on 1 January next year. Is the minister able to share with the committee when those standing contract prices are able to be put forward and, at this stage, how many companies does he expect to make submissions by whatever due date has been determined?

**The Hon. P.F. CONLON:** The first thing is that only one retailer will be required to make the standard price, and that will be AGL. That will on the basis that one would think that anyone seeking to compete with AGL under ordinary market forces would compete by selling electricity more cheaply rather than more expensively—although odd things happen in the world. What we are hoping to do and what we are confident we can achieve is for that process to have a price set by the end of September. This has been ongoing. We have a lot of work going on with the industry regulator at present, who will be the chair of the Essential Services Commission. I talk to him regularly—the last time only two days ago—

about the progress of discussions. Lew is doing his sums and AGL are making its submissions. We hope that AGL will come with a price that we believe is justifiable. If it is not, the provisions we have put in to protect customers will come into play, but obviously we are seeking to get a price out there at the earliest opportunity. Apart from anything else, it is very important for the possibility of retail competition, and we are hoping to do that by 1 October. Of course, we would be grateful if you could send the bill back to the Legislative Council by the end of August; that would be a great help to us, and I urge you to ask your colleagues up there to do that. We would then be looking at a price by the end of September.

**The Hon. W.A. MATTHEW:** As I said in my remarks yesterday evening on the Essential Services Commission Bill, the time frame is very tight. Without a current legislative mandate, AGL must put a price before government within six weeks. Has the minister received any indication of the likely quantum of that price and, if so, was that figure used in the government's assessment of the amount in the budget that is included in the appropriation for the Remote Areas Energy Scheme, and was that used to define the withdrawal of the component of $400 000 removed from that scheme as a savings clawback from electricity consumers in remote areas, the cost of whose electricity is presently subsidised so that they pay 10 per cent above the rate paid by grid connected customers for the first amount of their consumption?

**The Hon. P.F. CONLON:** It would be unhelpful for me to put a figure on that, as the honourable member well knows and, as he stated in reference to the Essential Services Commission, the role that the regulator and the chair of the commission will play in setting a price is an independent one. If I were to state here today what I think the price is, that might be seen as an attempt by me to send a signal to the regulator about what the price should be, and I do not think that that would be wise or helpful. I do not think that the regulator himself has settled a figure. From discussions, I understand that he has an idea, but he continues to talk to retailers and identify contract prices, all of those things that go towards identifying the sorts of parameters that will affect the retail price.

I take this opportunity to put a few things on the record. We have set fairly ambitious targets and we have pressed companies and our own officers very hard with this timetable. I put on the record my appreciation of the work of John Robinson, in particular, and his merry unit. They were given very tough timetables, and they have delivered. We will continue to set tough timetables. I would sooner suffer the embarrassment of not meeting one than setting one that is too easy and wasting valuable time. I am happy with the cooperation that we are getting from all sectors at present. The regulator is doing his job and will soon (I hope within three weeks) be the chair of the Essential Services Commission. We have set a target and we hope to meet it, but it would be unhelpful for the reasons I have pointed out to put down a figure today. As I said, I would like to put on the record my appreciation for, in particular, the government officers who have worked within very tight and difficult timetables on this.

**The Hon. W.A. MATTHEW:** This is a particularly long clause which encompasses almost three pages. That is why it is imperative that I exhaust my allowed questions. The provisions of this clause also relate to default contract prices, default contract terms and conditions, and default retailers. As I indicated in my second reading address, there is good logical sense in providing a safety net for people so that supply is not discontinued if a person moves from one residence to another, if the period of their contract ends and a new contract is not in place, or if someone makes no decision in relation to whether or not they will change retailers.

My question relates to the issue of the default retailer. As I understand it, in the first instance, the default retailer is AGL. This is something with which customers would be familiar because there is a default retailer for telecommunications, and that is Telstra. If, however, we are looking at a market that has endeavoured to encourage competition, I ask the minister whether consideration has been given by his government to, instead of having one default retailer, having more than one: in other words, deliberately sharing the business to enforce a more rapid rate of competition?

I ask that because certainly early indications from the New South Wales and Victorian deregulated markets, which both started in January this year, are such that customer movement has been very slow. The minister and I at least agree on the fact that the only way to drive down prices is to have competition. There are some schools of thought—not necessarily to which I subscribe strongly—which advocate that to have more than one default retailer enforces an earlier introduction of competition. So, I ask the minister whether consideration was given to that and, if so, what were the reasons for not proceeding down that path and instead opting for one default retailer?

**The Hon. P.F. CONLON:** As I understand it, the default retailer is the retailer responsible for the connection point when it was last used. Of course, in the vast bulk of cases that will be AGL, although I guess with new entrants to the market at some point it will not be. Consideration has been given to all manner of ways of improving competition, but I am not sure that the one the member suggests is viable in the circumstances. The bottom line is that the position we have put throughout is that there are no quick fixes to the difficulties, and a quick fix may well have unforeseen circumstances that are worse than the problem. We have said that we want to create a healthy electricity industry where people can make a reasonable return on their investment. We have said throughout that we have to keep a balance in setting a retail price—if the regulator does, in fact, set it—between protecting customers but not screwing down the margin so as to prevent competition and choke off competition.

We have racked our brains about this—I can assure the member of that—but we believe the best resolution for retail competition will be good policy, good planning, healthy electricity industries making a reasonable return on their investment and a good regulatory system that has a balance between security and improvement in regulation which is not at a high cost to the industry. We are trying to do all these things. That is why we have said throughout that we do not have a magic bullet or an easy answer, because we believe an easy answer would be illusory. As I say, we will attempt to get a healthy industry that is well regulated but making a reasonable return on its investment, and foster proper competition within that. To do anything else, I think, would be unwise.

Clause passed.

Clause 18.

**The Hon. W.A. MATTHEW:** Clause 18 is a particularly long clause, so again I request your indulgence as the opposition asks some questions in relation to it. This clause is the other major clause to which I referred in my second reading speech, in that it provides for warning notices, assurances and, indeed, also for a process of injunctions. As

I indicated during my second reading speech, we are certainly largely supportive of that process.

The question I have of the minister does not fit neatly within this clause nor the preceding one and, as there is no room within which to ask it, I will ask it with your indulgence and that of the minister so that he has an opportunity to respond to it. I put to the minister that, in order to get competition into the market, as he has indicated, it is the connection point that becomes important in the first instance to institute the default retailer.

If we look at, for example, a new housing estate, the connection point contract will be the all-important contract to establish a default retailer for the new home buyer. It seems to me that that will establish a new opportunity for companies to be able to grab a portion of market share. It is equally possible that some practices could occur that may need careful scrutiny. Has the minister given any consideration to the prospect of home builders grouping together and entering into bulk contracts to endeavour to hand over a big chunk of a housing estate to a particular retailer by virtue of the way in which the connection point contracts are allocated?

This could happen at any stage of the subdivision of land. It could be a part of a contract that might be included within land that is put on the market for subdivision. So, an actual landowner might own a farming property which is subdivided into 3 000 housing allotments. That landowner is able to prescribe up front an opportunity for a retailer to grab that chunk of the market. While it could be argued, 'Well, that is what competition is all about: finding ways of engineering competition,' has the minister given consideration to the insidious possibilities that could result from that with someone coming in and effectively accepting great sums of money from companies to allow entrance to the market in that way?

Of course, in posing the question, I appreciate that although they become the default retailer it does not take away the ability of someone to say, 'I'm not staying with that retailer. I'm moving as soon as they move in.' But people are creatures of habit. If they move into a house and there is a default retailer and they are reasonably happy at the start they will continue with that retailer, but they could be blocked entrance into that market at the start.

**The CHAIRMAN:** I think that was a statement and a question. Minister.

**The Hon. P.F. CONLON:** I am seeing whether my adviser understands the question, because I am not entirely certain that I do. If I understand correctly, the member for Bright is concerned that, at present, for every connection point in a new development someone is already responsible. We are talking about new housing developments and whether I am concerned that a developer might make an arrangement with a retailer for those connection points so that when people do move in they are already the customer of that retailer. It is a little difficult to understand how we might intervene.

One proposition put to me some nine months ago was that we should run a lottery and just divvy out existing customers to other new entrants. I would be very careful about—and I would have thought it more likely to come from the honourable member's side—trying to invent a regulatory regime that distorted the ordinary operations of the market. I find it almost impossible that I am saying this on this side of the committee in answer to a question from the honourable member's side, but it is difficult to conceive of how we might intelligently interfere with that process in new housing estates. If the honourable member has an idea, we are prepared to listen; but I find it difficult to understand just what, realistically, we might be expected to do and can see how we might create problems that we do not foresee by good intentions.

**The Hon. W.A. MATTHEW:** I refer the minister to the new section 63B under the heading 'Register of warning notices and assurances'. This section is consistent with the part to which we referred in the debate on the previous bill and it is to do with the keeping of a register of warning notices, in one aspect, by the commission—and I have already spoken to the minister in questioning on the previous bill in relation to this. The other aspect involves the Technical Regulator. It is my recollection at this time that the Technical Regulator is not quite as forthcoming with information on the internet in relation to a register of warning notices. I again seek the minister's assurance that it is his view that this information ought to be publicly available through the internet as well as within the register referred to in this section.

**The Hon. P.F. CONLON:** I will certainly raise this issue with the Technical Regulator. I expect that there will be not as much interest in warnings issued by the Technical Regulator as in warnings issued by the Essential Services Commissioner, but I understand the point and will raise it.

**The Hon. W.A. MATTHEW:** I refer to the new Division A2—Injunctions. This division essentially provides for the minister, the commission, the Technical Regulator or any other person to institute processes to obtain a court injunction. The effect of such an injunction is to remedy a series of adverse consequences of conduct that might have been identified. In the drafting of this section of the legislation have any of the adverse consequences referred to been drafted with previous infringements in mind that the minister is able to share publicly by putting them on the record? For example, it talks about the refunding of amounts wrongfully paid, compensation to a person or the publication of an advertisement through a misdemeanour. Have there been any serious transgressions in recent time of which the minister is aware that can be placed on the record tonight?

**The Hon. P.F. CONLON:** I do not believe so. The purpose of injunctive relief here, as in the Essential Services Commission, is that injunctive or equitable relief is the most flexible in terms of court relief. It can deal with future conduct and can reach back to the past. The matter is set out because it is injunctive relief under classic equity jurisdiction. The matters listed are not solely the orders possible by the court. The purpose of injunctive relief is to allow the flexibility to a court to make orders that deal with the future and present and reach back into the past to correct behaviour that exists, because we believe it is the best possible muscle we can give to the regulator, the commissioner or the minister, as the case may be.

Clause passed.

Clauses 19 to 21 passed.

Clause 22.

**The Hon. W.A. MATTHEW:** I have looked at this as being the ill gotten gains provision. There is much merit in providing a clause that enables the order for payment of profit from a contravention, so the opposition is pleased to support that clause.

Clause passed.

Remaining clauses (23 and 24), schedule and title passed.

Bill reported without amendment.

**The Hon. P.F. CONLON (Minister for Government Enterprises):** I move:

That by leave, pursuant to section 28A of the Constitution Act 1934, this bill be declared a bill of special importance.

Motion carried.

Bill read a third time and passed.

**The Hon. P.F. CONLON:** Mr Speaker, I draw your attention to the state of the house.

*A quorum having been formed:*

## STANDING ORDERS SUSPENSION

**The Hon. K.O. FOLEY (Deputy Premier):** I move:

That standing orders be so far suspended as to enable the Statutes Amendment (Structured Settlements) Bill, the Recreational Services (Limitation of Liability) Bill and the Wrongs (Liability and Damages for Personal Injury) Amendment Bill to pass through their remaining stages without delay.

Motion carried.

## RECREATIONAL SERVICES (LIMITATION OF LIABILITY) BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 1034.)

**The Hon. I.F. EVANS (Davenport):** I indicate to the house that I am the lead speaker for the opposition on this bill. I put on record from the outset that the opposition will be supporting the bill. We do not intend to oppose the bill, and we acknowledge that it is one part of a package of bills that the government is introducing to try to address some of the concerns that have been raised over some months in relation to both access to insurance and the cost of public liability insurance.

The opposition had been doing some work in relation to this matter prior to the February 2002 election. In fact, prior to the election, we had established a working party to look at this exact issue. We support the government initiative to bring measures before the house that seek to address the concerns raised by a whole range of commercial as well as not for profit operators in respect of the lack of access to insurance and the cost of insurance.

It is important to note that the bill was introduced this afternoon. To the best of my knowledge, we have had at least one and possibly two amendments to the bill during the afternoon. It is now 9.10 p.m. and I was briefed at 8.30 p.m.in relation to the bill but, in fairness to the Treasury officers and the Treasurer, we were offered a briefing on the original form of the bill yesterday, or it might have been two days ago, which some of us took advantage of. And, of course, we had access to the discussion paper which the government put out some months ago. So, while we have been caught out in some respects with some of the changes to the bill, we acknowledge that the government has put out a discussion paper that addresses the general issues raised in relation to the bill.

In speaking to this bill, I think it is fair to run a broad sweep over the principles behind why the government is bringing in this package of bills. Essentially, I could summarise it by saying that there has been a large community backlash against both the rise in public liability insurance costs and the lack of access to public liability that has been in the insurance market over the past 12 months.

There are countless examples, which I am sure members will bring to the house, representing their electorates, about small community organisations with generally good claims records that were struggling to get access to public liability insurance, could not get access to it, or could get access to it but at such a huge increase in price that it was simply unaffordable. I remember bringing to the attention of the house gymnastics clubs that had closed because of high insurance costs. I know that my electorate office has been lobbied by a number of organisations, some of them in what I would call high risk physical activity areas but others of which are in what I would call passive physical activity areas.

There has been public debate for 12 months involving community organisations about both the cost of insurance and the access in the market to that insurance. As best as I can establish, the insurance industry's argument is that, for some years now, when looking at the class of public liability insurance, they have been collecting about $1 in premiums but paying out $1.35 to $1.40 in claims, and that was being subsidised by other business activity of the insurance industry, whether through other insurance classes or through the success of the investment regime of their insurance businesses. That is what the insurance industry is putting to the government, to the opposition and to Senator Helen Coonan, in relation to the principle that they have been subsidising public liability through other business activities.

The industry is now saying that the market is slowly but surely coming back to its correct level, that is, in price of premium because, over that period where claims were outweighing premiums collected, some insurance companies have been deliberately underpricing the product, buying market share, which has been unsustainable. Some of those have fallen over in quite colourful ways, and now the market is returning to its natural level. That has been something of a price shock and a market access shock to the community. The community has been ambushed by a two-pronged attack from the insurance industry in regard to price and access.

The public liability insurance industry tends to be what is called long-tail insurance, that is, the premiums are collected up front but the claims and the possible liabilities can occur over a long time, so it is known as a long-tail insurance product. The insurance industry would certainly argue that there have been many years of underpricing and, as a result, the market is now adjusting itself.

The insurance industry tells us that a policy written today is priced not on the basis of the current cost of claims but on an estimate of the claims cost when the claims under that policy will, on average, be paid out. Typically in the long-tail classes, the average claim takes three or four years to finalise, and that can often be much longer, such as in the case of seriously injured children, because it may take a decade or more before their condition stabilises, and premiums are therefore based on the expected growth of average claims costs over the average duration of the claim and then discounted for the expected investment earnings on claims reserves over that period. Therefore, underpricing and potential overpricing occur when these estimates prove to be seriously inaccurate.

According to the insurance industry, it is now clear that a number of insurers seriously underestimated the growth rate and claims cost for much of the 1990s, and the impact on profitability for some was masked for a time by what were buoyant but what seem to be unsustainable investment profits. In other words, a trend has been established where claim costs would double in real terms every five to 10 years. The insurance industry then argues that today's premiums reflect the market adjustment to that reality, and there is some

expectation that this trend will continue to impact on claims going forward. They also mount an argument that, since the 11 September incident, there has been a shift of available capital away from what is deemed by the market to be higher level risk to lower level risk, and that is an issue to do with the capital markets.

Ultimately, the insurance industry argues that the sustainable solution therefore requires a concerted effort by all stakeholders to try to get greater certainty and stability to the underlying cost drivers of long-tail insurance classes. They argue that it means a legislative framework that clearly aligns the expectations of those with legitimate claims to the financial capacity of those to pay the premiums. It means a regulatory framework with the tools and resources to actively monitor trends in the liability classes and to take the initiative in responding to early signs of instability. It also means a clear understanding by all stakeholders of their role in ensuring stability and sustainability.

I think that pretty well gives a snapshot of what the insurance industry is saying Australia wide—whether it be to their various state government committees or various state government bodies—in relation to proposed legislation such as that which we have here tonight, or whether it is in formal submissions to the federal government through Senator Coonan and her various inquiries.

**The Hon. K.O. Foley:** She is a good minister.

**The Hon. I.F. EVANS:** The Treasurer says that she is a good minister. The insurance industry sees the initial legislative responses of governments to address the upward pressure on premiums and the degree of effectiveness of the legislation as somewhat uncertain due to the untried nature of some of the measures and differences between jurisdictions. However, most of the measures do represent some progress in the right direction. The insurance industry claims that the initial legislative response must be seen as a first step. They note that governments have announced a number of other measures that, if implemented, will effectively play a crucial role in establishing a more stable and sustainable environment for liability claims.

It is interesting that the insurance industry is really saying that it is not sure what the answer is. It recognises that it will be a balance of measures between new legislative responses, new approaches by the insurance industry and those seeking insurance. It is that combination of partnerships that somehow will have to come up with a solution to what is a difficult and complex problem. This particular insurer does recognise that the proposals put forward by various state governments are at least a step in the right direction.

In fairness to the Treasurer, I say to him that the opposition supports the measure. We recognise it as a genuine attempt by the government to address what is a complex community problem. We are not necessarily 100 per cent convinced that it will not be too bureaucratic on the ground, but that is yet to be seen. However, we are prepared to take the risk to put the measure out in the market place to see what the community thinks of it. We are not prepared to play politics by not putting the measure out there. We think it is worth a run, but there should be some ongoing monitoring so that we can make adjustments, if required, in future years to make it user friendly on the ground. So, the Treasurer can feel relaxed that he has the support of the opposition in that regard.

The bill really sets out a series of steps whereby recreational service providers can provide a recreational service and offer up recreational activities. Ultimately, if they adopt a code acceptable to the minister, the people undertaking that particular recreational activity—if they are undertaking it as a fee for service with a commercial provider—have an opportunity to offer a waiver to the commercial provider by signing a contract. If they are taking up the opportunity to undertake a recreational activity provided by a recreational service provider at no cost to the user, then the recreational service provider can, in essence, offer a waiver, and the waiver can be accepted by the user by simply having the recreational service provider put up signs. I think I have that right. So, there are two avenues for people to obtain waivers: one is by undertaking a commercial service and signing a waiver, and the other is undertaking a service at no cost to themselves, and if the signs are up, etc., there is no need for a written contract since the waiver is done by the broad principle of having the signs up. That sounds all well and good in principle.

The Treasurer would know that, as a former minister for volunteers, I did a lot of work trying to bring measures to the parliament and to the community's notice that would make the life of the not-for-profit and the community sector easier to operate in. If it is too difficult, those people will simply walk away and not be involved in a whole range of activities which we think are the lifeblood and the building blocks of Australian communities and Australian society. So, we do support this concept of trying to make it easier on the ground for community groups. We acknowledge that this bill recognises not only not-for-profit but also for-profit groups, but I have a particular interest in the not-for-profit sector in that regard.

This bill raises a whole series of questions that we will be asking the Treasurer when we are in committee. Some of these issues that we want to flesh out from the Treasurer during the committee stage relate to the capacity of the person who is the consumer as defined under the act. We now know that the government has brought in an amendment to its own bill that says that the consumer has to be an adult. That is different from the discussion paper. The discussion paper that went out provided that the parent of a child seeking a recreational service could waive the right of the child. As I understand it, the government listened to the consultation process and decided to bring in the measure without including that provision. This bill now does not include the provision that allows a parent or a guardian to waive the right of a child to sue in relation to damages.

That is one issue that is different from the consultation paper that went out. We recognise, along with the government, that that is a very complex issue. I think it is fair to say that the Treasurer made a fair amount of play, when announcing the release of the discussion documents, about issues in and around pony clubs. The discussion paper was attempting to address those issues. In fairness to the Treasurer, we now find that the consultation process really says that parents waiving a child's right to sue is not acceptable to a whole range of groups. I can understand where the Treasurer is coming from in the amendments to his bill. What we need to understand ultimately with that amendment is that this bill does not do a lot—in fact, I think it is fair to say (and if I am wrong the Treasurer can correct me) that it actually does nothing for people under 18 years of age.

It actually does not provide any relief to junior sporting groups or people who provide either a commercial service or a non-commercial service to those who are under the age of 18. So, for all those groups that were hoping to get some relief in relation to that area, as I understand it, this bill really

does not provide that relief, because anyone under 18 cannot sign a contract of waiver, and no parent can sign away the right of the child.

So that is a major change to this bill to what was sent out in a discussion paper. I bring that to the attention of the house because I know there were many members on this side—and I dare say on the government's side as well—who would have been lobbied by many community organisations with youth wings and youth activities that would have been trying to seek some relief through this bill from the problems they face. It is a difficult problem for the parliament to address, when gymnastics clubs and other clubs are closing because they do not have access to affordable insurance, and that becomes a very complex question for government. It is important that we recognise that is an issue that is not being addressed by this legislation. It is important that the members recognise that.

We need to flesh out other issues in relation to the bill during the committee stage. As I said, I had a briefing at about 8.30 tonight from the Treasurer's staff and officers, and I thank them for that. There are some issues that we need to address, and a key issue I would like to put before the house is the definition of recreational activity. Recreational activity as defined in the bill is:

> A sporting activity or a similar leisure-time pursuit; or (b) any other activity that involves a significant degree of physical exertion or physical risk and is undertaken for the purposes of recreation, enjoyment or leisure.

Recreational activities by that definition are those activities involving a significant degree of physical exertion or physical risk. I want to talk about this principle for a moment, because I think it is important that we flesh this out as a parliament. I acknowledge that the government is locked into the same definition that is in the federal bill. So, in criticising this definition I acknowledge I am criticising the federal bill. Even though the federal government is a similar colour to myself, I am happy to go on record as doing so.

At this point we need to understand what we are voting on. 'Recreational activity' is now restricted to a sporting activity or similar leisure-time pursuit, or any other activity involving a significant degree of physical exertion or physical risk. A number of organisations provide community activity that could be offered the opportunity of a code under this bill and to offer its participants the opportunity to sign a waiver not to sue the organisation offering the activity. I will give you a good example: community service clubs. Community service clubs—whether they be Rotary, Lions, Quota, Soroptimists or Kiwanis—are an example of organisations that do not fall under this definition and they are, in effect, penalised by the definition of recreational activity.

It seems unusual that the bill is saying that if you run an activity that is high risk and that involves a significant degree of physical exertion, and you are finding it hard to get insurance because of physical risk because the insurer does not want to run the risk, then the system will come in and develop a system of waivers to protect those who are offering a high risk activity. That is fine. I understand that and I accept that, because that helps the bungee jumpers and the parachutists and all those sort of activities that I probably will never partake in, given my conservative approach to those matters.

Why should the organisations that are presenting the higher risk activity—and, therefore, as a result of that activity, are having difficulty getting insurance—be the only organisations that benefit from the opportunity of being able to give their members a waiver? Why cannot the more passive organisations be offered the same courtesy by the system, whether they be chess clubs, service clubs or environmental groups that go tree planting?

I acknowledge that the state government's bill is locked in under the federal bill. For those members who are not sure how that works, currently under the law we do not have the capacity to sign waivers to get rid of our opportunity to sue. So, the federal government is moving amendments to the Trade Practices Act, and I understand that they are in the House of Representatives, yet to be debated. However, they will be debated later in September. The federal government has moved to amend the Trade Practices Act to allow people to sign waivers. The federal government has adopted a definition of 'recreational activity' and, to be consistent, each state is adopting the same definition. So, the state government is locked into this definition of 'recreational activity'. If we need to change this, we will have to lobby the federal government.

It seems to me that what the federal government has done—and, therefore, the state government has done—is say to those groups that are running well organised, low risk, affordable passive activities, 'You keep on paying high levels of insurance or not get insurance.' To those groups that have high risk activities and cannot get insurance, the federal government has said, 'We will develop a system so that you can keep operating.' When the Treasurer's officers briefed me tonight, I said, 'I play club cricket on Saturday afternoons and I'd never sue my cricket club; there's no point.'

**The Hon. K.O. Foley:** They'd sue you for lack of performance.

**The Hon. I.F. EVANS:** That is exactly right. It would just be against my nature, because I just enjoy the club and I enjoy the game. I think that thousands of people in my area would do that. I may be covered under the bill because it is a cricket club, so let us consider the Apex Club, which is not covered under the bill. I would not sue my Apex Club. I know that Apex pays about $40 or $50 a head just for insurance. Why should it have to pay $40 or $50 for insurance if its own members are prepared to sign a waiver saying that they would not sue? It would help the club reduce its costs. It is the same argument that we apply to bungee jumping, parachuting, or whatever.

**Mr Hanna:** What about financial risk management?

**The Hon. I.F. EVANS:** I'm coming to risk management. I am glad you've raised that, because I will be seeking your support on the floor. The whole definition of 'recreational activity' needs to be looked at. I recognise that there is no point moving amendments during this debate, because we have to be uniform with the federal body. The Treasurer and his officers should apply their minds to why the well organised passive organisations do not have the same capacity. A number of fantastic community projects that are undertaken by church groups, by the scouts, the Lions Club, Rotary and environment groups—there are literally hundreds of thousands of them out there—will not be covered by this bill. Those organisations are suffering the same problems as the high risk, recreational activity provider. I raise that matter with the Treasurer and am happy to have discussions with him in due course in relation to that issue.

I know why the bill has been drafted in this way. As I understand it, the Treasurer's officers have essentially indicated that there are two philosophies in respect of how to approach the insurance problem. One philosophy—and this is my philosophy—is that, if you can provide a waiver, why not make it as broad as possible and encompass as many

groups as possible and provide to them that little bit of added protection? If that helps a group survive, that is a good thing. Then there is the other philosophy—and this may well be coming from the administrators of the scheme (the people who do the actuarial calculations and those sorts of areas)—that a waiver should be provided only if there is proof that the insurance is not available or is available at such cost as to make it uneconomic. Therefore, it is a narrow waiver.

I suggest that the federal government has received advice—and I dare say this government has also—to adopt the narrow waiver approach to this issue. In other words, we will give a waiver only if the organisation cannot get insurance or its insurance is at such a high cost that it makes the business not viable. There are two philosophies, and I must say that I come from the philosophy of the broader concept of coverage in relation to waivers. I will walk the Treasurer through a few other issues before the committee stage.

The way in which I read this bill is that it covers local government. I am sure the Local Government Association will be absolutely delighted with this bill because it gives local government an extraordinarily powerful instrument over all its local sporting clubs. I know the Treasurer has an interest in local sporting clubs—I read the *Sunday Mail*—and this is the power that the Treasurer is giving local government. It seems to me that, under the bill, local government may have to do a code, registering with the Treasurer, in relation to its sporting facilities. I say that because under recreational services in the definitions it means 'a service of providing facilities for participation in recreational activity'.

From the way in which I read the bill (and I will be happy to be corrected during the committee stage), there is an argument at least that the local government, as the owner of many sporting ovals, netball courts, and so on, will have to do a code because it provides a recreational service, which is the service of providing facilities. Local government will have to do a code for, say, the local football oval. Then the local football club will have to do a code for the activity that is conducted on the oval. The council's code might be that it has to be watered and it must have grass, a fence and all those sorts of things; and the football club code could be that it must have first-aid trainers and trained coaches, namely, the operations of the actual sport. You may have to have two codes sitting over the one activity, that is, the activity itself and the facility on which you train.

This means that local government, which owns about 90 per cent of all the sporting facilities throughout the state and which leases them to the various clubs, then has an extraordinarily powerful instrument to say to those sporting groups, 'Get your members to sign a waiver or you cannot use our facility.' We all know that, if you cannot use your council's facilities, there are not too many other facilities you can use in many areas. I am concerned that that is an option under the bill, if I have read it correctly. I had a quick briefing tonight, but I am not sure whether I have read that correctly. However, I do raise it to seek clarification from the Treasurer because, if it gives local government that power (and I am not sure whether that is what the Treasurer intends, but certainly the bill covers local government), whether it needs to have a code for the facility as separate from the sport is something that we need to flesh out.

The other issue relates to risk management, about which the member for Mitchell interjected a while ago. I want to talk about risk management because I think the one thing missing in this suite of bills being put forward by the government—this one and the other two or three in relation to this public liability issue—is that there is no plan presented to the parliament about what we will do regarding risk management. It is one thing to change the legislative framework in an attempt to address the public liability issue, but it is one thing to try to cap claims and to offer structured settlements: all these thing are legislative and they all have an affect on the long-tail claim cost, I acknowledge that. But the other side of the agenda is: what is happening out at the sports clubs or community clubs? What is actually happening on the ground? I know this bill addresses part of that by saying that you can have a waiver, but it does not address a whole range of people who do not sign the waiver, or who are children and cannot sign. So, you still need to address those people; and the way to address those people is through risk management.

During our term in government, in late 2001 I sent the Hon. Angus Redford and one of my staffers to America to look at this issue of volunteer legislation and risk management. Although I do not like a lot of things within the American culture, there is one thing that the Americans have done right in relation to this issue, and that is that President Bush, to his credit, has set up a national office of risk management.

That office has legal, financial and risk management advisers who are available specifically to the non-profit sector. They go out and run training seminars and courses about risk management at the community level. So, the member for Mitchell's Marion Football Club could ring the office of risk management and say, 'Come out here and address our players, trainers and staff on risk management;' or if there were a country netball conference in Adelaide with a couple of thousand netballers they could, in association with a sporting carnival, run a range of training seminars about risk management.

So, I think that is the right approach. I think something is missing in this debate, and that is the issue of risk management. How do you actually change the way that community groups operate on the ground without getting too bureaucratic about it and weighing them down with extra costs, etc? How do you change people's mindset?

I will be seeking the Treasurer's agreement to establish an office of risk management, and I am happy to talk to him about that between houses if he wishes; and I can give him examples of the American model. I accept that it would not be set up this year because it is not in the budget, but I see no reason why an agreement could not be reached where it might be established in a future budget.The right response to this issue will be long term, because unless we change community attitudes on the ground to risk management and insurance, this problem will be repeated for some time.

So, we support the concept of an office of risk management; we have some information that we are happy to share with the Treasurer; and, as I say, President Bush has set it up in America. From memory, it started out being subsidised by the government and within about three or four years it was self-funding. Through the various training modules and programs they got it to a point where it was self funding.

There is already a whole network of groups within government that could be linked together to form the office of risk management. We have the Office of Volunteers, the coaching and training courses run at the Office of Recreation and Sport under the coaches program, and I am sure that if you looked through other agencies you could bring a group

together that would have a core role across government to educate communities about risk management.

But it should not be just the sport and recreation community, it should be the environment community, the volunteer arts community and the welfare community through health and human services. There is a whole range of groups that have risk management issues and the government could do itself a huge favour by developing an office of risk management across government.

I know that the Treasurer will not be able to commit to me tonight, but even if he could commit to me about having an open discussion between the houses, I would be happy to provide that information and try to get an agreement, ultimately, to establish that principle because I think it is important for the state and for those community groups that it be done.

There is a further issue with respect to which we will be seeking agreement with the Treasurer—and, obviously, we have not had time to prepare amendments: as I said, we were briefed basically three-quarters of an hour before the bill was called on, so I hope that we get some tolerance from the government in respect of that.

**The Hon. K.O. Foley:** Last week you were briefed.

**The Hon. I.F. EVANS:** We are still preparing amendments. We hope to obtain the government's agreement on the establishment of a select committee to have a rolling reference in relation to monitoring not just this bill but the whole package of bills relating to the public liability issue. I think it is fair to say that no-one in this chamber can guarantee the effectiveness of these bills, although we all hope that they have a positive effect. The advice would be mixed about the nature of the effect. We are not asking that the bill be stopped: we are saying that, when the bill is passed, we then should set up a select committee to monitor all the bills once they are passed.

So, the bill is passed, the measures are in place, and we monitor what the bills do: we monitor the issues that then arise—because, as we know, there are issues that fall through the crack. This is an issue that affects everyone. We all have issues in our electorates involving this point. Why not have a committee which can obtain rolling references from community groups, whose representatives can come in and say, 'This is sort of working, but if we had this change it would work a lot better'? There would be a far more responsive mechanism for the parliament to consider if we had a rolling select committee looking at matters that could report on an interim basis with proposed changes.

We will not move the amendments tonight—we cannot move the amendments tonight—but we are putting the Treasurer and government on notice that we will, in fact, be bringing a motion to the parliament about a select committee for that purpose. It is not only the Recreational Services (Limitation of Liability) Bill that we would be looking at: it is also the structured settlements bill, the changes to the Wrongs Act and that whole package. We think there is nothing wrong with having a rolling committee that would look at these issues. I can tell the Treasurer and his officers that we did some work on this issue. I had discussions with the same officers (in most cases) with respect to this issue for probably two years before the election, and we did the volunteer protection legislation, we got the Good Samaritan legislation up and we set up the working party. So, we were slowly getting down the track on a whole range of issues. I know, from having sat in the Treasurer's position in relation to oversight of this issue, that it is extraordinarily complex. Given that there is bipartisan support for the principle of what the Treasurer is trying to do—that is, to make life simpler for a whole range of groups—we think that a select committee with a rolling reference is probably the way to go.

The other issue that I want to raise relates to the concept of the codes. I understand that people who provide a recreational activity can register a code with the minister and, assuming it is approved, the code is placed on a web site. As long as the code is being adhered to by the service provider, ultimately, there is no liability to those people who undertake the activity in certain circumstances—again, assuming the code is being adhered to. One of the clauses in the bill suggests that the minister of the day will refer the matter to an expert or to a peak association for comment. Any recreational service provider can do a code: a football club could do a code, the local football association could do a code or the South Australian National Football League could do a code.

So, the code can come in at any level and, as I understand it from the officers this afternoon, the code is for an activity, not for a club. A better example might be the Guides. The Guides have their meetings in halls but they also undertake bushwalking. There might be a code of conduct for bushwalkers, and the service provider, which would be the Guides organisation, can link into that code and then the individual Guides go on a bushwalk based on that code. I guess our concern in that respect is the power that is entrusted to the peak associations by getting them to sign off on the codes. I have had the pleasure of being the president of my local cricket association for 10 years, and we have had an interesting relationship with the state peak body. Having been the minister for recreation and sport I know that there are lots of interesting relationships between peak bodies and regional and other bodies. The bill gives power to the peak body to provide input and I think a fair degree of influence over the advice that goes to the minister as to what the peak body can put down in the code.

The minister will receive the same advice as I did tonight when I asked this question. I accept the fact that the peak association is only an advisory role to the minister, but it does give the peak association a fair degree of power. If the local footy association says it is not associated with the SANFL and wants to develop its own code, the SANFL has some oversight—I accept that it does not have the final say—over that code, and there are some concerns over the amount of power peak associations have. In the other place we will be exploring the opportunity of moving amendments in relation to making these codes a disallowable instrument so that the parliament can disallow the codes.

So, in the unfortunate event that the peak bodies slip one past the minister and bring in a code which is either too lenient or too strict or, indeed, which provides anti-competitive measures in favour of the peak association, then ultimately the parliament will have the opportunity to oversee and, if necessary, reject that code. I do not want to hold up the house any longer. Others on our side may wish to speak, and I would encourage them if they do. We generally support the principle. We want to go into committee to discuss a whole range of issues. Given that the bill was tabled only this afternoon, I ask the Treasurer for some tolerance in relation to questions.

**Mr HANNA (Mitchell):** I support the Recreational Services (Limitation of Liability) Bill, one of three bills to address what is perceived to be the public liability insurance

crisis sweeping the nation. I have some general questions for the Treasurer which I hope he will address in reply. These questions relate to the development of the solution to this public liability issue in Australia generally over the past few months. First I want to check that the Trowbridge report has been made publicly available. I have not seen it, but I want to check whether there was any difficulty in its being made publicly available.

This report, which is largely actuarial in nature, assesses how the insurance industry is faring in relation to public liability. After all, if there is no long-term problem with profitability in terms of public liability insurance, then there is not really a crisis. So, this whole debate is predicated on the assertion that the insurance companies cannot make a profit out of public liability insurance—that is, in the long term—at anything like the current rates without legislative change.

Secondly, I ask the minister about the degree to which there has been a deal or an agreement between the relevant ministers throughout Australia. Obviously, the Treasurer was involved recently with his state and federal counterparts in relation to this issue. Has anything in writing come out of that meeting or any formal sort of an accord to enact certain legislation? Thirdly, what is there from the insurance industry by way of response to this hugely beneficial legislation which is directed towards the industry's interests? I say 'beneficial' in the sense that the insurance companies stand to gain so much from having these laws passed in South Australia and around the country. I query whether it has been done on a handshake with the insurance industry assuming that it will stabilise if not drop premiums in the public liability area if the states of Australia enact legislation along the lines that we are now considering or whether there is a commitment in writing that will definitely give relief to the clubs and associations that we are concerned about, those clubs and associations which have been facing rises in their public liability insurance premiums.

I also want to make some general remarks about the bill. In some respects it might be thought that the bill does not greatly change the law of negligence and the way in which clubs and associations need to consider it.

**The Hon. K.O. FOLEY (Deputy Premier):** I move:

That the time for moving the adjournment of the house be extended beyond 10 p.m.

Motion carried.

**Mr HANNA:** After all, the main concern for members on this side of the house at least—and this is dear to my heart—is the interests of people who might be injured and who ought to be fairly compensated for injuries that they receive when engaged in activities in public places, whether they be sporting or recreation activities or activities of other kinds. The principles that govern my thinking on this matter I have already set out in a grievance debate in June of this year. I am heartened by the fact that clause 4 of the bill requires providers of recreational services to think about codes that will ensure a reasonable level of protection for consumers.

In some ways, I think this is the most important part of the bill because it means that consideration will have to be given to the interests of consumers. It is important also that there be a check in the legislation with the codes then to be submitted to the minister who may require a report from a nominated person or association—presumably this means expert advice on what would be an appropriate level of protection to provide to consumers engaged in a particular activity—and the minister may ultimately refuse to register a code and thereby disallow the impact of this legislation.

However, presumably over a period of time for just about every conceivable sporting and recreational activity with some significant public liability risk attached, a code will be developed to cover that activity. The way I see it working is that the minister may well have some negotiation with the relevant peak bodies to ensure that an appropriate code is developed. If anyone can come up with a code for a particular activity and submit it to the minister, if it is to rubber stamped that really would be a great injustice to the people who might be injured after being faced with providers of services who keep to what is a very loose and shoddy code. So, it is important that the minister, with appropriate advice, takes care to see that consumers will indeed be provided with a reasonable level of protection, and I have every confidence that the minister in this Labor government will do that.

In some way, that could actually lead to an improvement in the current levels of risk management in the sporting and recreational fields of activity. The member for Davenport, who spoke on behalf of the opposition, questioned whether landowners such as local government bodies which own sporting facilities or open space facilities might need to consider a code in respect of those facilities. It makes sense to me that they would have to consider such a code. For example, if a council owned a sporting ground—irrespective of which sporting clubs might use it from time to time—it would be used for recreational activities involving significant physical exertion, such as walking the dog or amateur sports such as kicking a football in a neighbour to neighbour fashion, and that sort of thing. It seems to me that councils ought to be mindful of local residents coming to sporting facilities to practise sports, to walk and to generally muck around in that way.

It would be quite appropriate to have a code which affords a reasonable level of protection for consumers by, for example, insisting that the council would routinely inspect the land and pay prompt attention to fixing potholes and attending to hazards, fallen tree branches or other obstacles should they arise. I say that only by way of example. But, if that sort of consideration has to be given by providers of facilities as well as sporting clubs and associations, it seems to me that we might actually have a greater level of care for consumers than we have now under the general law of negligence and the consideration, or lack thereof, of it as those clubs and associations go about their business. With those remarks, I support the bill.

**The Hon. G.M. GUNN (Stuart):** This measure has caused considerable discussion within the community and, as is the case with most members, I have received representations from a number of clubs and voluntary organisations in my constituency. I refer, for example, to the Eudunda show and to various sporting organisations. Obviously, those at greatest risk include racing clubs, gymkhanas, sporting clubs which involve physical contact, the shooting fraternity, and people who are engaged in gliding, motor car scrambling and motorbike activities. All are having difficulty obtaining public liability insurance. There are other extracurricular activities which I will not go into. However, clause 4 of the minister's bill deals with a code of practice and provides:

A person (the proponent) may apply to the minister for registration of a code of practice governing the provision of recreational services of a particular kind (defined in the code).

They may apply. Clause 4(5) provides:

> The minister may refuse to register a code if the minister is not satisfied as to its adequacy or for any other reason.

Clause 4(6) provides:

> The minister may, by notice in the *Gazette*—
> (a) register a code under this section; and
> (b) cancel the registration of a code if the minister is not satisfied as to its adequacy or for any other reason.

The minister has wide-ranging powers. The minister—and it might not be this minister, it might be a future minister—may not like, say, the shooting fraternity. We have people in the community, such as the anti-gun lobby, the anti-firearms group, which have rather odd views on the shooting fraternity, and the minister could refuse to register a code which the shooting fraternity put forward; or, if a new minister does not like that group the minister could cancel at will an existing code. There is no ability within this legislation for those aggrieved by these quite draconian, arbitrary powers to consult with the minister and they have no right of appeal.

If the minister insists that he or she will not register a particular code of practice, what right does that particular organisation have? It may be a voluntary organisation. One must understand that we may be dealing with organisations that have few members and no resources—only volunteers. Surely, in its wisdom, this parliament should have the ability to say, 'Minister, when you accept a code of practice you table it in the house. When you reject a code of practice you table it in the house.' If the individual, the body or the organisation is unhappy they should have the ability to appear before the Legislative Review Committee and state their case and, in my view, that committee should have the ability to scrutinise. It is nothing unusual. That committee scrutinises all regulations. The minister, with the best will in the world, on occasions will be given bad advice. Bureaucracy is a wonderful thing: it takes upon itself great wisdom, sometimes without a great deal of sensitivity or understanding.

*Mrs Redmond interjecting:*

**The Hon. G.M. GUNN:** I beg your pardon?

*Mrs Redmond interjecting:*

**The Hon. G.M. GUNN:** Of course, the minister has to wear it.

**Ms Chapman:** He has no liability under this.

**The Hon. G.M. GUNN:** I understand that he has no liability, but I am trying to be a charitable character and say that the minister, with the best will in the world, may get bad advice, may make a mistake and where do people go? They can come to their member of parliament but it is too late, the decision has been made.

**Ms Chapman:** Like the State Bank.

**The Hon. G.M. GUNN:** That is right. I suggest to the minister that we all know that this legislation, in some form, must pass and pass quickly—and there is another piece of legislation that needs to go to the parliament—because the effects of the public liability insurance fiasco are serious and difficulty is being created across a wide spectrum of the community. People are very concerned and I do not think that we have seen the last of this. We have touched just the tip of the iceberg because other areas of government and commercial activity will be affected by the difficulties of public liability. The august legal profession, in my view, will turn its attention to other areas of interest where it thinks it can dip its hands in the pockets of the long-suffering public.

**Ms Chapman:** Hear, hear!

**The Hon. G.M. GUNN:** And I know that when one makes a few uncomplimentary remarks about the legal profession its members do get unhappy. My first attempt in parliament some 30 years ago was to interfere with the regulations concerning legal fees, and let me say to this house that it was an experience I will not forget. The profession took particular umbrage. It was like pouring a jerry can of petrol on a fire when I went down that course. The only one who would support me was the member—

**The ACTING SPEAKER (Mr Hanna):** Order! The member for Stuart will return to the substance of the debate.

**The Hon. G.M. GUNN:** I thought I was dealing with the substance. I am happy to be guided by your wise ruling, sir. However, in these clauses the minister has wide powers, but there is inadequate ability for an aggrieved person to have their concerns heard and acted upon. There is not sufficient area to have proper consultation because, once the minister cancels it they are finished. The parliament will not have any ability to scrutinise a decision of the minister. Once we pass this measure, as with lots of legislation, we lose control of it. We have delegated our authority to outside groups and individuals who do not have to worry about public opinion and about the unintended consequences. It is the poor members of the House of Assembly who have these people lined up at their electorate offices in a grave state, in many cases having to cancel long planned public functions. I know that you, Mr Speaker, have concerns, quite properly, about these matters.

I urge the minister and those people assisting him to consider these matters, as I believe they are not only important but essential for this legislation to work fairly and provide the duty of care required to allow these various activities to continue in an orderly, sensible and responsible manner. One of the things we know is that when we pass legislation, unless we allow some form of right of appeal, injustices will be created and unintended consequences will occur. I do not think any of us want that to happen. As sure as we sit in this chamber, that will happen and people of limited means and small organisations will have nowhere to go; they will be victimised and discriminated against. The parliament, with the best will in the world, will have passed legislation which has unintended consequences not in the public interest. I ask the minister to consider these points, because I want to see good legislation pass that is designed to assist the community.

**Ms CHAPMAN (Bragg):** I appreciate the careful consideration and comprehensive and concise presentation put by the member for Davenport on this debate and do not propose to revisit a number of matters he raised. Why are we proceeding with this bill at all, given a number of factors? First, the bill we are debating now has been comprehensively changed and members on our side of the house have had extremely limited time to deal with this matter and to have full consultation with some of the groups that have already raised concerns about the original bill. Indeed, they themselves have not been able to appreciate all the amendments made in the past 24 hours (some as late as this afternoon). The effect of this bill has been severely restricted by excluding the capacity to incorporate any activity involving children. One of the important aspects considered in the meetings between state and federal representatives on the crisis involving public liability insurance that is known to us all was for the commonwealth to agree to amend the Trade Practices Act of 1975 to enable a person to enter into a contract and waive their rights to sue.

I place on the record the question that has challenged me, that is, why we are now proceeding with this bill in light of

two things: first, that the commonwealth parliament is still a long way from dealing with this but that we are asked to hastily deal with this part of a package for reform. Secondly, I suggest that the actual passing of that amendment at the commonwealth level will have the effect of allowing providers to ask for a contract to be entered into as a waiver with the adults as consumers who are left in this area. Therefore, I suggest that it would have been preferable for that commonwealth legislation to proceed to come into effect and then to identify from it how necessary it is to proceed with any of this legislation.

The reason I say that is because the whole purpose of this original legislation, part of a package or otherwise, was to attempt to introduce measures that would assist individuals, small businesses and not-for-profit organisations, many examples of which have already been given, to obtain affordable insurance. There are two aspects of that: one is to get it, that is, to have insurers who are prepared to give it; and secondly, that it be at an affordable rate. Not one scintilla of evidence in any document has been presented to suggest that this reform will precipitate accessible and affordable public liability insurance to remedy the problem which, on a larger scale, is quite evident and is clearly serious.

I particularly raise that because, independent of the lack of evidence to support that even occurring, we have statements from the insurance industry itself as late as yesterday, when the Insurance Council's representative here in South Australia, Mr Chris Newland, announced on Radio 5DN:

> . . . it's too early to say if it'll alleviate the crisis. Some insurers might re-enter fields in which they've stopped offering policies. . . Insurers weren't going to start doing numbers until they see any legislation actually in place. . .

In other words, 'We're not even going to look at it as an insurance industry until you've put this in place.' There is no assurance or reassurance coming from the industry. He went on to say:

> . . . but it's certainly got the potential to reduce the amount of a claim and perhaps eliminate some. . . we probably won't see any premiums in the general sense come down, but we probably won't see them run away'.

The reality is that at best he is promising that some insurers may come back into the market, which is the highest he puts it at; they will not look at anything until the legislation is in place; and, thirdly and most importantly on the affordable aspect, the best we can promise is that the premiums that are already unaffordable will not run away. 'Run away' I expect means double, treble or the like. That is the only indication we have—and not one of much comfort—to support any reason to proceed with this bill independent of what we know is going to be happening; that is, a commonwealth amendment to enable adults to enter into contracts when they undertake any high risk activity in the fields we are talking of.

I raise the important question of why we are doing this at all. I note that there is some light on that, when I also read the transcript of the Treasurer on radio yesterday, when he said:

> For the first time, we're also bringing in a new law that will allow people to say sorry after an accident without admitting any liability.

There is currently nothing to stop anyone from saying, 'I'm sorry,' without attracting liability. Of course, if you say, 'I am sorry. I chopped your leg off and it was my fault,' then, wearing any legal hat, one will appreciate that that acknowledges some contribution towards the devastating circumstance that the victim may be in. There is nothing currently which, as a matter of law, prevents a person saying 'I'm sorry' to a victim who has sustained personal injury. The suggestion that this is a new package that will present an opportunity for people to say 'I'm sorry' should, I suggest, be totally rejected. It is not new. Neither this piece of legislation nor any of the other bills that we will consider in the next 24 hours provides a new opportunity.

I want to briefly touch on the issue of the extent of liability for those who may be excluded in relation to children. The initial proposal, where children involved in activities are able to be excluded from the possibility of claim, was a very good attempt—on the face of it—to try to deal with the insurance crisis. Quite properly, important representatives have considered this matter in the interests of protecting children's rights, namely the Law Society, members of the legal profession—who are conscious of these important rights—and other interested bodies such as AISSA, the peak body for independent schools. AISSA, of course, is responsible for a multitude of children in non-government schools, and it has raised a number of questions which I will be raising in the committee stage.

It is of great concern that, in attempting to deal with an insurance problem, we have moved to a situation where children's rights potentially could be removed. There have been some last-minute attempts to strip the potential elimination of children's rights from this proposal—last minute, but appreciated nevertheless—and it is very important that, regardless of any amendment that might be brought forward to make this bill sensible and useful in the long term, we place on record the importance of children's rights not being extinguished.

There are a couple of examples that need to go on the record. It is very important to appreciate that some children participate in activities that may be described as high risk, such as sporting activity, pony riding and the like. Sometimes the child is engaging in the activity against its will but at the insistence of a parent. Some children are force-fed into the cultural market. Even for myself—

**The Hon. M.J. Atkinson:** What do you mean by 'force-fed into the cultural market'?

**Ms CHAPMAN:** To give you an example: as a child I had no talent as a ballet dancer. My mother exerted significant pressure to try to force me to do that. She enrolled me in ballet lessons and painstakingly put me through that process. I failed miserably. Suffice to say—with due respect to my mother in this example—one needs to appreciate, in respect of the question of liability, the importance of protecting children against the pushy-parent syndrome.

The other matter that is very important to remember in relation to children's rights is that many children in Australia live in a household with only one natural parent. One parent may try to waive the imposition of undertaking a sporting activity, and the other parent may not, so we enter the realm of accepting a waiver from one parent when an equal joint guardian has an entitlement and a desire not to allow that waiver or that contract to be entered into on behalf of a child. It produces a serious problem when two guardians of the same legal standing wish to send the child in a different direction.

It is very important to place on the record those sorts of issues in order to ensure that we do not have a situation where further amendment or other legislation is presented which will in any way affect or extinguish the right of a child to claim against the negligent act of their parent or of a party, in this case as a provider. I hope that illustrates some important aspects of this issue. I remind those members who

are parents of children under the age of 18 years—I am not one of them anymore, but I note that there are a number—that children have rights to sue their parents as well, and that should be taken into account when we as adults attempt to impose these sorts of restrictions.

Notwithstanding the limited application, and therefore the situation we face when we perhaps challenge the whole purpose of even proceeding with this part of the package to remedy the problem (and I will deal with the others on another occasion), we do not have any indication of remedy. In fact, we have a very considerable caveat from the Insurance Council alone as to whether there will be any positive benefit from this. We have a wait and see attitude—a very limited application.

Let me turn to those to whom this will apply and those adults who have passed all the bureaucratic process to which other speakers have referred (I will not proceed with those again) and highlight where some of the difficulty arises. Let us assume that we have imposed registered and approved codes of practice, people have undertaken training and risk management—we have gone through all that—undertakings are signed by the providers, and we enter into contracts by writing on the back of a ticket or by notices in the playground, whatever course is appropriate, depending on whether a fee is paid. In that situation, there could well be a problem, and I ask the Treasurer to consider this in his reply; I will certainly raise it in committee. I refer to clause 7 of the bill, which deals with the modification of duty of care. Clause 7(1) provides:

> If a consumer to whom this section applies suffers personal injury—

presumably because of the activity that they have undertaken as provided by the provider—

> the provider is only liable in damages if the consumer establishes that a failure to comply with the registered code caused or contributed to the injury.

I raise this as an illustration of one of the many complications that may come from the implementation of this bill, well-intentioned as it may be, because it requires the minister and the advisers to the minister, when accepting a code of practice, to ensure that that code of practice is absolutely comprehensive.

I will try to give members an example—the best I could think of in the short time that I have had to consider this matter. There are two 25 year olds out on a go-cart track. It is a recreational activity and a code of conduct has been approved by the general body and presented to the minister for registration. That code of conduct covers things such as the mechanical standard of the vehicle, the safety requirements, the attendance of people trained in first aid, the use of a type of fuel, the speed limit that is allowed, and prohibitions against one of the 25 year olds banging into the other 25 year old, etc. So, they do their code, but nothing is mentioned about liability that might flow from, for example, an act of the weather and the obligation that might ordinarily be imposed on the provider to abandon the facility and, in particular, the activity, if there were more than a certain amount of rain which could cause a slippery surface which might result in an accident.

**The Hon. M.J. Atkinson:** Then it will fall to be decided in the normal way.

**Ms CHAPMAN:** You may say that, Attorney, but I suggest that the clause indicates that there is a waiver of liability. The contract has been entered into, and section 7 then makes provision for the provider to be liable for damages only if the consumer establishes that there has been a failure to comply with the registered code. It does not identify whether there has been an act of negligence in relation to an aspect of safety that perhaps ought to have been considered and incorporated in the code. I raise that point for the Treasurer to address. I hope that he will, because I suggest that we are entering into a situation where we may be inadvertently excluding quite legitimate claims by adults for negligence by the provider or, as has been pointed out by the lead speaker on this matter, by a body above that which operates or owns the facility (for example, a local council) if there had not been proper cover in the code of conduct at the time of registration.

While there are procedures in the bill to allow for modification and variation to the code and for the undertakings to be varied (presumably to accommodate that type of amendment), that does not resolve the issue for the victim who has sustained personal injury arising out of negligent behaviour which may ordinarily give them proper recourse to compensation but which not only was not covered in the code but also not acted upon by the provider. They are just some of the matters I raise in relation to the concerns that I have.

**The Hon. M.J. ATKINSON (Attorney-General):** I rise to support the bill. The rationale behind this bill, as the Treasurer has explained, is that adults should be able to make a legally binding agreement to engage in a strenuous recreation on the basis that the provider's only duty is to comply with the registered safety code. It might seem surprising that a law is needed to achieve this result. One might have thought that it is part and parcel of the condition of adulthood that a person is entitled to decide for himself or herself whether and on what terms to engage in a legal but risky activity.

That this is not so is perhaps an example of what His Honour Chief Justice Spigelman of the New South Wales Supreme Court meant when he recently described the law of negligence as 'the last outpost of the welfare state'. I will be referring in some detail to His Honour's speech, which was presented on 27 April this year to the colloquium of the Judicial Conference of Australia held in Launceston, when we come to debate the proposed amendments to the Wrongs Act.

I well recall that when in opposition I applied to be allowed to use the parliamentary gymnasium, which had been closed. Permission was refused. On inquiry, it appeared that there was kind concern that I might injure myself. To allay any fears, I offered to give a waiver absolving the parliament and the state of South Australia from any liability should an injury occur. Still, permission was refused. The view was apparently taken that the waiver of a consenting adult of full capacity, no matter how widely expressed, could not be relied upon adequately to protect the state of South Australia from liability were I to be injured. In recent times, however, the tide has turned. There is a growing public dissatisfaction with this state of the law. Increasingly, voices are raised to say that adults should be able to make binding choices, including choices to waive or modify their legal rights. Chief Justice Spigelman noted:

> There has been a significant change over recent decades in expectations within Australian society about persons accepting responsibility for their own actions.

There are even signs of this belatedly in the courts. For example, in the recent case of Woods v Multisport Holdings Pty Ltd, decided in the High Court on 7 March this year, the High Court upheld a trial judge's decision refusing damages to an indoor cricket player who had been hit by a cricket ball. The player had sued the indoor cricket arena arguing that it should have displayed notices warning players about the risk of being hit by cricket balls. Alternatively, it should have required him to wear a helmet. The trial judge found the risk of being struck by a cricket ball to be so obvious that no warning signs were needed.

**The SPEAKER:** All he needed was a brain!

**The Hon. M.J. ATKINSON:** Yes, you might well be prompted to say that, Mr Speaker. The trial judge also found that there was no duty on the cricket arena to require players to wear protective helmets, particularly as these were against the rules of the game! I have to say that, on appeal, the High Court did not find the case simple. It dismissed the appeal by a majority of three to two.

The legal reason individuals cannot contract with companies that provide recreational services to reduce or exclude liability is found in the commonwealth Trade Practices Act. That act implies into contracts between corporations and consumers a term requiring that any services be rendered with due care and skill. Remember here that we are talking about companies, so the commonwealth can regulate the area, and does so through the Trade Practices Act. The parties cannot contract to exclude or vary this term.

To my mind, the intention behind this law is to protect consumers from being sold shoddy workmanship or valueless services by stipulating certain standards of quality. The law is, however, broadly expressed, and it has the effect of preventing the parties from contracting for recreational services on the basis of a waiver of liability for bodily injury if the services are not rendered with the care and skill required by law. That means the common law of negligence. A similar provision, though narrower in scope, appears in our Consumer Transactions Act.

With the emergence of a crisis in the availability of public liability insurance cover, and the growth of public sentiment that adults should be free to assume risks, governments around Australia have taken the view that legislative action is required. The commonwealth has agreed to amend the Trade Practices Act so that the parties to a contract for the supply of recreational services can agree to exclude the implied term to the extent that this would give rise to an action for damages for bodily injury. A bill is now before the commonwealth parliament to this effect. Meanwhile, the commonwealth has also appointed a panel, chaired by Justice Ipp, to consider the law of negligence, including the issue of waivers for risky activities. The panel is due to report at the end of September. It is likely that thereafter other jurisdictions will follow suit and will legislate to permit adults to assume the risk that goes with recreational activities.

The South Australian government has received letters and submissions over the last few months urging it to intervene to address the problem experienced by providers of recreational services and others in obtaining liability insurance. It is clear that if something is not done immediately some organisations face the choice between closure and trading without insurance, where the law allows them to do so. Either result is undesirable—from the point of view of the recreational facilities available to the public, including tourists, and from the point of view of recovery of damages if someone is tortiously injured.

This bill provides the mechanism whereby adults can agree with the providers of recreational services to modify liability. It proposes that codes be devised setting out adequate safety standards and procedures for a given recreation. The provider may register to be bound by the code and may then contract with consumers so that liability for injury is governed thereby. In that case, the provider's duty is to comply with the code. He or she has certainty about what to do to avoid liability, a certainty that, I may say, cannot be provided by the current law of negligence, a topic on which I shall hold forth tomorrow. Certainly, this should have favourable effects on the cost of insurance. At the same time, the consumer knows the extent of the protection available and the extent to which the recreation is taken at his or her own risk.

In short, the bill proposes to treat adults as adults. It does not expect the providers of recreational services or their insurers to protect the consumer from the inherent risks of their chosen recreational activity. The bill provides certainty. It does not, as the present law does, leave recreational providers in the position of having to guess in advance what actions on their part a judge might find in future to have amounted to reasonable care. At the same time, the bill provides for a minimum level of safety to apply for the protection of consumers. The bill should, I hope, lead insurers to reassess the risks of providing cover to recreational services and to find themselves able to offer such cover on affordable terms.

**Mrs REDMOND (Heysen):** In view of the hour and the fact that this side of the house is supporting the bill, I do not intend to speak for very long, but I want to raise a few matters—perhaps some of them not novel. However, given that this matter was a focus of my maiden address in this house and something which has concerned me for a number of years, I want to make some comments. First of all, I note that this legislation is novel, by which I mean that insofar as we have been able to ascertain, or have been advised, there is no precedent for this piece of legislation that we can find in any other jurisdiction. Whilst that may be welcome in the sense that I am pleased to see the government trying a new initiative—

**The Hon. M.J. Atkinson:** All initiatives are new.

**Mrs REDMOND:** True; point taken—it does have the effect that, of course, we do not know exactly what will lie ahead of us in relation to this legislation. As the Attorney-General has just pointed out, this legislation will require some commonwealth legislation to be amended, and I raise the same point as the member for Bragg who questioned the urgency, given that the commonwealth legislation will not even be debated in the House of Representatives until September (if the information I have received is correct). It seems a little odd that we are pushing it through with such urgency.

I have no difficulty with the idea that it is appropriate for this government to pass its legislation and to have it ready to proclaim as soon as the commonwealth legislation is through. However, why we are sitting until all hours to do so is a little confusing. Of course, the urgency has led to my having to get my head around the original draft and then the amended draft of the bill, which I saw for the first time on Monday afternoon. This afternoon I dealt with what I thought was the final draft. However, I have since been advised that, indeed, there has been another amendment. As the amendment will not

substantially affect anything I am about to say, it will not really have any effect for the purposes of my comments.

I still have some difficulties with the new definition of 'recreational activity'—which, of course, was defined as a 'recreational service' in the earliest draft—in the sense that I am not sure that, say, a meditation group would be covered by the way 'recreational activity' is defined under the bill. The bill provides that 'recreational activity' means:

(a) a sporting activity or similar leisure-time pursuit—

and I do not know that meditation is similar to a sporting activity—

or

(b) any other activity that—

(i) involves a significant degree of physical exertion or physical risk; and

(ii) is undertaken for the purposes of recreation, enjoyment or leisure;

*The Hon. K.O. Foley interjecting:*

**Mrs REDMOND:** The Treasurer has questioned me about using meditation as an example. I do so for a specific reason, that is, that I came across an instance of a meditation group which, remarkably enough, paid $200 for its public liability insurance last year and was asked to pay about $6 000 for it this year. That is just a nonsense. That is the reason for my picking on that group.

**The Hon. K.O. Foley:** What do they do at these meditation classes?

**Mrs REDMOND:** Dangerous things, obviously. However—and the member for Davenport has raised this matter already—there is also the question of why we give the protection afforded by this bill to people caught by the definition who are, therefore, likely to be doing the more adventurous, risk taking activities but not to, for instance, volunteer organisations. I appreciate some of the complications that might arise from trying to put that consideration into the bill, and I am happy for this bill to progress without encompassing that for the moment.

The intention of the bill is to enable adults to waive their rights to sue in certain circumstances. Essentially, those circumstances are where a provider of an activity has registered a code, and the code is made known by a mechanism to the user of that activity. In doing that, they agree at the same time that they will waive their right to sue unless the code is broken, that is, if the provider of the activity does not comply with the code in that circumstance, the right to sue remains with the user of the activity. However, provided the code has been registered appropriately and the user has been notified, the user will waive their rights to sue in undertaking the activity. That is a sensible regime. As the Attorney indicated, it allows adults to behave as adults. I have no difficulty with the thrust of the legislation.

I still have difficulty with the fact that the original proposal and the original draft did include the right for parents to waive their children's rights. As a former practising lawyer, I appreciate the legal argument that can go on about the rights of parents to waive rights on behalf of their children who are not of age and the complications that could arise. My suggestion is that it is still nevertheless worth exploring the possibility of giving some perhaps limited rights to parents to waive their children's entitlement to sue. Having talked to parents and being a parent of three who have gone through the usual childhood activities, I believe that children can often fall over and break an arm or by doing something pretty innocuous.

My view is that it would be appropriate for us to have a regime in which parents could waive their children's rights up to a certain limit. However, we all know that, whilst you would be happy to waive your children's rights on the basis that if they fell off a horse and broke an arm you would agree not to sue, if your child fell off a horse and broke their neck and was going to be a quadriplegic and incur enormous future care costs for the rest of their life, your view about whether you should have waived those rights may well change pretty dramatically. It seems to me that it is still worth exploring the possibility that there be some level to which parents can give away their children's rights to sue at common law.

My reason for that is that my understanding of one of the primary purposes of introducing this bill in the first instance was to cover just those sorts of situations, because, living in the Hills, the pony clubs had spoken to me about the difficulty which now confronts them, and this bill (because of the exclusion of the waiver as applying to children) has no effect for the pony clubs and their engagement of activity with children. I suggest that at some stage we need to consider that.

In terms of a couple of technical matters, I do have a minor problem, which I would like considered—and perhaps we can consider it in committee—with the notification process which is established under clause 6(3). That provision essentially says that, if a registered provider provides recreational services gratuitously and displays notices prominently in a manner required by the regulation and in a form required by the regulation notifying the conditions, that acts as the appropriate notice rather than a specific contract or a specific document of waiver. One can think of dozens of examples of where it would be impractical to have everyone sign a separate waiver if the activity involves thousands of people, for example, a fun run or something such as that. I envisage that, for instance, this will apply if someone allows hikers to walk across their land.

They will have notices at the access points to that land in the form prescribed by the regulation notifying people that, if they do walk across the land, they are doing so on the basis of this legislation and that they will waive their right to sue unless something has not been complied with. My difficulty mainly is concerned with the fact that clause 3(a) provides that it is only the provision of recreational services gratuitously that are caught by that provision. I wonder whether that makes it too narrow and whether it perhaps should be wider so that it includes not only the recreational services provided gratuitously but also those provided for fee or reward.

The other one that occurred to me as a potential problem (and I suppose it is the lawyer in me that thinks about these things) is the provision for the minister to register the code and publish it on the internet. It occurred to me that under that publication you could get a situation where a provider decides to register a code, and it might be for something that is quite technically complicated and they have to engage the services of, say, a consultant engineer to help them establish the code; they spend considerable money preparing that code and getting it established, and the minister publishes it on the internet. The act then provides that, once that is done, anyone wishing to comply with that code may then undertake to do so.

It seems to me that, whilst I have no objection to the concept, in practice I ponder whether the initial person wishing to register may incur a significant cost to come up with what is quite a specific document for them, but then other people come along and eventually just feed off it,

basically without making any contribution towards the cost. I also wonder whether copyright issues could be involved. It is another little area that I think perhaps we need to consider more closely. However, they are relatively minor things. I have no particular difficulty with the overall thrust of the legislation.

Having said all that, as previous speakers have said, particularly the member for Davenport who indicated that there may be a range of practical considerations which will arise (and because this is novel legislation and we do not have another jurisdiction to look to to see what has happened there and so figure out what the problems might be in practice), I would support the comment of the member for Davenport that some sort of monitoring needs to be put in place, because we in this state are the front runners in terms of this legislation and we need to keep an eye on how it progresses, what the practical difficulties are and how to overcome them. I am reasonably open as to how that monitoring should be set up, but I do think we need to have some monitoring.

All this, of course, at the end of the day, is designed to limit liability and enable insurance premiums to be reduced. Some may think me very cynical, and I accept the good intentions of the government in introducing the measure, but in my view insurance companies are (a) not to be trusted and (b) not moral creatures. My expectation is that this bill will provide a benefit to insurance companies which they will happily take up, but it will in no way have the effect of bringing insurance premiums down.

However, it seems to me that that does not provide a basis upon which to say, 'Well, no, let's not try it.' It is because it is new legislation, because it is a new idea and a new approach that I think we need to adopt a 'suck it and see' approach and see how it works. Certainly, my own view is that, particularly in the case of voluntary organisations, we need to be looking at giving some sort of guarantee to organisations, either by the government directly entering into the insurance market or somehow assisting, because that is the only way we will eventually force insurance companies to bring their premiums down. They are not charitable institutions: I would like to think that they will bring their insurance premiums down, but I do not expect it.

However, I do not think that that is a good reason to oppose the bill. I welcome the introduction of the bill and I look forward with interest to see whether it has the desired effect; it will certainly have the desired effect for making insurance potentially more accessible, and it will certainly bring down the potential for claims and therefore, in theory, one would hope it will bring the premiums down; but I raise my cynicism a level whenever I talk about insurance companies. However, I am happy to support the bill and I congratulate the government on its introduction.

**Mr GOLDSWORTHY (Kavel):** I will make only a brief contribution to the debate as other members have covered most of the points. The bill is part of a package to address the problem faced by individuals, small businesses and not-for-profit organisations in obtaining public liability insurance. This bill obviously also relies on the commonwealth passing amendments to the Trade Practices Act.

I have previously spoken on this issue several times in the house—in my maiden speech as well as on other occasions—and I continue to maintain that the government has been somewhat tardy in introducing this legislation. I have heard the argument that we had to wait for the New South Wales parliament to get its house in order. However, I do not necessarily agree with that argument.

The federal government, led by Senator the Hon. Helen Coonan, should be congratulated, as the federal government identified the way the issue was heading. It was heading into crisis and has obviously ended up in that situation. However, I do not want to try to score political points; the government is addressing it now.

I led a delegation from the horse industry to the Treasurer who received those people well. He put the government's case, which we all understood. However, he also understood the concerns of small business and the community groups which they expressed through that delegation. The people I took to the meeting felt somewhat encouraged by what the Treasurer had to say. I had, and continue to have, constituents who are facing the closure of their businesses. They cannot obtain public liability insurance. The insurance companies are not prepared to take on the risk. Obviously, Mr Speaker, as you well know, if you cannot insure you cannot operate your business. There is only one way to go from there, and that is to close it. That is obviously a very grave situation to be in.

The other issue that needs to be addressed is the hike in insurance premiums. Many constituents have contacted me personally regarding this matter. The hotels in my electorate, other retail outlets and even the local show societies have all spoken to me about the hike in insurance premiums. My own household insurance premium increased by 20 per cent this year—and I have not made any claims for a couple of years. When one asks the insurance companies what it is all about (and the member for Davenport spoke about this), they talk about the HIH collapse and how it had supposedly softened the market with artificially low premiums in an effort to maintain and also gain market share. There was also the 11 September incident. I am not diminishing the effect of 11 September on the United States and the world in general in any way at all. However, I think that we were heading down a slippery slide before that event in terms of insurance, and 11 September probably accelerated the process somewhat.

I support the legislation, but I believe that we are only part way there. It concerns me that the issue of minors is not addressed; that this legislation does not look to cater for minors. As I have previously said in the house, many horse-riding schools operate within my electorate, and they may not be able to offer their services to minors if insurance companies are not prepared to cover them. I think that people under the age of 18 would make up a fair percentage of the clientele of the horse-riding schools. The government needs to address this issue and do some more work on it. I thought that the member for Bragg spoke very succinctly on this matter.

I think that, as legislators, we have taken some steps in an effort to rectify the current critical situation. Again, I note the comments of the member for Davenport, who said that we cannot guarantee that this will completely fix the problem. But I want to make one point: I think that, as legislators, we have acted in good faith.

I believe that once the legislation is assented to it is now incumbent upon the insurance industry also to act in good faith and come back into the market to offer the risk that they have withdrawn and to lower their premiums. I know it is a complicated matter to deal with, and we are endeavouring to address and break the impasse, but I only trust that the insurance companies do the same. In general terms the bill covers some of the requirements of the recreational operators,

although, as flagged, amendments are being considered. In view of this, I support the bill.

**Mr VENNING (Schubert):** I did not intend to make a great contribution on this matter, but it is probably one of the most serious issues that have been raised before this house. As a country person and a businessman I know that this certainly is very important and has caused a lot of consternation and grave concern. I support this legislation, and I assume it is totally supported on both sides of this house. Insurance, particularly public risk insurance, has been an ever increasing problem, particularly in recent years, and the bottom line has been the huge increase in massive pay-outs. People have often said—and it is pretty callous and cruel to say—that it is sometimes better to be killed outright than be massively injured, because of the insurance pay-outs. It is a pretty terrible thing to say, but that has been the reality of it.

I have been involved with the insurance industry, particularly when I was a new member of this parliament, when I introduced the compulsory third party insurance on special vehicles, that is, farm machinery. I did that because farmers' public risk policies were not able to cover the burgeoning problem back then, almost 10 years ago. In some cases, farmers with policies of $5 or $6 million were finding that they were not adequate. If a farmer was driving his tractor on the road and there was an accident in which someone was hurt, sometimes it was not adequate. We saw the huge pay-out to the film star, Mr Blake, and that certainly brought this to a head.

I do not think the insurance companies are squeaky clean in all this. When we introduced the compulsory third party insurance for farm machines—the take-up of which has been excellent—you would think that, given the relief that was given to farmers' public risk policies, the insurance companies would have decreased their premiums, because there was an extra policy to cover part of what was previously covered by public risk. But there was no such luck: the premiums did not decrease at all, and the extra insurance taken out by the farmers was just absorbed by the insurance companies.

I get quite frustrated when people come to me about this. Only last week a lady came to me who lived in Kapunda and who wanted to start a tourism business in ghost tours. You might think ghost tours are a strange thing to be involved with, but do you remember the TV segment about Kapunda and the ghosts? That created a lot of interest, and the demand exists for an operator to pick up people in Adelaide, take them up to the Kapunda region for a couple of days and show them not only the ghost experience but also the mines and everything else that goes with that. This woman is an entrepreneur and has all the right ideas and excellent enthusiasm, but at the last hurdle she was stopped. You can guess: she could not get insurance, because the concern was that people, including young people, would be clambering around in mines in the dark. As this legislation does, we just have to put in clauses and peg certain areas of the insurance industry to put a ceiling into these vexatious and massive claims that are made. Rorting of insurance always goes on, and I hope we can clamp down on that. As a small business person and a farmer, I know that insurance is a large part of the business. It is quite okay when we have an excellent season like we did last year when taxation can soak it up, because insurance is a tax deduction, but this year insurance looms as a large cost, particularly as farmers move about the highways. In our litigious society, you only need to cause an accident or for someone to get a backache and they are encouraged to sue.

Therefore, not only should we be critical of insurance companies but I think there is an argument that some lawyers should bear some of the responsibility—we have some lawyers in the house, and I like most of them—particularly when they advertise class actions against companies such as BHP or Pasminco. I think that is crook. They say, 'If you're going to bring an action against a company, join us and we'll take them for everything that we can get.' People forget that, in the end, we all pay, that one way or another we all pay and the community breaks down. We have reached that situation now where it has broken down. I welcome this bipartisan approach by the government and the opposition tonight. I hope this bill passes quickly and, most importantly, that it works. I support the legislation.

**The Hon. K.O. FOLEY (Deputy Premier):** I thank all members for their contribution tonight and for the spirit in which the debate has been conducted to this point. I will make a few comments on some of the remarks made by members, but I will pick up the bulk of them in committee and, I suspect, in other pieces of legislation that will be debated through the course of tonight and tomorrow. I might work my way back and conclude with the lead speaker's contribution. It is interesting to note that the member for Kavel in good spirits—I am not being critical—intimated that I had been too slow and that we should have acted quicker as a government, while the member for Bragg was, I think, mildly critical of the fact that we are moving too quickly, so I suspect that I am probably about right on the political spectrum of how quickly we have moved.

The member for Heysen is concerned about the fact that a meditation group in her electorate may not be able to get access to a waiver. I am hard-pressed to see what damage could be done to someone whilst meditating, but perhaps I have not meditated sufficiently.

**The Hon. I.F. Evans:** It's the levitation.

**The Hon. K.O. FOLEY:** Of course, one is off the ground—bang! Fall down. Didn't we have a political party that was into that?

**The Hon. I.F. Evans:** Yes, the Natural Law Party.

**The Hon. K.O. FOLEY:** A good party. Did you get their preferences?

**The Hon. I.F. Evans:** Yes.

**The Hon. K.O. FOLEY:** Probably one of the Evans family rorts in the Adelaide Hills if the truth be known!

*The Hon. I.F. Evans interjecting:*

**The Hon. K.O. FOLEY:** I withdraw that allegation. The member for Davenport would not be involved in any such activities. I want to comment on the general issue of waivers. This was a difficult decision for the government, and a number of views were put to us about waivers.

Perhaps I should first address why we are moving so quickly. We are moving quickly because we have decided as a government that it is important to have our legislation in place ahead of the commonwealth so that we are in a position to implement waivers as soon as practicable after the commonwealth government's legislation is assented to. Given that the commonwealth legislation could take a number of months to pass both houses, and picking up the member for Kavel's point that we needed to get things moving, we did not think that it would be sensible for us to wait until that point, given the further time delays that would come after that.

**Ms Chapman:** No other state thinks so.

**The Hon. K.O. FOLEY:** Just because no other state has done it, that should not preclude us. I say to the member for Bragg that sometimes in politics one has to be prepared to show some initiative and move forward quickly. I think this government has demonstrated in its few short months in office that being decisive is one of its characteristics. But it should also be noted that, other than the New South Wales legislation, this package of bills is the most significant piece of tort law reform of any state. In fact, I am told that this is a more comprehensive package than what has been put forward by New South Wales. Certainly, what Queensland has done is nothing compared to what we have done. So, we are, to all intents and purposes, the second state to offer substantial tort law reform.

I say from the outset that the federal Minister for Revenue and Assistant Treasurer, Helen Coonan, has welcomed the move of the South Australian government. If members opposite want to know what Helen thinks of what we are doing, I can tell them that she was full of praise and acknowledged that it is good to be moving quickly on waivers. So, although the member for Bragg might think it is not a very good idea, her federal colleague thinks it is a good idea.

In regard to what the Insurance Council of Australia, or the insurance industry, said, I do not disagree with the view that we must monitor insurance companies very closely. I do not want to overdo the benefits that this package may or may not provide. We believe it should bring down insurance premiums and that it is a comprehensive set of reforms, and it is incumbent upon the insurance companies to deliver. In a press release yesterday, the Insurance Council of Australia said:

> As a result of this package, the package should produce savings in claims costs and insurers will assess the impact on premiums accordingly.

I suppose that is about as good as you get from insurance companies. I am quite open-minded on the point made by the shadow minister in this matter, the member for Davenport, about whether or not we should oversee the industry at a state level. I am not sure that we need another select committee: perhaps the Economic and Finance Committee would be a vehicle by which we could assess that.

I also want to say with regard to waivers that we have to understand why we are putting in waivers. The member for Davenport and others suggest that we should provide waivers to a wider group. Let us be very careful about this. We are introducing waivers as a result of market failure, particularly at the risky end of the spectrum. We are bringing in waivers not as an alternative to liability insurance but as a reaction to market failure, and I will talk more about that in committee. Whilst our legislation gives the government the power, it will be our decision—the decision of the opposition should it be in government one day—how we want the policy to be applied. I do not envisage waivers being made generally available, although the commonwealth legislation will allow that to occur. We believe it is important that waivers not become an alternative but that they be available as a policy reaction to market failure.

The government's intention is to look at the risky activities which cannot get insurance. Those activities that are paying extremely high prices for insurance should have access to waivers, and it may be that, through the consultation process and through further dialogue over the next few months, we can consider how widely we want to make them available. I will discuss this point at the national ministers' meeting in September. We must get uniformity amongst all the states as to the availability of waivers. I have a different view to that of the member opposite about how widely these should be made available, because they are there as a result of market failure. In a perfect world you would not have waivers: you would have affordable public liability insurance which everyone could have and everyone would be covered. The reality is that some organisations cannot get it.

Our draft bill initially included children. We took children out. Why? The overwhelming reaction from a broad section of the community was that waivers for children are not right. I must say that I was more than convinced by that argument and, indeed, I was not sure about including children from the outset. I say that to the member for Bragg, who raised the issue about children and who should perhaps do us the courtesy of listening to the answer—perhaps the member for Bragg likes to tell us what she thinks but is not that keen on listening. I am just addressing the honourable member's issue about children. The reason children were taken out was quite simple, and I can respect that some people may disagree. It is a very delicate area. One should look at some of the issues, for example, school excursions.

If I took my son's best mates ice-skating and, as my wife did a few weeks ago, went tumbling over and took them with me but had waived the rights, that is extremely problematic. Do guardians or people who have the care of children have the right to waive? There could be an example of a divorced couple, where the husband or the wife has a disagreement over whether or not the rights should be waived. So, many problems were exposed and we took the view that it was just not possible. I respect that some people are not convinced, and may not be convinced, but it is a good debating point and I think that we should be able to do it.

In committee I will address some of the issues raised by the member for Davenport about Apex clubs and other community clubs. Our view is that we should not be making it as wide as possible; that we should be dealing with market failure and allowing those groups that cannot get it to get it and those who cannot afford to pay the escalating premiums to use them. Then we could look to expanding it in a more considered fashion to other sporting and recreational groups. But I want to get some consistency amongst the other states as to exactly how we do that and just not make it available in a blanket measure.

The member for Mitchell, of course, asked for the Trowbridge report. I am advised that the Trowbridge report is available on the commonwealth government's web site, but I am happy to make it available from our resources if need be. Pony club matters were raised by the members for Kavel and Davenport and, I think, the member for Heysen. Again, I think I can talk about pony clubs a little later, but that is extremely problematic; and I accept that without children having waivers that is causing problems. However, these are not easy problems to resolve and some of these issues are just too difficult and we must acknowledge that.

With respect to the Apex group, as the member for Davenport would know, much of the liability insurance for Apex or Lions clubs would be for people attending those functions, not just for the members of the particular club but also, I assume, public liability for fundraising activities and all of that. It is a more complex issue. There were a lot of positive comments and positive feedback from a wide variety of groups. There was a lot of disagreement and a lot of healthy debate. However, shortly upon coming into office as a government we were faced, as all governments in Australia were faced, with a very serious problem, namely, the rising

cost of liability insurance, the lack of availability of it in many cases and the fact that, as governments, we had to react.

I want to pay a compliment to the federal Assistant Treasurer, Helen Coonan, who has conducted these meetings well, although I do believe that the federal government has a greater responsibility. At least it needs to provide more assistance with respect to some of these harder issues, particularly medical indemnity insurance. But the commonwealth has provided good leadership. All the states are working as well as they can collectively to bring about some tort law reform that will provide real savings. There are enough measures in the Wrongs Act, and I will talk about that a little later. As I said, we are the second state government in Australia to move such a comprehensive package of reform.

We will deal with waivers, notwithstanding the criticisms of the member for Bragg. These are good measures; and these are measures that should bring down the cost of public liability insurance. I make no promises. I can make no promises but, as the member for Heysen said, we should be doing this. We should not be simply holding back. I say to those who say we should do more: come to me with the ideas—I have an open door policy on these issues. If you want to come to me with your ideas, do it: we do not have all the answers and we are ready to take advice.

In conclusion, I thank many people in government for putting a lot of hard work into this package of legislation in a very short space of time: my officers here with me tonight; the Deputy Under Treasurer (John Hill); Katherine O'Neill from the Attorney-General's Department; Brian Daniels; my own staff—Jeff Hole, my economics adviser, and my Chief-of-Staff, Cressida Wall—who have worked extremely hard over a very short period of time. I am advised by the Law Society, among others, that this has been the best consultation process the government has undertaken for many years and all involved are to be commended for that and for pulling together a package in such a very brief time.

Bill read a second time.

**The SPEAKER:** Before the house goes into committee, as is my wont, I will make comment, rather than engage in debate during the course of the second reading. I point out by way of explanation, to those elements within the media who choose to see things otherwise, that I am here not only by grace of this chamber to be its Speaker but also to represent the people in Hammond. My purpose is to simply point out that I see in this legislation some deficiencies of the kind to which the member for Stuart drew attention. It is not only the code that disturbs me and would disturb the people whom I represent and with whom I have discussed what might be the options but also I see the provisions under clause 5 in the registration of providers as resulting in difficulties in that subclause (8) leaves no appeal should the minister—not necessarily this minister but possibly subsequent ministers—determine that they would deny a registered provider the opportunity to participate. To my mind parliament writes itself out of its responsibilities by agreeing to a proposal of this kind, and as an independent member in this place, not accountable to any political party or other lobby group, I draw attention to what I see as a serious deficiency in that respect. I thank the house for its patience and courtesy in allowing me to make these remarks.

In committee.

Clauses 1 and 2 passed.

Clause 3.

**The Hon. I.F. EVANS:** To ensure that members have the right copy of the bill, there has been an amendment in clause 3 to the definition of 'consumer'. 'Consumer' now means:

> . . . a person (other than a person who is not of full age and capacity) for whom a recreational service is, or is to be, provided.

Unfortunately, the old bill was distributed to the house, so the attendants have just been distributing the new one. Clause 3, the definition of consumer, is the only change, but those who wish to have the correct bill will need to get that copy. Will the minister explain what is meant here by 'and capacity'? Is it capacity as in being an adult or capacity as in mental capacity, that is, the capacity to make decisions, having your full faculties, in effect?

**The Hon. K.O. FOLEY:** I apologise to members. As we know, and I have been up front about it, this legislation has been widely consulted on. We consulted with the opposition on Friday, and some of the amendments we made were in response to concerns and issues raised by members opposite, particularly by the shadow attorney-general. My Chief of Staff has been working with Parliamentary Counsel and Attorney-General's officers up until lunch time today to get the package completed, and I think they have done an outstanding job in getting this package together. With the speed there are some hiccups of a minor nature, but we are addressing those. We wanted to fix the definitions and get the legislation in its best form before we debate it. On that issue, I am advised that both the age and the mental capacity of a person are part of that definition.

**The Hon. I.F. EVANS:** I assume I will have some flexibility on this three question issue. I want to tease out this concept of consumer and capacity. Am I right in assuming that, if someone providing the recreational service in good faith believes the consumer has the mental capacity, then an event occurs, the consumer is injured and it is found that the consumer did not have the mental capacity, the owner of the business is then liable? In other words, the waiver that would apply then does not apply?

**The Hon. K.O. FOLEY:** That is a very good question. It highlights the fact that waivers are not perfect. The advice I am given is that the provider of the activity has to make that judgment. If the person is not of a mental capacity, does not have the mental capacity but you have assumed that they do, then you are liable. If you are concerned, you would want to err on the side of caution, which causes problems in itself, or you insure yourself against that particular risk. I am advised that, assuming that you are using waivers for the vast bulk of your clients, the ability to insure for this particular aspect should be available. This is not perfect: we have teased this one out and there simply is not a way in which we can be absolutely 100 per cent certain in clarifying this issue. It does come with some risk.

**Ms CHAPMAN:** When I saw the words 'other than a person who is not of full age and capacity' it reminded me of an old act I read a long time ago—the Age of Majority Act 1971. That is the earliest act I can think of where that phrase was used. Perhaps the haste of preparation has seen that phrase adopted, as a reflection of the desire to ensure that children are clearly excluded from this legislation. Why is it necessary to add 'and capacity', the meaning of which is slightly different in the Age of Majority Act? With respect, I think this is the way to deal with it. A consumer can mean a person who is 18 years old or older, and the use of 'consumer' would make your point absolutely clear. To try to say that contractual obligations are interfered with by

capacity and then impose an onus on the provider—or on the level above, such as local government—to make a personal assessment on mental capacity is another issue altogether.

With respect, I do not think it is necessary. What is necessary, if that is what you want, is to ensure that the consumer is someone over the age of 18 years. If you intend imposing on the provider that they must make an assessment or judgment, which they are clearly unqualified to do and will not do in the precincts of their activity, then the question of mental capacity could impact on any adult. I am happy for you to look at some amendment to cover that, and I appreciate that the bill was hastily prepared. I think, however, that this issue can be easily remedied and the clause will then be acceptable.

**The Hon. K.O. FOLEY:** Let us put this into context. First, I appreciate the member for Bragg referring to an act she read in 1971. I was still in primary school and had trouble reading my books, let alone an act.

**Ms Chapman:** It's the earliest I can recall.

**The Hon. K.O. FOLEY:** That's okay. I will get some further clarification on this, but we are advised by parliamentary counsel that both children and people who lack capacity must be treated together, or not at all. You do not split them. It is an issue of having people all in or all out and we treat them the same regardless of whether it is based on age or mental capacity.

*Ms Chapman interjecting:*

**The Hon. K.O. FOLEY:** With due respect to the member for Bragg, I take my advice on this from parliamentary counsel.

**The Hon. G.M. GUNN:** How will this legislation benefit the Pitchi Richi Rail Preservation Society and its desire to be able to continue to operate an effective service? Peterborough SteamTown is another voluntary organisation. They both run tourist steam railways and, as the minister knows, they have suffered considerably because of the difficulty in obtaining public liability insurance.

**The Hon. K.O. FOLEY:** I do not think this bill will affect or offer benefit to Pichi Richi because I do not think we would classify people riding on the Pichi Richi railway as eligible for waivers. The bill after next, which amends the Wrongs Act and which deals with capping of general damages, income and a number of other measures, will have a very real effect on groups such as that. It surprises me that there has been a real problem with tourist and historical railways around Australia. All of them have faced enormous premium increases, based on the fact that they are inherently risky because a lot of them run on second-hand or old rail infrastructure or rolling stock and use volunteers, so the insurance market has written an enormous risk premium. I wish that did not happen, but that is what has been done around the nation, and that is a particular problem. The bill amending the Wrongs Act, which we will be debating later tonight or tomorrow, will address more specifically the issues raised by the member.

**Mrs REDMOND:** I have a double-barrelled question about the definition of personal injury, as provided in clause 3. The first part is technical, and I notice in the proposed amendments to the Wrongs Act that new section 24C deals with damages for mental or nervous shock. If we are dealing with it as mental or nervous shock under the one act, would it not be more appropriate, just for the sake of consistency, to refer to mental or nervous shock in clause 3(a) of this bill, rather than as mental and nervous shock?

Also, what if those two provisions are read together? The provision amending the Wrongs Act states that damages can be awarded for mental or nervous shock if the injured person was physically injured in the accident or was present at the scene of the accident, and then it goes on. Will that apply to this provision as to personal injury? I assume that those two provisions need to be read together. I wonder whether it will be necessary to get a waiver in relation to, for instance, an observer of someone undertaking an activity that would involve the necessity of going through the process of getting the waiver signed?

**The Hon. K.O. FOLEY:** I am advised that a waiver applies only to the consumer, the person undertaking the activity, and would not apply to any person watching, witnessing or looking on.

**Mrs REDMOND:** Reading those two provisions together, if we had a scenario where a person was observing an activity, something dreadful happened and they claimed for nervous shock, would their rights remain unaffected by this legislation, and could they bring their action under new section 24C of the Wrongs Act?

**The Hon. K.O. FOLEY:** Having thought that one through, I advise that the Wrongs Act applies to all injuries.

**Mr MEIER:** My question follows on from that of the member for Stuart. As the Treasurer would be aware, unfortunately the Yorke Peninsula tourist railway, known as Yorke Peninsula Rail, ceased operating about two or three weeks ago. There is a significant infrastructure in that railway—quite a few carriages, a diesel locomotive and two Red Hens. I was down there on Monday, helping with a photograph that they wanted for a tourist railway booklet in Australia. They asked what assistance I could give, and I said, 'Let's see what this legislation provides.' Their insurance premium went from about $5 000 to a suggested $55 000. They are all volunteers and could not afford that amount. That railway runs from Wallaroo to Bute, and it was proposed that it run to Snowtown. But, of course, it may never run again.

The definition of recreational activity in the bill provides:

> any other activity that—
> . . . (ii) is undertaken for the purposes of recreation, enjoyment or leisure;

I would suggest that everyone who travels on that train does so for the purpose of recreation, enjoyment or leisure. There were 200 passengers on the train when it made its last run two weeks ago. Why does this provision not apply to that railway? It was good to hear the Treasurer say that the Wrongs Act will have a significant effect. That is fine. Let us make sure that we get as many acts coming in as possible to help this railway and various other railways in South Australia.

**The Hon. K.O. FOLEY:** You have to read the two definitions together:

> any other activity that—
> (i) involves a significant degree of physical exertion or physical risk; and
> (ii) is undertaken for the purposes of recreation, enjoyment or leisure;

So you must have both. Unless passengers on the railway are jumping up and down for an hour or running up and down the carriages or hanging from the rafters or something there is probably not a lot of physical exertion. I am not being flippant. It comes back to the point that the waiver is not an instrument to replace public liability insurance. It is there to address market failure; it is there to address unaffordable

premiums; and it is there to offer an alternative for those activities that have proven to be extremely problematic.

It may be that governments nationally decide that we will broaden out who should have access to waivers. However, given the nature of waivers, we need to be very careful—that is my view at least—as to how widely we make them available. As for the trains, my answer to the members opposite stands: let us look at what comes out of the Wrongs Act amendments. I think you will see that it will offer some comfort to your particular railway. I underscore the fact that many recreational activities are being significantly affected by the current public liability crisis.

**Mr MEIER:** If we moved an amendment to delete the word 'and', is there any reason why this parliament could not go down that track and extend it to a broader range of leisure activities?

**The Hon. K.O. FOLEY:** As I have said, these waivers are not designed as a replacement or an alternative to public liability insurance. If families travel on SteamRanger or Pichi Richi, or any rail service, they should be covered. We should not be asking families to waive their right to liability insurance when taking a scenic railway adventure. God forbid that it does happen but, if there were a tragic accident, people should be able to access liability insurance. It is not an activity where people should be encouraged to waive their rights.

I am also advised that the definitions that we are using here are the same as those in the commonwealth legislation. We have to be consistent with the commonwealth legislation. If we amend our legislation, the waivers will not have effect because they will not be consistent with the commonwealth legislation.

**The Hon. I.F. EVANS:** Treasurer, I am going to float a whole range of examples. Rather than be caught by the three-question rule, I will go through a series of examples, and you can come back and tell me how it fits into the model. You have advised the members for Stuart and Goyder that the train trip is not covered. In your answer to the question by the member for Stuart you talked about them having problems accessing insurance because of the risk. It is because of the very risk involved that they cannot access insurance. I would argue that a minister could interpret it that way. Paragraph (b) provides:

> . . . any other activity that involves a significant degree of physical exertion—

I agree—the train trip does not include that, but it certainly involves physical risk.

**The Hon. K.O. Foley:** Not a significant degree, though.

**The Hon. I.F. EVANS:** Well, it is such a significant degree that the insurance company will not insure them. If the risk is not significant, why are they not insured? If the risk was not significant, they would be insured. I would argue that a minister could mount an argument quite easily that train trips are indeed a physical risk and it is undertaken for the purposes of leisure. That is the first point. I think train trips could be covered.

Secondly, I assume that the definition is consistent with the commonwealth's definition, but the interpretation is not. I assume that the interpretation will to some extent be decided by the minister. If the minister thinks they are a significant risk, the minister will sign off on a code. I as minister might say that the train trip is a significant risk, and I sign off on the code. You as minister say that the train trip is not a significant risk, and you do not sign off. I think I am right in saying that the definition of recreational activity is consistent with that of the commonwealth, but the interpretation of recreational activity will differ from minister to minister, government to government. Therefore, members should not lose heart that train trips might not be covered because a minister might interpret it that way.

The other examples I want to give are things like fun runs. Take the City-Bay fun run, which is conducted by an association, an incorporated committee. They charge people $5 or whatever to enter. I assume that they are therefore defined under this bill as a commercial recreational service provider. To provide a waiver for the 10 000 people who enter, they would all have to sign a physical contract of some description to do so. I just wonder if that is the intention. Or what would be the situation if the City-Bay fun run asked for a donation of $5? You could enter for nothing, but if you wished to donate $5 you could. Is that a service provider for nothing or is that a service provider for a commercial fee? That is an interesting one to explore. Another issue comes back to the train trips example. I warned the minister and his officers I was going to raise some bizarre examples. I am just trying to flesh out exactly what the legislation means, so bear with me.

If you accept the argument that train trips may be covered, because there is a physical risk and they are undertaken for enjoyment and leisure, where do football club and netball club fundraisers fit into the scheme of things? What is the football club activity? The advisers may say it is simply the act of training and participating in kicking the ball, the actual playing of the game, but if you look at the definitions under 'recreational services' it talks about 'or otherwise assisting a person's participation in a recreational activity'. Is fundraising otherwise assisting a person's participation in a recreational activity? The answer to that I think would probably be yes, because there would not be a sporting or recreational organisation that does not undertake some form of fundraising. So, does the code go out to cover fundraisers?

**The Hon. K.O. Foley:** Can we leave it at that?

**The Hon. I.F. EVANS:** No, I will keep going.

**The Hon. K.O. Foley:** I won't remember them all!

**The Hon. I.F. EVANS:** As long as I can come back, because we need to extend beyond midnight.

**The Hon. K.O. FOLEY (Deputy Premier):** I move:

> That standing orders be so far suspended as to enable the house to sit beyond midnight.

**The CHAIRMAN:** I have counted the house and, as an absolute majority of the whole number of members of the house is not present, ring the bells.

*An absolute majority of the whole number of members being present:*

Motion carried.

**The Hon. I.F. EVANS:** I sat down to allow the foregoing motion to be put, at which point I was halfway through a contribution. The Treasurer offered to answer the three or four points I had raised and then let me continue, so that he did not have nine or 10 points to answer at once.

**The Hon. K.O. FOLEY:** I can indulge the honourable member—a courtesy, I might add, never extended to me, but I will do so because I am such a generous guy. First, I am advised that the Pichi Richi Railway would not meet the criteria. Whilst one could try and put it in the definition, one would be hard-pressed to make a case for a Pichi Richi Railway. Let us remember that the issue again is that it is up

to the policy of the government of the day as to whom it will extend a waiver; for example, it is up to the government to decide whether to will give the Pitchi Ritchi railway a waiver. I would argue that you should not give Pitchi Ritchi or other railroads a waiver, because people going on a train should be covered by insurance as trains are inherently risky. Even though there have been few accidents on trains, the market has clearly priced in a degree of risk. However, they can still get insurance. Is it expensive? Yes. Will that stop some services? Maybe. However, it has never been the intention of this government's policy thrust to waive the right to sue for anybody getting on a tourist train. If a future government wants to do so and the definition does not allow it, you can amend it. I would argue that a recreational service like a railroad is something that we would not envisage and have not envisaged as being suitable for a waiver.

Waivers could be available for the City to Bay fun run. Instead of having 10 000 people lining up on a Sunday morning, a registration form would be sent to participants, or they would have to come to the event with the waiver. That would certainly be available. There is no distinction between commercial and non-commercial. With regard to fundraising, I draw the committee's attention to the definition of 'recreational services', as follows:

> a service of training a person to participate in a recreational activity or supervising, guiding or otherwise assisting a person's participation in a recreational activity.

That would not be for people organising the bar at the Blackwood footy club at 1 o'clock on a Sunday morning when everyone is drunk. They are not the people you cover with a waiver. You are covering the athlete and those people assisting in the training of that athlete. It would not be extended to the wider activities of the club.

**The Hon. I.F. EVANS:** I will not pursue the matter further, but the Treasurer might want to go through the *Hansard* and follow his argument in relation to the trains. One minute he is telling me that this is all about covering market failure—and the member for Goyder gives an illustration of how his local train service is closed due to market failure, that is, it cannot get insurance—then he says to the committee that he thinks trains are so inherently risky that people must have insurance yet somehow they do not come under the definition of something that is a physical risk. There is not a logical sequence to the Treasurer's argument. However, I accept the view that what happens to that will be a policy decision for the government of the day.

I have a theoretical question. If one reads this definition literally, escort agencies would be covered by this bill, because they involve a degree of physical exertion or risk, the activity is undertaken for the purposes of enjoyment and leisure and, of course, it is a legal activity. So, in theory, escort agencies could be covered by the legislation. However, events like Christmas pageants and fetes are not covered by this measure. I wish to raise two final issues. Will the Treasurer explain to me—and I am sorry to drag this out—

**The Hon. K.O. Foley:** That's all right; I'm just having trouble hearing.

**The Hon. I.F. EVANS:** All your answers are giving us some guidance as to—

*Members interjecting:*

**The CHAIRMAN:** Order! We cannot hear the question from the member for Davenport. I ask the member for West Torrens to join his friends and actually move into the gallery, and I ask other members to observe standing orders.

**The Hon. I.F. EVANS:** I am not quite sure what the impact is on insurances covered by the Motor Accident Commission in relation to motor sports. Does the waiver cover any issue? I have no idea how it relates to issues in relation to Motor Accident Commission. For instance, if we have a rally, they sign a waiver. Someone has an accident, and compulsory third party insurance and all those things are involved. Has it any effect? I am not sure in relation to that issue. The last question on this issue—and I thank the Treasurer for his indulgence—relates to who needs to apply for the codes and who needs to administer the codes in things such as community recreation centres?

I will give an example. The Blackwood Community Recreation Centre is situated on land owned by the council. It is leased to a management committee and has two incorporated associations which use the centre. A number of people pay a fee to play netball, but the recreation centre, not an association, runs the activity. The facility is owned by the council. It has been leased to the incorporated association, the recreation centre, which is the management committee. The management committee runs a series of activities—

**The Hon. K.O. FOLEY:** Perhaps we could do the first part. Thank you for your indulgence, sir. I will try to work through those lists and come back to the last one. My capacity to deal with four or five issues is limited. In relation to the train issue, I return to the point that it is the lack of physical activity that does not meet the criteria.

*The Hon. I.F. Evans interjecting:*

**The Hon. K.O. FOLEY:** No—

**The Hon. I.F. Evans:** It is; it is the degree of physical activity or physical risk.

**The Hon. K.O. FOLEY:** It is a degree of physical exertion or physical risk—physical risk in the activity.

**The Hon. I.F. Evans:** While sitting on the train you are at risk; that is why they will not insure you.

**The Hon. K.O. FOLEY:** That is not what is meant by that at all. It is physical risk in undertaking an activity. There is physical risk—

*Ms Chapman interjecting:*

**The Hon. K.O. FOLEY:** It is an important point, because it is a very important philosophical debate as to how we as a government will apply waivers. Members might have a different view on it, but waivers are not about waiving the right of people participating in things such as train trips, because—

**Mrs Maywald:** Why not?

**The Hon. K.O. FOLEY:** What if there is an accident?

*Members interjecting:*

**The CHAIRMAN:** Order!

**The Hon. K.O. FOLEY:** It is very important that members understand that the government's policy on this is not to make every activity available to use a waiver. Railroads are able to get insurance. Under this government's policy decision, those that cannot will not be able to access waivers. It is intended for physical activities that involve a significant degree of physical exertion or physical risk. It is not intended for things such as sitting on a train for a recreational activity, sitting on a houseboat or on a bus going on a wine tour; nor is it—

**Mrs Redmond:** What about going to a brothel?

**The Hon. K.O. FOLEY:** Going to what?

**Mrs Redmond:** Going to a brothel.

**The Hon. K.O. FOLEY:** I will come back to the brothel—that is a good one. I appreciate that the member for Davenport may have different views and I think that it is

important that we tease this out, but it is not intended for those. The second one was the brothels/escort agencies. It is unlikely that a minister would register a code for an escort agency.

**The Hon. M.J. Atkinson:** Why?

**The Hon. K.O. FOLEY:** Well, maybe some would, and the minister may want to answer that for me.

**The Hon. M.J. Atkinson:** A brothel would be against public policy, but an escort agency is, strictly, not in contravention of the existing law.

**The Hon. K.O. FOLEY:** Well, I do not think that waivers were intended for escort agencies or brothels, just as they were not intended for SteamRanger.

**The Hon. M.J. Atkinson:** It is not a question of intention, it is a question of what the statute says.

**The Hon. K.O. FOLEY:** The other bit of advice that I am being given is that perhaps one would be unlikely to sue. Maybe we need to think the matter of the escort agencies through a bit; but certainly it was not the intention of the government. Let us remember that the legislation does not prescribe who shall have access to these waivers, it is up to the government to formulate the policy, and we will be endeavouring, at a national level, to achieve national consistency. If there is national consensus that we should do brothels and tourist railroads, I will get back to the member opposite.

*Ms Chapman interjecting:*

**The Hon. K.O. FOLEY:** Well, member for Bragg, I have—

**The CHAIRMAN:** Order! The committee is degenerating in its behaviour. Mr Treasurer, you should ignore interjections.

**The Hon. K.O. FOLEY:** I should ignore interjections, sir. As you know, that is what I normally do in question time, and I should do it here. As to the impact on the Motor Accident Commission and rally cars, I am advised that if the rally is being conducted on the road, the drivers can and would be covered by CTP. The provider, that is the group organising the rally, is not covered by the CTP and could be granted a waiver.

**The Hon. I.F. EVANS:** You will be pleased to know, Treasurer, that this is my last question on the clause. In relation to community recreation centres, who is liable to introduce the code and who is liable to administer the code? An example is the Blackwood Recreation Centre, which is my local rec centre. The land and building are owned by the local council and the management has been leased to an incorporated association—the Blackwood District Recreation Centre Incorporated, which manages the centre. The recreation committee, in managing the centre, provides two types of services: some are run by other incorporated clubs (an example would the Blackwood Trampolining Club Incorporated), so you have two incorporated associations operating one underneath the other; and then there is mixed netball where you pay $3 for a game and there is no actual association.

So, if I have this right, the local council have to have a code of conduct for the facility and the Rec Centre Management Committee will have to have a code of conduct for each activity, or at least have access to a code of conduct for each activity. Some of the activities referred to are: tennis, table tennis, trampolining, rollerblading, squash, gymnastics, basketball and volley ball; so they would have to have access to each one of those codes and administer them. Then the association under them—for instance, the Blackwood Trampolining Club Incorporated—would also have to have access to a code. Does the trampolining club have to have access to the code, or does the recreation centre management have access to the code for trampolining, or both? Am I right in assuming that those recreation centres will have to have access to 20 or 30 different codes?

**The Hon. K.O. FOLEY:** I am advised that the waivers are provided for the provider of the service, and there may be cases where there are two parties—the owner of the facility, or the people who have leased the facility, and the people coming in. It may be that both groups need to register a code. Those issues will be worked through. With respect to, let us say, the trampolining club, the trampolining would be covered by the trampoline code. The club, or the owner of the facility, may also want to have the protection of a waiver, and would be entitled to apply for one as well, if they felt that that was necessary.

**Mrs REDMOND:** My question relates to the definitions of 'recreational activity' and 'recreational services'. I note that, in the original draft of this bill, what now appears as 'recreational activity' was originally defined as 'recreational services'. The second to last copy of the bill that I received today came with a document (from the Deputy Premier's office, I understand) headed 'Recreational Services (Limitation of Liability) Bill 2002 Report'. At the bottom of page 1 of that report it is stated:

> The commonwealth bill defines 'recreational services' as services that consist of participation in. . .

It then uses the terminology that appears in the current bill as our definition of 'recreational activity'. In light of the Deputy Premier's earlier indication that our legislation, in order to be effective, had to reflect the commonwealth legislation, does the changing of that definition from the name that we previously adopted of 'recreational services' (which was consistent with the commonwealth legislation) to what we have now adopted of 'recreational activity', which is different, create a problem with respect to consistency with the commonwealth legislation and, therefore, with the viability of the legislation?

**The Hon. K.O. FOLEY:** I am advised that the answer is no; the changes were based on advice from Parliamentary Counsel. The advice of Parliamentary Counsel was to have this, and there were issues related to how the commonwealth had drawn up its legislation and how we felt the legislation should be drawn up. The advice we were provided with was to include this.

**Mr MEIER:** I do not want to hold up the house unnecessarily, but I will make a comment on the questions raised and the answers that have been given. It seems to me that one of the problems Australia has faced over the past 20 to 30 years has been the increase in litigation. I remember 30 years ago when it was indicated to me that if we are not—

**The Hon. M.J. Atkinson:** That's quite true, but do you need to say it at 20 past 12?

**The DEPUTY SPEAKER:** Order! The Attorney is out of order, and the member for Goyder should ignore him.

**Mr MEIER:** If we are not careful, Australia will follow the United States and will become a litigious society where everyone wants to sue everyone. We have got to that now in the year 2002, and as a parliament we should and can put a stop to it. It is interesting to hear the answers to these questions to the effect that we do not want to go too far, because surely people should have legal protection. But, if they are travelling in a tourist train, I am sure that the vast

majority of people—in fact, I would say 90 per cent or more—would be quite happy to sign a declaration that they recognise that by going on the train they do not have the chance to sue anyone if something should happen. They will be covered by their own personal liability insurance and they would still get a disability pension if the worst came to the worst. I think this is a great chance to bring new common-sense in here. I do not necessarily expect an answer from the Treasurer, but it is something the parliament ought to consider. We will not go further here, but I hope the other place will look at it. Certainly, we must convince our federal colleagues to go that way too, so that it is matching legislation.

**The Hon. K.O. FOLEY:** I have to say that this is not designed for tourist railroads, tour buses or the city to bay tram. It deals with inherently risky activities that cannot get or afford insurance.

**Mr Meier:** A train cannot get insurance.

**The Hon. K.O. FOLEY:** Sure; if you want trains covered, when you get into government, change the policy. I do not think that governments—

*An honourable member interjecting:*

**The Hon. K.O. FOLEY:** And I am not doing it. Understand this point: waivers are not available for tourist trains under this government.

**Ms Chapman:** What are they available for? Give us some examples.

**The Hon. K.O. FOLEY:** They are available for risky activities.

*An honourable member interjecting:*

**The Hon. K.O. FOLEY:** I could think of a lot; trampoline clubs, horse riding clubs and football clubs may want to avail themselves of it. Sporting clubs may want to avail themselves of it, and we will deal with the various categories of activities, but let us finish with trains. The bill makes quite clear that it is intrinsic to physical activity. You cannot have physical exertion or physical risk unless you are being physical. Sitting on a train is not being physical. Most train trips that I have been on have not been physical, although there was that footy trip to Melbourne when I was young, when the Semaphore Park footy club went on its end of year trip.

I accept the point. I am not saying that we should not try to help in a number of areas that cannot get it, but it is not designed for everyday activities, notwithstanding the fact that tourist railroads have a problem. I am interested in the member for Bragg's response as a lawyer. Would we really want a situation where people who get onto the Steam Ranger or the Cockle Train waived their right to sue and—God forbid that this should happen—there was a head-on collision? We must put this into context. It is not designed, nor should it be used, for that type of activity in my opinion and that of my government. I accept that others may have a different view, but it is not a view that we support.

**Ms CHAPMAN:** I thank the Treasurer for citing some examples. I look forward to seeing how many adults seek a waiver for the activity of trampolining. My question relates to the definition of 'recreational services'. I am concerned about schools because we know about the situation with schoolchildren, but we also know that schools currently provide facilities for activities to other community groups and institutions and, indeed, other schools. Can schools apply to be a registered provider so that the community and other institutions can use their facilities?

**The Hon. K.O. FOLEY:** The answer is yes, but they will not be able to obtain waivers for children. I cite a few other examples such as white water rafting, abseiling, climbing, canoeing, kayaking, waterskiing, windsurfing, parachuting, rock climbing, bungee jumping—you name it; if it is risky they can get a waiver, or just about, anyway.

**Ms CHAPMAN:** Will the government give an assurance that liability risks for schools will not increase under this legislation? Obviously this applies to non-government schools.

**The Hon. K.O. FOLEY:** One is always careful not to offer absolutes and guarantees in this business. We are excluding children, so it is hard for me to see how that would be an issue.

**Ms CHAPMAN:** Is it necessary, given that you cannot give that assurance, that non-government schools therefore be required to cease providing recreational facilities to other community services and institutions where adults might use, say, the school oval for a physical or sporting activity?

**The Hon. K.O. FOLEY:** I assure the shadow minister for education that she will not get a story out of this. We are not allowing waivers for children, so that is a non-issue, but, if a non-government school wishes to make services available—if St Peters, Pulteney, Wilderness or Prince Alfred, all of those schools in the member's electorate where her constituents go to school, want to make their facilities available for adults—they can register and apply for a waiver. If that is what they want to do, they can do it. But they cannot do it for children because waivers are not available for children, and I cannot see how anyone could regard that as having an adverse cost impact, except for whatever costs may be associated with registering and applying for a waiver.

Clause passed.

Clause 4.

**The Hon. I.F. EVANS:** Under any of the ministerial powers—

**The Hon. M.J. Atkinson:** If there are more than a couple, they will not be quick.

**The Hon. I.F. EVANS:** If you keep interjecting, they get longer, of course. Can the minister advise whether under any of the powers the minister has the power to delegate, and does the minister have the capacity under the bill to introduce registration fees and, if so, what are the proposed fees?

**The Hon. K.O. FOLEY:** I will address the second question first. Clause 10, to which you can certainly return at the end of the bill, allows the minister under regulation to make fees. It is our intention to have costs recovery. This is not something that would be provided free of charge: there will be cost recovery for the preparation and printing of waiver forms, of administering the code and of providing the service. The exact costs have not been determined but they will be minimal. I make the point that if a group cannot get insurance it is not paying for insurance, so it will have a capacity to pay the fee and, if it can get insurance and this is a supplement to its existing insurance, it would be a minimal cost. We have not set the fee but it would be minimal, and just enough to ensure that the taxpayer does not subsidise this service. This is a service to those groups that cannot get insurance or that cannot afford insurance. We do not see the minimal cost of the fee for a form or whatever—the few dollars that may be involved—as being onerous. Under the administrative arrangements the minister will be able to delegate to the appropriate officers.

**The Hon. I.F. EVANS:** I assume that power will be in the regulations.

**The Hon. K.O. FOLEY:** I am told it will be under the Administrative Arrangements Act.

**The Hon. I.F. EVANS:** Clause 4 raises the issue that the minister may require a proponent to obtain a report on the adequacy from a nominated person or association. Does the minister intend to regulate how much the nominated person or association can charge? If you go to the parent association and say, 'Give me a comment on this particular code,' they could slug the junior association $10 000 or $20 000. Will there be any control mechanism?

On a similar and related basis, one assumes that if the nominated person or association comments on the code, the code is adequate. If it is later found—I notice that the minister has five advisers—that the code is inadequate, one assumes that the nominated person or association which gave the minister advice as to the adequacy of the code could be sued.

**The Hon. K.O. FOLEY:** The shadow minister has commented on the fact that I have five advisers. The law is not my strong point; I wish that I had 10. I probably could do with 10 advisers. I hide not from the fact that dealing with complex legal matters is not something at which I have a great skill, but I am battling through. The answer to the last part of the question is, yes. I am advised that payment of the cost of registering a code is really up to the associations and the people involved.

Clause passed.

Clause 5 passed.

Clause 6.

**Ms CHAPMAN:** I would like to raise the question of liability of a school or, indeed, a parent, and minors, that is, children, being taken to a public playground or a park—which obviously offers a facility where physical exertion, leisure and so forth operate—and the relevant sign is displayed. In other words, the proprietor or owner of the playground is providing a service gratuitously. The relevant sign is displayed and it denies any liability. What is the liability on the parent or the school with respect to a child who invariably, of course, in this example, sustains physical injury? What is their liability? Because you can no longer sue the park owner, the local council.

**The Hon. K.O. FOLEY:** As I have explained, there was a late amendment, a good amendment. We have taken the decision that children will not be consumers.

**Ms CHAPMAN:** No, I am talking about liability. The children can sue, that is just my point. The children can sue but the owner of the park, which might be the local council, is offering a gratuitous service to the public. It puts up its sign so that it qualifies in all its application of what it does so that it cannot be sued, but the parent or the school teacher who takes that child into the playground remains vulnerable to be sued. What protection is offered to them, as you have wiped out the opportunity to sue the local council?

**The Hon. K.O. FOLEY:** I have trouble following the honourable member's point. The duty of care still remains with the parent or the guardian.

*Ms Chapman interjecting:*

**The Hon. K.O. FOLEY:** Let me finish. Nothing has changed. The owner of the playground will still be liable because children are not covered. If a child has an accident in the playground they have not waived their right to sue so they would sue under the existing laws. Nothing changes.

**Mrs REDMOND:** My first question relates to clause 6(3) and the matter that I raised in my second reading contribution. Will the minister explain the basis upon which it was decided that the provision in this clause for the ability to put up a notice applies only to those registered providers who provide recreational services gratuitously rather than all providers?

**The Hon. K.O. FOLEY:** As a commercial enterprise you are in a position to strike a contract with a consumer. If you are providing a service gratuitously you are not, and the advice and thinking was that a sign was the best way to deal with that and that is why it has been included that way.

**Mrs REDMOND:** Does that mean that subclause (4) then does not apply to those and that the intention of the legislation is that if you come under subclause (3) you provide the service gratuitously and put up a notice, as decided by the regulations as to its manner and form, and then you do not need to comply with subclause (4), partly on the basis that you are not conducting a business and because you are not running a commercial activity but providing a gratuitous service? Is that the intention?

**The Hon. K.O. FOLEY:** I will think that one through for a moment. It is general. If you have a place of business you could display it; if you do not you cannot. That makes sense, does it not?

**The Hon. I.F. EVANS:** To pick up on a point raised by the member for Heysen in her second reading contribution, I want to flesh out clause 6(3)(a), providing recreational service gratuitously, and ask whether the minister would consider expanding that provision for those not-for-profit organisations that provide a service only by way of membership fee. I can understand the government's argument in relation to a facility that is commercially run for profit that offers a service, such as a gymnasium like Body Heat or Kerry O'Brien, but there is a middle group captured as commercial providers, namely, the local football club, the Seaton Ramblers—

**The Hon. K.O. Foley:** Port Districts.

**The Hon. I.F. EVANS:** That would be a not-for-profit association, I would think. Most football clubs these days are not for profit. The person who pays their $50 to be a member of the footy club is not buying a commercial service. They are in a different league to someone who says, 'I want to go to your gym, pay $200 and buy a commercial service.' It is more of a contribution to a common aim. There is a slightly different approach that could be adopted for not-for-profit groups that offer membership by subscription. We will not move an amendment tonight, but the Treasurer might think about that and we will talk between the houses, if he is happy to, about whether he will accept an amendment about adopting that role for not-for-profit groups which accept membership by subscription. That principle will cover 95 per cent of community sporting organisations. It comes back to the point where I know the Treasurer will say that all those groups do not especially enjoy market failure, so they will not be covered by this as ultimately it will only be used for the groups that suffer market failure, that is, cannot get insurance. Another government may have a different view and the legislation, if amended, would give the government some flexibility on how it will adopt it.

**The Hon. K.O. FOLEY:** Do not misrepresent me. The waivers were designed as a mechanism to deal with market failure and for groups that cannot get insurance. I have said that the government will then determine, in consultation with other states and the commonwealth, how widely we may want to make waivers available. It may well be that we make them more generally available to other sporting groups. That is to be determined. It will take the commonwealth a good three

months to get it through its parliament, I would have thought. It is in recess now and will not be back until September. By the time it gets through the Senate and proclaimed, it will be the back end of the year. We will have the laws in place. We will work with the other states to get a broad understanding as to how narrow or how wide we want to make them. Let us say that we decide to make it available for football clubs, which we may well do. What the honourable member is suggesting to me is that you simply put up a sign at the football club saying, 'If you play footy at Port Districts Football Club you waive your right,' as distinct from signing a form. Is that what the member is suggesting to me?

**The Hon. I.F. EVANS:** I am suggesting that there is some middle ground we could explore for the not-for-profit sporting organisations that take membership by subscription. When people subscribe you have to send them a receipt, and they could be notified at that time. It can be in their constitution that membership of this organisation means you automatically accept a waiver etc. There are all sorts of options available. I do not think that they provide a commercial service as such. I think there is a difference between the commercial provider of a recreational service, that is, where you pay $400 to go white water rafting for two days down a river, and that is different from a service provided by the local footy club year in, year out, week in, week out, generally for the same sort of population base, same sort of individuals.

**The Hon. K.O. FOLEY:** I know what the member is saying, but if we chose—and we may not—to include football clubs, I do not think it is an onerous task to put a waiver in front of a footballer, if that is what you were doing, and say 'You make the call: you want to play for us, you sign a waiver.' I think that would be a far better thing to do than simply having a sign or a notice on your membership form and you waive your right to sue the club. Given the significance of what you are doing, you would want to bring it to the attention of the player. We can have some more talks about that if we can think of other examples. I am trying to think of some examples of the whole idea of gratuitous services. Let us say a skateboard rink, for example. After parliament tonight you and I grab our boards and go down to the skateboard rink, where there will be a sign saying, 'If you break your neck, bad luck.' We do it, we know we are doing it, we take the risk. That is where a sign can work. I do not think the sign at the Port Districts Football Club would have that much effect. It would have effect, but—

*Mr Goldsworthy interjecting:*

**The Hon. K.O. FOLEY:** I just had someone who represents the Adelaide Hills suggest to me that people in Port Adelaide can't read! I could be very, very rude in coming back quickly about people who live in the Adelaide Hills, but I won't, because I am a nice guy. I am happy to explore that further and have some dialogue over the next week, if the member wishes.

**Ms CHAPMAN:** There have been some questions about the cost of obtaining a report, the whole process for registration. Does the Treasurer agree that regulations governing applications should provide for wide dissemination of the proposed code together with notice to those persons who are provided with a copy of their right to object to the proposal?

**The Hon. K.O. FOLEY:** This could be part of the point that the member for Stuart raised, about whether the code should sit in the parliament for disallowance or through the legislative review committee. We do not support that. Many organisations already have a code. My thinking is that it would be up to the association to circulate its code widely amongst its members, and that may be a factor that the minister will consider when making the determination.

I need to point out at this stage that because we have time to get this right, and that is one of the benefits of putting this legislation through now, we will set up a task force internally within government that works with officers who already manage the risk management of government. The task force will work through a number of the administrative requirements for these waivers and it will consult widely with the various codes and groups to ensure that we meet all the needs and requirements. We want to make it as simple as possible. We do not want to have too much bureaucracy involved.

The standards are already in place in many organisations, such as equestrian associations and pony clubs. Many of these groups already have their codes. Some do not, but the Department for Recreation works with these groups all the time, as I am sure the former minister for sport is aware, so it would not, in our view, be difficult for them to quickly work through that with those groups.

**Ms CHAPMAN:** Perhaps if you are going to have a working group on this, the minister could consider including a modification for duty of care. It should specifically provide that any failure to comply with the code will give rise to liability: it should be clear and implicit in the legislation.

**The Hon. K.O. FOLEY:** That is not the role of the task force. The role of public servants is simply to work through the administrative side of it. The duty of care and failure is a principal part of the act. That is the whole point—if you do not observe your code you can be sued. That is the enforcement.

**Ms CHAPMAN:** If you do not want to give it to the task force, would you consider that?

**The Hon. K.O. FOLEY:** Section 7(1) provides:

> If a consumer to whom this section applies suffers personal injury the provider is only liable in damages if the consumer establishes that a failure to comply with the registered code caused or contributed to the injury.

It is in the legislation.

**Ms CHAPMAN:** I suggest to you that that should be explicit to the extent that, if there is a breach, irrespective of the injury, liability applies. It should be part of the code.

**The Hon. K.O. FOLEY:** It is in the act. It is in the law. If you are saying that the waiver form or the code should have big red block letters at the bottom, that is no problem at all. The consumer needs to know of their rights to sue, and the people who register the code need to know the ramifications. I can give a commitment that that will be clearly identifiable on the forms—absolutely.

Clause passed.

Clause 7.

**Mrs REDMOND:** I have one question which relates to section 7(1), which the Treasurer just read out. In the first instance, was any consideration given to whether it is necessary to say 'caused or significantly (or substantially) contributed to the injury', instead of 'caused or contributed to the injury'? My recollection of the Workers Rehabilitation and Compensation Act, for instance, is that when the provisions were introduced they provided for work-related injuries, or circumstances, causing or contributing to an injury.

That was ultimately modified because it allowed claims where the causal link between the contribution made, and its significance to the causal link to the injury sustained, was very small. But, because the word 'significantly' was not

included, the act had to be amended, as I recall, so that the benefit of the section could be claimed only if there was a significant causal link between the failure and the resulting injury.

**The Hon. K.O. FOLEY:** That is a matter that I have pondered and toiled over extensively. I am prepared to consider that, and I thank the member for Heysen, a lawyer, for bringing that to my attention. I return to a point raised by the member for Bragg, another lawyer.

*Members interjecting:*

**The Hon. K.O. FOLEY:** No, I am just enjoying debating members opposite; I am waiting for a few on the government side to enter the debate. Returning to the point about the notice, clause 6(2) provides:

> Before entering into a contract under subsection (1), the registered provider must give the consumer the notice required by the regulations of the effect of the agreement.

That reinforces the point that we must make sure that the consumer is aware of all the aspects. I am happy to consider the member for Heysen's point, and we will deal with that in another place.

Clause passed.

Remaining clauses (8 to 10) and title passed.

Bill reported without amendment.

**The Hon. K.O. FOLEY (Treasurer):** I move:

That this bill be now read a third time.

I conclude by thanking all members for their participation, by thanking my advisers and again by thanking my staff for working this bill through. I think it would be fair to say that the Attorney-General does not face any threat from me in any future reshuffle! However, the legislation that has been passed tonight is very important. I know that some members on both sides of the house have had to consider this long and hard, and the further legislation that we will deal with tomorrow night has required a lot of careful consideration by both sides—but an important first step has been taken.

I thank members opposite. I will take on notice the questions that we have not answered tonight and provide answers before the debate occurs in the other place. I look forward to continuing the debate on the other two bills tomorrow night.

Bill read a third time and passed.

## ADJOURNMENT

At 1 a.m. the house adjourned until Thursday 15 August at 10.30 a.m.