HOUSE OF ASSEMBLY

Wednesday 25 February 2004

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

PARLIAMENTARY PROCEDURE

The SPEAKER: Order! When the Serjeant-at-Arms is at the bar of the house all members will remain in their places and remain silent. All members know that. It is highly disorderly and insulting. Admit the messenger from the Governor.

MEDICAL PRACTICE BILL

Her Excellency the Governor, by message, recommended to the house the appropriation of such amounts of money as might be required for the purposes mentioned in the bill.

SHINE

A petition signed by 49 electors of South Australia, requesting the house to urge the government to immediately withdraw the trial of the Sexual Health and Relationship Education Program, developed by SHine, from all 14 participating schools pending professional assessment and endorsement, was presented by the Hon. W.A. Matthew.

Petition received.

INTERNATIONAL LAW CONFERENCE

The SPEAKER: I apprise the house of a very important occasion. Later today—indeed, during the dinner break—there will be in this chamber the delivery of the Zelling Lecture from the International Law Conference, the Challenge of Conflict: International Law Responds. The guest lecturer providing that dissertation will be the Honourable Madam Justice Louise Arbour of the Supreme Court of Canada. She will be speaking to us all—those of us who wish to avail ourselves of the opportunity—about the Canadian Charter of Rights and Freedoms. I therefore advise all honourable members that they ought to note two things. First, upon departing the chamber later this afternoon before the dinner break, they should take all personal possessions with them, because there will be about 170 to 180 people here during the dinner break to hear that lecture. Secondly, the house will be suspended for the dinner break until the ringing of the bells, which members can reasonably anticipate will not be before 7.45 p.m. It is thought entirely appropriate for the dissertation to be delivered here in this chamber because of its relevance to the constitution of the state and any amendment which may be made to our existing statutes in such manner as may address the matters which are currently being debated around the world and which are relevant to the topic of the dissertation, which I remind all honourable members is entitled, 'The Canadian Charter of Rights and Freedoms.'

LEGISLATIVE REVIEW COMMITTEE

Mr HANNA (Mitchell): I bring up the 13th Report of the Legislative Review Committee.

Report received and read.

Mr HANNA: I bring up the 14th report of the committee.

Report received.

PUBLIC WORKS COMMITTEE

Mr CAICA (Colton): I bring up the 199th report of the committee on the Repatriation General Hospital—Mental Health Capital Project.

Report received and ordered to be published.

QUESTION TIME

JARVIS, Mr J.

The Hon. DEAN BROWN (Deputy Leader of the Opposition): My question is to the Minister for Urban Development and Planning. Given that Mr Justin Jarvis—the manager of the government's office of the Upper Spencer Gulf, Flinders Ranges and Outback—is a former unsuccessful Labor candidate for the seat of Stuart and has been tipped—

Mr Koutsantonis interjecting:

The SPEAKER: Order, the member for West Torrens!

The Hon. DEAN BROWN: —as a future candidate, is the minister confident that Mr Jarvis is performing his role in a non-political way?

The Hon. K.O. FOLEY (Deputy Premier): You know they are hard up for questions when they start attacking personal staff. Justin Jarvis is employed under contract to the Premier and, in his absence, I will answer the question. As far as I am aware, Mr Jarvis conducts himself appropriately and in accordance with his contract. He is a political staffer. He is not a pre-selected candidate for any seat. As many would recall, there are many instances of political staff running for state parliament—I was one. Some members opposite perhaps (although I cannot pick one now)—

An honourable member: The member for Kavel.

The Hon. K.O. FOLEY: The member for Kavel was a former assistant to a politician. A number of members of parliament from both sides of politics have performed very well as political staffers. Some would be critical of the political system of the two major parties because of the fact that people do come into parliament from political staff positions. It is a well-known process, and Mr Jarvis will conduct himself appropriately, in accordance with his contract. But, if the member opposite wants me to reflect on some of the conduct of former Liberal staffers, then we can look at that. I do not think that is what you are asking, but if you want me to look at that, we can do it.

The Hon. P.F. Conlon: What about the public servant doorknocking in Mawson?

The Hon. K.O. FOLEY: That's right. I was just reminded that an allegation was made about a public servant doorknocking in Mawson.

Members interjecting:

The SPEAKER: Should the member for Bright and the Minister for Infrastructure wish to amuse themselves by whatever activity they engage in, they may choose to do it without interrupting the proceedings of the house by going to sit with each other somewhere suitable.

The Hon. DEAN BROWN: I have a supplementary question. Does Mr Jarvis have access to correspondence between members of parliament and ministers; and will the Deputy Premier table a copy of Mr Jarvis' contract?

The Hon. K.O. FOLEY: What a bizarre question, from two positions. First—to the best of my understanding, and I will check this—Mr Jarvis would be on a normal, standard contract. Secondly, as to whether he as a political staffer will have access to correspondence between MPs and ministers, yes; what else would he be doing if he was doing his job properly? Would he not have access to them? I have to say that, when I was a political staffer—chief of staff to the Premier of South Australia—I had access to ministers' and MPs' letters. While I do not want to single out Liberal staffers who may or may not be in the gallery as we speak and who may or may not have gone doorknocking—

Mr BRINDAL: I have a point of order, sir. I believe, save for yourself and very other few people in this chamber, it is disorderly to refer to members in the gallery, and that has been done several times by government members already.

The SPEAKER: The honourable member for Unley is correct.

The Hon. K.O. FOLEY: I cannot let it go without pointing out, for the media's benefit if no-one else, that we have a former Liberal staffer in the gallery who, I am advised—

The SPEAKER: Order!

The Hon. K.O. FOLEY: —was doorknocking when working for a Liberal minister in the lead up to the last election when he was a candidate. What hypocrisy!

Members interjecting:

The SPEAKER: Order!

The Hon. DEAN BROWN: Mr Speaker, you have indicated that the Deputy Premier cannot refer to people in the gallery. He blatantly denied your ruling and went ahead and did so.

The SPEAKER: The Deputy Premier will apologise for his breach.

The Hon. K.O. FOLEY: I apologise, sir. But honestly—

The SPEAKER: The Deputy Premier will apologise unconditionally and sit down.

The Hon. K.O. FOLEY: I apologise unconditionally, Mr Speaker.

FREEDOM OF INFORMATION

Mr CAICA (Colton): My question is to the minister—

The Hon. K.O. Foley interjecting:

The SPEAKER: Order! The Deputy Leader is out of order.

Mr CAICA: My question is to the Minister for Administrative Services. Has the minister concluded his inquiries into allegations that a ministerial adviser improperly instructed an FOI officer to make a determination and, if so, what have they revealed?

The Hon. J.W. WEATHERILL (Minister for Administrative Services): I have had an opportunity to consider the opposition leader's allegation that a ministerial adviser had improperly instructed an FOI officer to make a particular determination. The Leader of the Opposition chose not to tell the house a number of very important points, and this raises very serious questions.

The first point is the nature of the application. The application was one made by Angus Redford and was made in these terms:

> I request access to documents prepared by and for the Economic Development Board. In particular, I request any agendas, minutes of meetings, resolutions or recommendations the Economic Development Board has made since commencing operation.

This is not dissimilar to the breadth of requests that have been obtained from 410 MPs' applications, a 754 per cent increase in applications on the years 2001-02 to 2002-03. It is an amazing increase, many of the applications being of that breadth and taking extraordinary amounts of resources to process. Of the documents that were identified as falling within that category, some 112 were identified, and 48 were released.

The other point that seems to have been lost in all this is that in his initial question the Leader of the Opposition correctly stated that it was a letter, in fact, from Mr Warren McCann to the Ombudsman concerning this matter about which he was quoting. He later went on to talk about the fact that it was the Ombudsman who had identified, or made a finding about this matter. The material that the Leader of the Opposition quoted was contained within a letter from Mr Warren McCann to the Ombudsman, and was settled by the Crown Solicitor. It is important to bear that in mind, because an officer of the head of Premier and Cabinet and the Crown Solicitor's Office would not be expected to be penning a document that was inconsistent with the Freedom of Information Act.

The fourth point—and, I think, the most egregious point of all—is that the Leader of the Opposition quoted from a letter (of which, one presumes, he had a copy), and he quoted selectively from that letter. What he told the house was this:

> In reaching his determination about all but one part of one document Mr Treasure [the FOI officer] was instructed by Mr Lance Worrall, who is the Premier's economic adviser. . .

That is where the quote ceased. So, that is what this house was told. However, what the quote states in full is as follows:

> and who assists the Economic Development Board (the EDB). Mr Worrall is familiar with the documents and their use by the EDB. He is also in a position to offer an opinion on the likely consequences of release of the documents and on any harm to the public interest. Mr Worrall would be pleased to discuss the various fact situations with you if you require further detail.

Mr Worrall was clearly engaged in this process, consistent with the FOI process guide (which was brought into existence by this government), which states:

> It is frequently necessary to seek opinion for various reasons to ascertain whether disclosure might affect intergovernmental relations, whether the document was created in the administration of another act which contains a secrecy provision, whether disclosure will affect the business affairs of your agency or affect the economy of the state.

It is inaccurate in the extreme to then make the conclusion that the Leader of the Opposition made in his further series of questions—that the Ombudsman identified the fact that the adviser stopped these documents being released. Nothing could be further from the truth. Mr Worrall was simply discharging his proper function in providing advice to an FOI officer. It was always acknowledged, and would always be acknowledged by the head of Premier and Cabinet and by its legal advisers, that the matter of discretion was his—but a properly informed discretion. I invite the Leader of the Opposition to carefully consider the material that has been put before this house and come back with an apology.

HOWELLS, Mr S.

Mr BRINDAL (Unley): My question is to the Minister for Gambling. Minister, given the involvement of the—

The SPEAKER: Order! The honourable member knows that his question is addressed to the chair, not to the minister.

Mr BRINDAL: Sorry.

The SPEAKER: The member constantly takes points of order with respect to other members in the parliament and ignores the remarks that I have made about that in assisting government backbenchers to stop the practice. The honourable member ought to know better.

Mr BRINDAL: I do apologise, sir. I am a bit distracted by the nature of this question. Given the involvement of Victorian lawyer Stephen Howells in several internal union disputes in South Australia, including the minister's old union, the AWU (and I understand that the minister briefed Mr Howells in the AWU dispute) is Mr Howells' appointment—

The Hon. P.F. CONLON: Sir, I rise on a point of order. I have no problem with this, but this question is being prefaced by an explanation without seeking the leave of the house. If the honourable member wants to start the question by saying, 'Given this and that, and that and that', and then make a long series of statements, he should seek the leave of the house, as is proper.

The SPEAKER: The English language, and particularly its grammatical structure, is one which, I guess, inspires a great deal of contemplation as to how to get around some directions otherwise contained in language elsewhere. In this instance I believe the solution to the problem to which the Minister for Infrastructure refers (and it is a problem) is in his hands. The house could simply amend the manner in which questions are asked by limiting the amount of time taken to ask a question, rather than allowing the amount of time taken to ask a question to include such ramblings. The member for Unley has the call. It is a practice—can I tell the honourable member—which has grown up in the last decade and which was not part of proceedings of the chamber, as I recall them when I first visited the chamber on a more frequent basis in the 1970s. The member for Unley.

Mr BRINDAL: In deference to your ruling, sir, I will shorten the question to this: is Mr Howells' appointment as chair of the Independent Gambling Authority a return for services rendered?

Members interjecting:

The SPEAKER: Order! The minister will not commence his answer or response to that question until I have had time to contemplate its implications. I will allow the question, but I point out that it is defamatory of Mr Howells. I have an interest in the matter, because Mr Howells QC has defended me, and I know the man to be of impeccable integrity, though it is not proper for me to do other than disclose that fact by virtue of my contemplation as to whether it is otherwise a question that is in order. I find that, whilst it is offensive in its allegation or imputation, nonetheless, it is in order. It compels me to repeat that I have now changed my view about the rights of citizens to make replies to allegations in this chamber whenever they believe their good reputation to have been impugned. The minister.

The Hon. J.W. WEATHERILL (Minister for Gambling): The question is disturbing on so many levels that it is difficult to know where to start. The first level on which it is disturbing is that, in this area of gambling policy, I must say that the extraordinary contribution that this man has made as presiding member of the Independent Gambling Authority could not possibly have been missed by all members in this house. Since he has been presiding member there has been the production of at least three of the most substantial pieces of reform in gambling policy that have ever been put before this place: the family protection order; the inquiry into gaming machine numbers; and, indeed, the codes of practice.

This house should be passing resolutions congratulating this man on providing us with the opportunity for dealing with what is one of the most serious and significant social problems with which we have to grapple as a community. Instead, we get cheap shots from those opposite. It is actually interesting, because there is a parallel between the way in which members opposite have chosen to conduct themselves in this question time. It has been the cheap shot, which can be contrasted with the way in which, over their period of government in the gambling field, there were essentially no substantial contributions to public policy. I think there was one small moment where they talked about a freeze for three years and then finally implemented it, but that was about their high-water mark.

Mr BROKENSHIRE: I rise on a point of order, Mr Speaker. The minister is now clearly debating the issue and not answering the substance of the question.

The SPEAKER: The observations being made by the minister are in defence of the reputation of a pre-eminently appropriately qualified person to have been engaged by government of either political persuasion to do the work which that gentleman has been appointed to do. I uphold the point of order, but if the minister will confine himself to defending the reputation of the Hon. Stephen Howells QC in addressing the nature of the inquiry from the member for Unley, I think that will suffice.

The Hon. J.W. WEATHERILL: This is an appalling slur on a man who has gained a reputation for not only the high-quality public policy work that he is doing for our state but a range of pro bono work for people within his own state including members of the Aboriginal community. In fact, he has represented internationally a range of Labor organisations in the South Pacific islands, all without requesting a fee. Indeed, he flies here from Melbourne at his own expense, and what does he receive from members opposite? He receives vilification and scorn for the hours and hours of work that he contributes. It is not a simple public policy—

Members interjecting:

The SPEAKER: Order!

The Hon. J.W. WEATHERILL: He might not be good enough for those opposite, but he seems to be good enough for the Anglican community of Australia, because he sits on the Anglican Synod. In fact, I think he plays a role on their judicial body and he discharges responsibilities in that institution at the highest level. This is a breathtaking allegation, and those opposite who are promoting it ought to be ashamed of themselves.

STATE PARLIAMENT, CANDIDATES

Ms RANKINE (Wright): Will the Deputy Premier advise the house of any state ministerial staff who were preselected as candidates for the state parliament during their time as ministerial staff and say whether he thinks this was inappropriate?

The Hon. K.O. FOLEY (Deputy Premier): I am aware of some, and I do not think it was inappropriate. I preface my comments by saying that on the day when the nice guy opposition leader is not in the chamber the opposition chooses to be very grubby. I have been provided with certain information, but I stand to be corrected if I am wrong. Mr Speaker, at the last state election, as you would recall, a candidate who opposed you for your seat was Barry Featherston, who was then, I am advised, working for the then premier Rob Kerin, so that was okay. I am told that a

candidate who ran for the seat of Croydon used to work for federal minister Robert Hill, and of course I have mentioned Mr John Behenna, who used to work for Malcolm Buckby, who ran for the marginal seat of Colton. I do not think this is inappropriate—it is eminently appropriate—but I have to remark on the hypocrisy of the deputy leader because, I am advised that when he was a minister—and I stand to be corrected—one Michelle Lensink was working for the then deputy leader. I might be wrong. Am I wrong?

Members interjecting:

The Hon. K.O. FOLEY: Was it Robert Lawson? I am advised she was working for some minister and she was running for the Senate, but I stand to be corrected. I am told that Sue Jeanes was working for Robert Hill and Heidi Harris was working for someone running against the member for Colton. The truth is that it is an eminently appropriate professional occupation for potential political candidates, but I have to remark on the hypocrisy of the opposition to attempt to be grubby when the nice guy leader of the opposition is out of the chamber. They have been told to harden up and toughen up, so today is the day to be grubby. We saw that in the despicable question to the Minister for Gambling. It is absolute hypocrisy.

REVENUE SA

The Hon. DEAN BROWN (Deputy Leader of the Opposition): My question is to the Treasurer.

Members interjecting:

The SPEAKER: Order! The deputy leader.

The Hon. DEAN BROWN: Thank you, sir. Will the Treasurer undertake to revise the interest charges incurred with the payment of land tax by instalments? Many self-funded retirees and pensioners struggling to pay their land tax bills elect to pay by instalments. I have been advised by constituents that they are being charged 12.89 per cent interest by Revenue SA to pay by instalment, and they have been forced to take out personal loans to cover their land tax bills.

The Hon. K.O. FOLEY (Treasurer): That is actually a very good question, and I thank the member opposite. And I am looking at this issue, absolutely. I am advised that that did occur under the former government, and I will check at the end of question time what the interest rate was when members opposite were in office. This is the hypocrisy of the deputy leader.

An honourable member interjecting:

The Hon. K.O. FOLEY: Well, what was acceptable practice when the Liberals were in office is not acceptable now Labor is in office. I am having a look at that, because I actually think—

Mr Brokenshire interjecting:

The SPEAKER: Order, the member for Mawson!

The Hon. K.O. FOLEY: —that there is an argument that, given issues related to land tax, we should have a look at issues such as quarterly billing, instalment payments and perhaps credit card payment options and, indeed, the prevailing rate of interest. I am prepared to look at all of that. It is a good question but, again, it highlights the hypocrisy of the member for Finniss (the Deputy Leader of the Opposition) who forgot about the eight years of Liberal government—and I have to say that it is a pretty good thing to forget about. Since this government has come to office, we are finding areas that need reform in this state, and we are reforming them. We are taking on the big issues—the tough issues—that were ignored by the Liberals in office—such as putting more police into the police force and increasing concessions on electricity. We will have a look at this issue relating to land tax, because we are a reformist government and are prepared to tackle the hard issues.

INVESTIGATOR SCIENCE AND TECHNOLOGY CENTRE

Ms BEDFORD (Florey): My question is to the Minister for Science and Information Economy. How does the Investigator Science and Technology Centre support understanding and awareness of science and technology in the community from its new home at the Regency Park campus of the Regency Institute of TAFE?

The Hon. J.D. LOMAX-SMITH (Minister for Science and Information Technology): I thank the member for Florey for her question. It is appropriate that she should ask this question because, of course, her constituency is named after one of South Australia's pre-eminent scientists. The Investigator Science Centre has moved to a site at the Regency TAFE, which is a space that operates very well as an educational centre and allows us to change the focus of a static museum display into one which is both interactive and which has an outreach function. It is particularly clear that, during the last few years, science has been in decline in South Australia. Until 2002 there was a 14 per cent decrease in the number of year 12 students completing a science subject, and that had occurred over less than five years. That decline is an unsustainable one in our current economy, where the future rests very heavily on science and innovation in terms of manufacturing, industrial enhancement and job creation. It is essential that more people go into science training, go into university science courses and become science teachers in order to promote this sector to young people.

The current arrangements at the Science and Technology Centre are different in that, instead of having very large and expensive museum displays, the organisation is moving towards having on-the-road activity, going to centres throughout the regions in South Australia, going into schools with hands-on activities, and inviting the community to enjoy and have fun learning about science.

In particular, partnerships are formed with industry. There is an enhanced involvement of companies and businesses involved in science and technology to host students who learn about activities on site. The Electronics Industry Association sponsors a travelling bus which goes out to locations around the state and the CSIRO sponsors a series of activities for year 12 students that would be far too expensive to be carried on in schools, other than perhaps the Australian Science and Maths School.

This morning, when we attended, there were children doing biotechnology-type DNA experiments. Those are available through a range of special CSIRO courses. Of particular interest, apart from the Science at Work and Science on the Go activities, there is a mathematics room where children can get involved in mathematics and learn to improve their interest in the science side of their curriculum. This is particularly important for people who might well go into the TAFE and skills system, because to do an apprenticeship and trainee course, currently, you do need to have high levels of numeracy and literacy. Those skills are deficient to some extent in many of the young boys leaving school at the moment.

The science promotion will include Super Science Sundays, when a series of activities will be run over the next month of Sundays, during which there will be opportunities for young people to be involved in science experiments. It is particularly pleasing that the centre now outreaches, it links with science, it links with industry, with schools and university, and has the real potential to be an instigator of change in our community and with young people. We should all be grateful for the efforts put in by people such as Barbara Hardy over many years, stretching back from 1991, and look forward to reviewing how this new mechanism for running a science centre operates over the next two years.

LAND TAX

Mrs PENFOLD (Flinders): My question is to the Treasurer. Can the Treasurer advise the house what action he will take to reimburse all those people who are being incorrectly charged land tax on their principal place of residence? The land tax assessment notice presents with the total amount due and due date on the front of the notice. In fine print on the reverse of the bill is advice that land tax is not payable on the principal place of residence. Calls to my office and to the Liberal Party land tax hotline indicate that many South Australians, in particular pensioners, have been paying land tax. Well you may laugh. This is serious for them.

Members interjecting:

The SPEAKER: Order! The member for West Torrens, for the second time, and that means next time he's jumped.

Mrs PENFOLD: In particular, pensioners have been paying land tax on their principal place of residence.

Mr Venning interjecting:

The SPEAKER: Order, the member for Schubert!

Mrs PENFOLD: They were unaware that they were eligible for this exemption. When these same errors arose a year ago, the Treasurer gave his assurance that he would seek advice from Revenue SA. One year later, problems are still occurring and still causing considerable financial difficulties and anxiety.

The Hon. K.O. FOLEY (Treasurer): I will refer that matter immediately to the State Taxation Commissioner, who has authority and responsibility for administering state taxation law. Of course, let us recall that the land tax threshold, as I always like to remind people, was, from memory, some $80 000 under Labor when we were last in office and was reduced by the Liberals to $50 000, to pick up a whole new batch of land tax payers. Again, I highlight the hypocrisy of members opposite. I am effectively being blamed for their policy initiative.

The SPEAKER: Order! The honourable the Deputy Premier knows that quite explicitly the question was: 'Will the people who have been compelled to pay land tax on their principal place of residence get a refund?'

Ms Chapman interjecting:

The SPEAKER: Order, the member for Bragg!

The Hon. K.O. FOLEY: As I said, I will refer that to the Tax Commissioner. The principal place of residence is not liable for land tax. I would be happy for the member to provide me with the people involved so that we can have an immediate look at it and if it has been incorrectly charged that should be and will be corrected.

WATER CONSERVATION

Mrs GERAGHTY (Torrens): My question is directed to the Minister for Environment and Conservation. Would there be a substantial benefit to our water conservation measures by increasing water prices?

The Hon. J.D. HILL (Minister for Environment and Conservation): Last week members will recall that I informed the house that, based on modelling used in New South Wales, prices would have to rise by 67 per cent to achieve a 20 per cent water saving. This information was based on modelling used by the Independent Pricing and Regulatory Tribunal of New South Wales which regulates Sydney water. I can advise the house, as I said I would attempt to do, that I now have a copy of recent work on the topic by the New South Wales tribunal, and I now table that report. I have had a chance to consider the modelling outlined in this paper, and it confirms that consumption of water by residential customers is not very responsive to increases in price, despite what the member for Unley was arguing. For a 1 per cent increase in the average price of water, low water consumers, such as small households without a garden, would reduce the quantity of water that they purchased by between 0.01 and 0.05 per cent, while medium water users would reduce their consumption by about 0.2 per cent. High water users would reduce their consumption by 0.3 per cent.

The tribunal assumes that customers who use low volumes of water—that is, less than 150 kilolitres per annum—are using most of water for non-discretionary purposes—health and hygiene—and are, therefore, unlikely to significantly change their consumption in response to price changes. On this basis, to achieve a 20 per cent reduction in water use, prices would need to be hiked by 67 per cent, and possibly by as much as 150 per cent, to affect the consumption levels of some households. A price increase of 150 per cent would take the water bill for an average family from $218 per year to $545 per year. That is the basis of the New South Wales report and it is the position that the member for Unley has put on behalf of the Liberal Party.

On the other hand, South Australians have achieved significant water savings since the introduction of water restrictions in July last year as well as permanent water conservation measures in October of last year. Water demand for the last seven months—that is, July 2003 to January 2004—is 22 per cent lower than that of the previous year and 12 per cent below the average over the past 10 years. Permanent water conservation measures and public awareness campaigns have contributed to low water consumption. These are the real measures, put in place by the government, that are helping to cut water usage. I thank the member for Unley for giving me the Golden Shovel Award earlier today. I understand that it is for the hard work I have been doing in my portfolio.

LAND TAX

Mrs HALL (Morialta): Will the Treasurer consider instigating a pro rata formula for land tax assessment in cases where a small business may be operating in only part of a principal place of residence, such as a bed and breakfast operator on a farm? At a land tax public meeting on Wednesday 11 February, concerns were raised by a number of bed and breakfast operators who run their B&B business on a farm and who are being charged land tax on the entire farm. These bed and breakfast operators claim that, because of the

huge increase in land tax claimed by the government on their property, the small business venture operated within the principal place of residence was becoming less viable, as the land tax assessments and costs were becoming greater than the income received. It was also pointed out that these small businesses provided accommodation for tourism across the state. They claim that, should they need to close down because of a non-viable tax regime, crucial tourism dollars would be lost to the state.

The SPEAKER: Most of that explanation was debate.

The Hon. K.O. FOLEY (Treasurer): I thank the member for her very constructive question. I give no guarantees and no indication that I agree with the member. However, on balance and on merit, I think that what she has put forward is worthy of consideration.

WATER PROOFING ADELAIDE

Mr BRINDAL (Unley): Does the Minister for Infrastructure agree with criticisms of the Water Proofing Adelaide discussion paper made by sections of the water industry, namely, that the paper is strongly biased in a manner that is beneficial to SA Water?

The Hon. P.F. Conlon interjecting:

The SPEAKER: Order! The Minister for Infrastructure does not have the call.

Mr BRINDAL: Water Proofing Adelaide, released recently by the minister, lists under the heading 'Increasing Yield from Existing Resources' an option to increase the available water from the River Murray. It makes little further comment. However, alternative water sources are examined more thoroughly. Rainwater tanks, as one example, are criticised since they say that the drinking water, and I quote, 'rarely meets Australian drinking water guidelines'. The paper then lists problems with tanks such as illegality, limited effectiveness, mosquitoes and the high cost.

The SPEAKER: Frankly, I do not know how the explanation enhances an understanding of the question. It was pure debate.

The Hon. J.W. WEATHERILL (Minister for Urban Development and Planning): I thank the honourable member for his question, and thank him for raising the question of Water Proofing Adelaide. The whole idea of the paper is to generate a public debate and, albeit he does come at it from a very strange angle, he does assist us in raising the profile of this important issue. Of course, the paper is about canvassing views, and if people have a view that it is too much bias towards SA Water they will put that point of view and we will take it into account.

Mr BRINDAL: My question is again to the Minister for Infrastructure. Can the minister assure—

Members interjecting:

Mr BRINDAL: I do not care which one of you answers it; the Speaker said that before.

The SPEAKER: Well, get on with it or you will not get it.

Mr BRINDAL: Can the minister assure this house that Water Proofing Adelaide's consultations will be meaningful and will, and I quote from the document, 'engage the community and the key stakeholders in decision-making'? The Water Proofing Adelaide discussion paper states on page 7 that there should be 'openness of debate to encourage participation and exchange of views.' And also, sir, and I quote again, that there should be 'rigour in evaluating options and choice in the way forward'.

The SPEAKER: Order! That is pure debate.

The Hon. J.W. WEATHERILL: It is very difficult to follow the member for Unley. First he criticises us for having a talkfest, for having a discussion paper instead of taking some steps. Now we get asked about whether we will go out and talk to everyone about it. He really has to make his mind up about which one he wants to choose. To give some history about this—and let's just end the hypocrisy of the member for Unley. When he was minister for water resources he tried to get a project like this off the ground. In fact, we borrowed the model from him—it is just that we made it work. And we are putting that in place. So I cannot understand why he is now carping on about something that he was trying to achieve.

Members interjecting:

The SPEAKER: Order!

SCHOOLS, REPORT ON SPECIAL CLASSES

Ms CHAPMAN (Bragg): Will the Minister for Education and Children's Services advise when she will release a report entitled 'Report on Special Classes', prepared two years ago by former DECS employee, Mr Adrian Murray, and when—if at all—the recommendations of that report will be acted upon?

The Hon. P.L. WHITE (Minister for Education and Children's Services): I understand that the report that the member may be referring to is a report of the ministerial advisory committee on students with disabilities, a report that has been referred to my department for—

Ms Chapman interjecting:

The Hon. P.L. WHITE: No, not at all.

Ms Chapman interjecting:

The Hon. P.L. WHITE: Wrong report? She is not referring to that report? Well, perhaps she should clarify which report she is referring to.

Ms CHAPMAN: I am happy to assist the minister. It is the report entitled 'Report on Special Classes' prepared by Mr Adrian Murray.

The Hon. P.L. WHITE: I started my answer by talking about a report from the ministerial advisory committee on students with disabilities. The member for Bragg just said then that it was not that report, and I know of no other report.

COUNCIL AMALGAMATION, MOUNT GAMBIER AND GRANT

Mr WILLIAMS (MacKillop): My question is to the Minister for Local Government. Does the minister support the City of Mount Gambier's desire for the city and the District Council of Grant to amalgamate, or does he agree with the Grant council's position that their ratepayers would be disadvantaged by amalgamating with the vastly more populous city of Mount Gambier?

The SPEAKER: I do not see the relevance of the question, but the minister is the Minister for Local Government.

The Hon. R.J. McEWEN (Minister for Local Government): I support the legislation that this house has passed, which makes quite clear that any amalgamation would be voluntary and both parties will need to participate.

Mr WILLIAMS: Does the minister support the legislation that enables a council such as the City of Mount Gambier

to force a neighbouring council to defend its independence at considerable cost to its ratepayers?

The Hon. R.J. McEWEN: Mr Speaker, I am now totally confused. I think the question is whether I support the legislation that this house has passed. I do not think I could give any answer other than yes.

REGIONAL DEVELOPMENT BOARDS

Mr WILLIAMS (MacKillop): Does the Minister for Industry, Trade and Regional Development believe that two round table sessions, one at Whyalla and one at Mount Gambier, will be adequate for all South Australian regional development boards to inform the government about all achievements made in each region over the past 12 months, all goals that the regions hope to achieve in the next two to five years and what government support the regions believe they need to facilitate those goals? Regional stakeholders have been advised that they will have two round table sessions to agree on what will be presented by regional South Australia at the Economic Growth Summit one year on. There is to be one session in the member for Giles' electorate and one session in the member for Mount Gambier's electorate. I understand that the regional developments boards outside those areas will be required to attend either one of these sessions or make a written submission.

The SPEAKER: Again, it is debate, not explanation. The minister.

The Hon. R.J. McEWEN (Minister for Industry, Trade and Regional Development): Neither is the question any responsibility of mine. Our regional development boards have chosen to put in place a process whereby they can have a discussion about the partnership between state and local government to fund the regional development boards. It is totally their process.

METROPOLITAN FIRE SERVICE

Mr BROKENSHIRE (Mawson): Will the Minister for Emergency Services table a briefing report to the house detailing the South Australian Metropolitan Fire Service's actual budget position year to date compared to its projected budget position year to date by 25 March this year?

The Hon. P.F. CONLON (Minister for Emergency Services): Sir, I have no intention of tabling anything that is not the ordinary process of government.

Mr Brokenshire: Why not?

The Hon. DEAN BROWN: Sir, I rise on a point of order. A normal process of government is asking questions and getting answers. Therefore, it is appropriate that, in fact, the minister be asked this question under standing order 97 and that he give an assurance he will do so under standing order 98.

The SPEAKER: Can I help the deputy leader understand that not all questions are capable of being answered in the way in which the honourable member making the inquiry might expect. The minister is giving an answer. He is telling the honourable member, as I recall it, that he (the minister) will not give an assurance that he will table documents in this place. That is an entirely proper remark for him to make if he is responding to the question, as I believe he is.

The Hon. P.F. CONLON: My strong view is that our very good Treasurer has put in place some very open systems for reporting the budget process as a whole, and I will be led by what my excellent Treasurer believes is entirely appropriate to come before the house at that time. I do point out that we are putting together a budget and, if they wait the appropriate number of sleeps, members opposite will be able to go through that and do estimates and all the rest of it.

CHILDCARE WORKERS

Mr O'BRIEN (Napier): My question is directed to the Minister for Education and Children's Services. What impact has current federal government childcare policy had on the number of qualified childcare workers employed in this state?

The Hon. P.L. WHITE (Minister for Education and Children's Services): The childcare sector in this state is currently in the grips of a shortage of qualified childcare workers, and federal government policy continues to exacerbate that problem. At present 18 per cent of childcare centres in South Australia are operating under exemption because they are unable to recruit the required minimum number of qualified staff. I have written to, met with and lobbied the federal minister (Hon. Larry Anthony) about this matter. In addition, I pointed out to him the motion moved by this house earlier this week calling on the federal government to act immediately to address the situation.

The state government, even though this is a federal government funding responsibility, is trying to assist the industry in South Australia to address the acute and ongoing shortage of trained staff by providing childcare workers with the opportunity to gain scholarships to help them with their qualifications. The scholarships cover up to two-thirds the cost of undertaking a diploma in children's services, and funding is also available to help aid those centres to backfill those positions. A further 25 services providing care for South Australian children will receive those scholarships under the second round of this very important state government initiative to boost the number of qualified childcare workers.

Also, 13 childcare centres and 12 OSHC (out of school hours care) services (both metropolitan and country regions) will receive the benefit of those training scholarships in this recent second round. In the member for Napier's own electorate, areas experiencing difficulties in recruiting those qualified people are being targeted, for example, the Kaurna Plains Childcare Centre and the Springvale Gardens Childcare Centre will benefit from that initiative. The state government is acting even though this is a federal government responsibility. I call on the opposition to change its position on this very important matter and join with the government in lobbying the federal government to give South Australia a better go when it comes to child care.

GAMING MACHINE REVENUE

Mr BROKENSHIRE (Mawson): Will the Treasurer advise the house whether he will agree to allow all members of parliament to attend a briefing with his Treasury officials so that we can be advised by Treasury of the genuine projections of revenue income with respect to gaming machines with the modelling based on the reduction of 3 000 machines?

The Hon. K.O. FOLEY (Treasurer): I will make Treasury officers available for the debate in this house for the legislation so that all questions can be provided by way of spontaneous answers from Treasury. What I will do is clarify comments I made earlier in this house—not clarify, but I will give members more detail because I stand by what I said—

that the Treasury assumptions are based on no behavioural change. The model put forward by the IGC is all about behavioural change. Treasury has forecast that, with no behavioural change, revenue impact will be minimal. The unknown, of course, is behavioural change.

Mr Brokenshire interjecting:

The SPEAKER: Order!

The Hon. K.O. FOLEY: In the lead-up to the budget, I will be working with Treasury to determine what reduction we should consider should a combination of measures start to bite. The member for Mawson shakes his head. I would have thought that, given what I have heard the member for Mawson and others who are anti-gambling and anti-pokies say, they would actually welcome this legislation. I do not know what more the government can be expected to do.

Mr Brokenshire interjecting:

The Hon. K.O. FOLEY: The member for Mawson just said that the government is hoodwinking. The Independent Gaming Commission gives the government a report, the minister releases the report and the Premier commits to its implementation. What criticism would we get if we sat on the IGC report and did not release it or, if we did, said that we were not going to implement it? There would have been howls of derision from members opposite—and a fair few from this side, I might add. The truth is that we have released this report upon receipt of it, from memory, and the Premier has made known his individual position as head of this government. There will be a proper debate and a conscience vote, and I will ensure that adequate information is provided to the house so that all members can have the benefit of that information and advice when casting their vote in this chamber.

METROPOLITAN FIRE SERVICE

Mr BROKENSHIRE (Mawson): Will the Minister for Emergency Services confirm to the parliament whether the South Australian Metropolitan Fire Service budget is inadequate at this point of the year? Recent South Australian Metropolitan Fire Service recruits are very concerned because they have not been able even to be supplied with basic uniforms for training and practice and are in breach of occupational health and safety requirements.

The Hon. P.F. CONLON (Minister for Emergency Services): I am somewhat taken aback by the allegation that we cannot provide recruits with uniforms. That has not been reported to me by the Chief Officer. I can assure you—

An honourable member interjecting:

The Hon. P.F. CONLON: I actually talk to the Chief Officer, and I am sure that he has some small interest in making sure his recruits get a uniform. That way he would know who they are when he passes them in the street. I find it hard to believe there is anything at all to this question. I assure the member for Mawson that, were he to do any research at all, he would find significant real increases in funding for emergency services since this government—

An honourable member interjecting:

The Hon. P.F. CONLON: He asked about the adequacy of funding. Well, it is certainly far more adequate than under the previous government, because there is far more money. Shortly, the member for Mawson will have to deal with the report of the Auditor-General on the adequacy of his management of fire service budgets, and it is going to be enormously—

Mr Brokenshire interjecting:

The SPEAKER: Order! The member for Mawson!

The Hon. P.F. CONLON: What it will show is that the member for Mawson was 'the little engine that couldn't'. I look forward to that day, and I look forward to his apology.

The Hon. DEAN BROWN: I rise on a point of order, Mr Speaker. Clearly the minister is debating the question and not sticking to the answer.

The SPEAKER: I uphold the point of order, but the minister has finished his answer.

HECTORVILLE KINDERGARTEN

Mr SCALZI (Hartley): Will the Minister for Education and Children's Services advise the house of the progress of plans for the relocation of the now closed Hectorville Kindergarten to the East Torrens primary school site? Public meetings overwhelmingly expressed a desire to relocate the kindergarten to the East Torrens primary school campus, and the minister expressed in principle support for the project in a letter dated 9 May 2003. Close to a year later the Hectorville Kindergarten has closed without any provision for continuing services at the East Torrens primary school site. Its equipment is now in storage and the East Torrens primary school has still received no indication of progress or government commitment to the project.

The Hon. P.L. WHITE (Minister for Education and Children's Services): I will check with my department the details requested by the honourable member, but from the little that I do know there are some facts that the member has not shared with us. I will go back to the department, get the full story and put it before the parliament.

LAND TAX

Mrs GERAGHTY (Torrens): Can the Treasurer inform the house what the interest rate charged for land tax bills has been since the Taxation Administration Act 1996 commenced?

The Hon. K.O. FOLEY (Treasurer): Earlier in question time today, I was berated by members opposite that this government was charging a 12.9 per cent rate on land tax bills, so I had my office do some quick checking for me. I do not have a complete answer, but I have some very important issues at hand that I should share with the house. In 1996, the Taxation Administration Act was introduced and commenced being administered in this state. I assume that it is state legislation, although I have not had that confirmed; I am waiting on that information. I am advised that that legislation provided that the government should charge a premium of 8 per cent above the prevailing interest rate of the day. That legislation was introduced under the last Liberal government. The member for Finniss had just lost the premiership, and on 1 January 1997, under the Liberal administration, guess what the interest rate was? It was 18.5 per cent. The following year it was 17.8 per cent, and the following year it was 16.8 per cent. I can advise the house that the interest rate today is the lowest it has been since that lot opposite introduced this legislation in the mid 1990s.

So, members opposite should not come in here and have a whack at the Treasurer for interest rates, when I am advised that the Taxation Administration Act 1996 requires the government to charge 8 per cent above market interest rates. So, you thought it was a good idea in 1996—

The SPEAKER: Order! I did no such thing.

The Hon. K.O. FOLEY: Mr Speaker, members opposite thought it was a good idea in 1996 and 1997. Perhaps the member for Finniss could stand up in this house during the grievance debate and explain why he as a cabinet minister and his government agreed to have an 8 per cent premium on interest rates. I assume that is what happened, but the member can correct the record if it is not true. I am going to have a look at it to see whether that is fair, because this government is about reform—that is, reforming the penalties and impositions put on taxpayers in this state by the former Liberal government. However, there is one thing that is certain: it would appear from what information I have been provided with in this brief time that our interest rates are a lot lower than the 18.5 per cent charged by the former Brown-Olsen Liberal government.

The Hon. G.M. GUNN: I rise on a point of order, Mr Speaker. I draw your attention to the comments that you made at the beginning of the sittings of the house today, and I refer to the memo that has been sent around to all members of the house about the sitting time this evening. In doing so, I draw to your attention standing orders 53 and 71 in relation to this particular matter. In my experience in this chamber, the course of action that is proposed for tonight is unique and unusual. It is normally accepted that the sittings of this house take precedence over all other activities. I therefore ask for your ruling in accordance with these two standing orders.

The SPEAKER: The member for Stuart certainly raises a legitimate point. However, at the time that the decision was made by me to allow the use of the chamber for this important international dissertation the house was not going to be sitting this week. More importantly, I would have thought that the honourable member for Stuart, if he so wished, might have chosen to approach the chair rather than embarrass the state on the platform of international jurisprudence in discussions of such matters of importance. It is, of course, open to him to move that the conference simply not be facilitated; that is something he might wish to countenance in the seriousness of the consequences which would flow from it, for all of us. I would also point out to him that, above all else, the Speaker's determination in the past has been held to be correct and, whilst I am not that arrogant to insist upon it, there have been occasions upon which when he himself was Speaker the house demurred to his direction.

Mrs MAYWALD: I rise on a point of order, Mr Speaker. In light of the comments that you have just made, given that the members of this house—and I assume that you would also have been included in that—were given notice in the latter part of last year of the sitting dates of this parliament, there was plenty of time to have accommodated alternative arrangements, should it have been necessary.

The SPEAKER: Well, that is a part of debate. The house will note grievances.

GRIEVANCE DEBATE

WATER PROOFING ADELAIDE

Mr BRINDAL (Unley): In 1989, minister Susan Lenehan produced a very important document entitled 'South Australia Water Futures' and it was called '21 Options for the 21st Century'. That document lay on a cabinet table of which the now Premier, Hon. Mike Rann, was a member and it basically, as far I can see, gathered dust. Indeed, in the two years since this government came to office it has again gathered dust, until recently when we saw released a new discussion paper called 'Water Proofing Adelaide—Exploring the Issues—A Discussion Paper'.

It is interesting to compare these two documents, because if one looks at '21 Options for the 21st Century' and then one looks at the 'Water Proofing Adelaide' document (clearly put together by this Premier), they are a reasonably good facsimile the one of the other. It is true that there is some slight updating, but I think any academic worth his salt would be calling in the authors of this document and suggesting plagiarism, so heavily does this new document draw from the old one. In fact, for the benefit of all honourable members of this house (and I will make it clearly available) I have prepared a comparison of '21 Options for the 21st Century' with 'Water Proofing Adelaide' and in every case we find cross-references and similarities.

More interesting is that in item 4 in '21 Options for the 21st Century', for instance, 'detailed evaporation control'; option 5, detailed Mount Lofty Ranges storages; option 10, South-East surface water; option 11, South-East ground water; option 13, icebergs—there is an interesting proposal. They say that I come to this house a little bit out of left field; if ever there was an 'out of left field' one, that is it; and stormwater run-off. Just for starters, these have comment in 'Water Proofing Adelaide' that reads thus:

> Information sheet providing assessment currently being developed by SA Water.

How long does it take SA Water to develop an information sheet? '21 Options for the 21st Century' was laid on the table of this house 15 years ago. They have now come up with 'Water Proofing Adelaide', and SA Water is still developing an options paper 15 years later. That is the basis for opposition questioning before this house. We do not believe that there is need now for two years of future discussion and development.

We believe that there is a need to get on with the job. However, the minister in question time implied that I am having it both ways. In actual fact, I am. There is nothing wrong with the opposition saying on the one hand you should get on with the job but, on the other hand, if you are going to consult, you should be honest and forthright in the consultation process, because segments of the industry doubt the integrity of the government in terms of this discussion paper. It appears that it is a very good strategy for this government to go out and be seen to consult, provided it gets the answers it is looking for. The answers it appears to be looking for, according to some segments of the industry, are answers that are in line with the business plan of SA Water to continue its profits and cash flow.

Profits and cash flow for SA Water are not necessarily in the best interests of the water resources of South Australia. You, sir, were on the select committee on the River Murray, so were the member for Chaffey, myself and others. One thing we learned is that we have to rethink the paradigms associated with water in this state. There has to be a profound rethink about what we do and how we do it. The fact that the government has an arms length business enterprise called SA Water which delivers $200 million per year to the state coffers cannot be ignored by this parliament and, indeed it will not be ignored by the government. To put that as some

sort of prima facie need and tailor the rest around it is a disgrace. The member for Giles is here. The member for Giles well knows the problems of the Whyalla Council with SA Water in the past.

Time expired.

AUSTRALIA DAY AWARDS, WHYALLA

Ms BREUER (Giles): I would just like to point out to the member opposite that he managed to clear his side of the house in his speech. It was fascinating.

I want to spend my time today congratulating a number of citizens in Whyalla who recently received awards in the Australia Day awards. In doing this, I want to say that I think the achievements of these people is indicative of the great work that goes on in our community by a large number of individuals who have worked very hard for our community for many years. I know that this is the case particularly in country communities. One of the joys for me, when I was reading through the names of the people who won awards on Australia Day, was realising that I knew all of them, and that is also indicative of how close our country communities can be and how well we get to know each other.

First I want to congratulate Bet Henderson. I was delighted to see that she won the Citizen of the Year in Whyalla, because I have known Bet for many years and over the years have served on a number of boards, associations and organisations with her. She personifies that really strong spirit that operates in our communities, because she has been involved in so many different organisations. From the time she stepped into Whyalla 31 years ago, she began to get involved in various community organisations. Over the years she worked in school, Our Lady Help of Christians School, and from there she was able to instigate change in the community in matters such as getting school crossings up for various schools in Whyalla. She lobbied in her own school to develop the school oval and the playground, and she was able to help disadvantaged Christian families through her work in the school, and from that went on to work with St Vincent de Paul. She was on the welcoming committee of the Whyalla Counselling Service, which welcomes new residents into the community, helping them to settle in. She gave help in teaching English to Polish refugees.

I knew her very well when I was a member of Soroptimists International. She served on that for many years and held all the office bearer positions. She also had a hand in constructing the Whyalla baby memorial at the local cemetery and has also helped raise funds for palliative care beds at the Whyalla Hospital. Her role in the community has involved work in correctional services and she is well known. My sincere congratulations to Bet. I am so thankful that so many years ago when she was lost in the desert with her husband and a couple of others they were found after 24 very long, hungry hours.

Today I would also like to congratulate another one who is very dear to me and who is almost like a second daughter to me. I have watched this young woman grow up and she has been part of my household for many years. Her mother is a dear friend of mine. Maria Dimitriou was awarded the Junior Citizen of the Year. She epitomises all that is good about our young people in Whyalla. She has worked very hard for her community, and I was very proud and happy to see her win this award. She has been involved through her church, the Catholic church in Whyalla, she has become involved with the Edmund Rice Camps and has worked on them for many years as a youth leader. She also has been very much involved with working at Baxter and Woomera Detention centres with young detainees. I thought that it was really fitting that a young woman who has helped out with these children who are in the detention centres was able to win the junior citizen award in Whyalla. My best congratulations to Maria.

A number of other people received community awards on Australia Day, and I was pleased to see that this was introduced, because two people are not enough when you have a community the size of Whyalla and given the work that is done. So, congratulations to Shirley Gabb, who received her award for her work in the community, the Westland Fundraising Group, teaching square dancing in schools and working with the aged care people, organising singalongs, etc. Jason Gloede, who is 18 years old, has been a real role model for young people his age. He has been involved in soccer for many years and has worked as a coach as well as a player and helped organise the junior indoor soccer competition, which has grown to 32 teams. He has done a lot of work there. Katrina Graham excelled at Judo and has become Australian champion. Joy Cayetano-Penman has done great work in the community in Whyalla with people from multicultural backgrounds. I am very pleased to see that she got this award. She is the chair of the Filipino Cultural Association, but has done much work with other community groups also.

Natalie Sawyer, a young ballet teacher, is a very successful young business woman in Whyalla. Natalie is also dear to my heart, as she taught my daughter for a number of years. She has been involved in ballet, having set up her own ballet school in Whyalla, and teaches many young girls. She is a great role model herself. She is only, I think, 21 years of age and has done very well. Kirsty Scott also worked with asylum seekers. She has achieved a great deal at her very young age. Congratulations to Kirsty and to Ray Williamson, who has been involved in so many things in Whyalla over the years. My dearest congratulations to him also.

TAFE, TRAINING FEES

The Hon. J.D. LOMAX-SMITH (Minister for Employment, Training and Further Education): I seek leave to make a personal explanation.

Leave granted.

The Hon. J.D. LOMAX-SMITH: I seek to clarify my response to a question on TAFE fees yesterday, when I spoke of capping all the fees, increasing the subsidy to affect 14 000 low income students. To clarify the point, I have received the exact data on the individuals involved this afternoon. The precise numbers are as follows: 10 471 people received a concession on their enrolment fees and 2 770 received a fee cap rebate. Of those, 1 010 were already in receipt of a fee concession. So, the fee capping and subsidy affected 13 241 people.

PNEUMOCOCCAL INFECTION

Ms RANKINE (Wright): I seek leave to make a personal explanation.

Leave granted.

Ms RANKINE: On Monday 23 February, I told this house that in the first six weeks of this year a total of nine children under two years of age contracted pneumococcal infection. This information was as it was provided to me.

However, I have since been advised that, so far this year, there have been nine cases of pneumococcal infection involving children in the following age ranges: one was at less than 1 year of age; six were at 1 year of age; and two were at 2 years of age. I thought it important to advise the house of this to ensure that the record was corrected.

MINISTERS, RESPONSES

Mr MEIER (Goyder): It concerns me that it appears the government has now implemented a new policy whereby members of parliament may not receive an answer from a minister in response to an issue or issues that a member has taken up with the minister. The reason I say that is that in October last year I received a letter from a constituent of mine regarding two major issues in the health field which affected her family. The letter states:

> Dear Mr Meier, I write to bring to your attention two areas in the health category with which my family have recently had the need to access.

It then goes on for a page and a half detailing the problems that have beset the family. As a result, on 16 October I decided to write to both the Minister for Health and the Minister for Social Justice, and I enclosed a copy of the letter that my constituent had written to me. Interestingly enough, I received two responses indicating that my correspondence had been received, and both of those came from the Minister for Health, so I knew that at least she had received my correspondence about what I regard as fairly serious issues that my constituent had raised with me.

A formal response from either minister was not received, so earlier this year my office contacted both ministers' offices. I was advised that the Minister for Social Justice had referred my correspondence to the Minister for Health as well, so she had my correspondence twice over. I then received a letter from the Minister for Health dated 9 February which thanked me for my letter and apologised for the delay in responding. It advised that a reply had been sent direct to my constituent. I found this a little unusual because in my 21 years in this parliament I have always received a letter from the minister and, if one has gone to the constituent (which has happened occasionally), I have certainly received a copy.

I asked my personal assistant to contact the minister's office and ask whether I could have a copy of the minister's response, as I had taken up the issue on behalf of my constituent. However, on contacting the minister's office for a copy of her response to my constituent, my personal assistant was advised that, due to confidentiality reasons, I was unable to receive a copy of the minister's response to my constituent.

I would like to know what is going on. Does this mean that members of parliament are becoming somewhat superfluous? Perhaps our role of taking up issues will be such that we will not get an answer. Perhaps we can take up an issue, but the reply will go directly to the constituent. As far as I can see, this opens up a whole new chapter since this parliament first started, but I am hopeful that the Premier will address this issue. In this case, the Minister for Health may have an answer as to why she refuses to give me a copy of the answer in relation to the issue that I took up on behalf of my constituent. It has always been my impression that I, as the local member, have the right to take issues up with the minister and have the right to receive answers. Certainly, this is something that you, Mr Speaker, may wish to look at further. I think I have highlighted all the relevant details in this grievance debate.

BEHENNA, Mr J.

The Hon. M.R. BUCKBY (Light): I seek leave to make a personal explanation.

Leave granted.

The Hon. M.R. BUCKBY: During question time, the member for West Torrens alleged that Mr John Behenna, who was a ministerial research officer whilst I was minister for education and children's services, undertook campaigning in his role as the candidate for Colton while he was in my employ.

The Hon. M.J. Atkinson interjecting:

The SPEAKER: Order! Leave has been granted.

The Hon. M.R. BUCKBY: At no time did Mr Behenna, while he was working for me, undertake any doorknocking, either for me or himself, in the seat of Colton, or any other seat. He did undertake doorknocking on the weekends while he was employed by me. He resigned on 11 October 2001, at which time he obviously went full-time campaigning. So, I refute the allegation in totality that was made by the member for West Torrens.

INTERNATIONAL WOMEN'S DAY

Ms BEDFORD (Florey): In the next few days, women throughout the world will prepare to enjoy International Women's Day on 8 March, an occasion when women of all continents, divided sometimes by national boundaries—often by ethnic, linguistic, cultural, economic, or political differences—come together on their special day to look back on a tradition that represents approximately nine decades of struggle for equality, justice, peace and development.

Much like May Day and Labour Day, International Women's Day is a time to reflect on achievements and to redefine and contemplate the struggles ahead. It is a time to strengthen solidarity, refocus priorities and celebrate what it is to be a woman. International Women's Day is the story of ordinary working women as makers of history. It is rooted in the centuries old struggle of women to participate in society on an equal footing with men to have equal human rights and respect, changing little by little—but many of us would say not fast enough.

In contemplating the relevance of International Women's Day in these times, we need only consider the actions of Lysistrata in ancient Greece, when she initiated a sexual strike against men in order to end war (perhaps this is a new strategy that Laura Bush, Cherie Blair, or even our own Janette Howard—

The Hon. M.J. Atkinson: Or even the Taliban!

Ms BEDFORD: Or our own Mrs Atkinson—the No War campaign could consider promoting) and when Parisian women during the French Revolution marched in Versailles calling for liberty, equality and fraternity in demanding women's suffrage. Of course, South Australia has a proud tradition and place in women's suffrage, being the first place in the world to permit (which is a strange word) women to stand for election and to vote in elections.

The modern idea of International Women's Day first arose at the turn of the century which, in the industrialised world, was a period of expansion and turbulence, booming population growth and radical ideologies. The first International Women's Day rally in Australia took place in 1928. Since

then, the participants, focus, size and type of events have ebbed and flowed, reflecting differences in time, place and generational change in the thinking of women's groups. Earlier events focused on the way poor working and living conditions were endured by people and, in later periods, issues such as equal opportunity, child care, housing and education joined the ever present impact of the lack of work and poverty. Abortion and gender issues were included in later years. Improved rights for disadvantaged women in both Australia and overseas have been common demands. The oppression of women internationally is now the most important focus for International Women's Day.

In assessing the relevance of International Women's Day, we can also consider that we are still fighting to achieve appropriate and cost-effective child care, reproductive control, freedom from violence and harassment, quality education, accessible health care, paid maternity leave and, unfortunately, the list goes on. As women in Australia celebrate International Women's Day with spirit and enthusiasm, we can reassure ourselves of its relevance when we consider that all over the world women face many oppressions. They are held in custody and are vulnerable to abuse and often have no access to lawyers, let alone family. They are subjected to continuing honour crimes in other parts of the world, with the torturing and killing of women. They face the fact that rape is still used as a weapon of war to spread terror and as a reward for soldiers, or to extract information from women who are unable to raise their voice in the name of freedom and democracy. There is still a wide chasm between us and the glorious future on which we have fixed our eyes, hearts and minds.

Sadly, we do not have to go abroad to understand the relevance of International Women's Day. The necessity to continue to fight for women's rights is here on our own doorstep—human rights that are not only deserved but are an entitlement. We need only to consider the refugees held in our own detention centres, those detained Muslim women who must ask for sanitary items from male guards. We also consider our indigenous sisters and their terrible circumstances, particularly the women still without appropriate housing and, in some areas, power and water, who are battling the ravages on their families of substance abuse. We think of all our sisters who flee domestic violence only to find a shortage of shelter, accommodation and domestic violence services that are dedicated and committed to trying ensure they do not have to spend time living in their cars. The oppression persists, and the need for women to be united against it is as necessary today as it was all those years ago.

The world faces the aftermath of yet another war. We have witnessed, too, the wonderful effects of mass solidarity—the same solidarity we need in our continuing fight for women's rights. It is up to each and every one of us to assess the relevance of International Women's Day at a personal level, but to me its relevance is clear, particularly as I look into the faces of our young women. I will be attending the member for Elizabeth's International Women's Day breakfast in the north—this is a function that she has run for many years—and I urge all members to participate where they can.

ROADS, RURAL

Dr McFETRIDGE (Morphett): I had the pleasure of being in the electorate of McKillop on the weekend, and was shown around the electorate by the honourable member and his good wife. I thank them for hosting that trip, and am just apologetic that I have not been down there since a Liberal Party state council a couple of years ago. I was disturbed to go down there and see that all the stories that I have heard about rural roads were true. The money that has been spent on the shouldering of the Princes Highway down there has just been wasted, because you are driving over potholes and patches. The speed limit has been dropped down from 110 km/h to 100 km/h and in places—even in a good car with good suspension such as the one I was driving on the weekend—you could not do that sort of speed. You really did need to have a well-designed and well-built car, and to manoeuvre on those roads is something that takes a lot of concentration. I just hope that the Treasurer in his budget deliberations is doing something about improving rural roads, because cutting back on the road gangs in the savage way that has occurred is affecting not only the constituents of the rural members but also all South Australians and, in particular, all tourists.

Tourism brings in $3.4 billion a year to this state. It is outgrowing a lot of other industries, and I understand that that return is something above what is being achieved from agriculture and minerals.

Members interjecting:

Dr McFETRIDGE: I know that members opposite start bleating and carping because they feel very guilty about what they are doing and what the government has done—or should I say, what the government has not done—in the last two years. This Labor government came into power with a golden opportunity to continue the eight years of brilliant work by the Liberal government. What did we inherit? Well, I will not rewrite history—I will be perfectly truthful—we came in with a $10 billion debt: this government here inherited a $62 million surplus. And, given the huge land tax rip-off that is being put in place by this government, they should hang their heads in shame that they are not giving some back to the people of South Australia.

The land tax revenue is something that this Treasurer makes many excuses about. I heard someone at a public meeting out at Payneham say to the aggrieved residents there who are being slugged this huge land tax, 'Well, you didn't complain when your properties went up in value.' But I don't know anybody who can eat bricks and mortar. These people—some of them self-funded retirees who have paid taxes all their lives, who have scrimped, and saved and invested in various schemes—have been well and truly dudded, and this government should help them out, not only regarding land tax, but I think there is an opportunity today to help many people in South Australia overcome the hardships that they have had to suffer through no fault of their own. There are many people who come into my office who complain about the slugs of land tax; they complain about other grievous harm that has been done by legislators.

I say that this government has an opportunity to go ahead and do what they say, as open and honest government. Members opposite come in here and profess to be the leaders of the new change. The Premier stands here and waves his arms about—I cannot quite do his hand motions, but we know that he is a thespian—and pontificates about being the leader of the new South Australia, but we have yet to see anything. It is the blame game. The government needs to grab the opportunities that the previous Liberal government left it and continue on to build this great state, give the people what they deserve, help everybody to achieve their hopes and desires and make sure that every moment in this place is not wasted. I believe that this afternoon there is going to be

another opportunity to show the people of South Australia what they are really made of. Whether this government will grasp the bull by the horns and give people back money that is owed to them when they have been dudded remains to be seen.

It is an opportunity that this government should not miss. If this government lets them down, if it does not do the right thing by the people of South Australia, well, woe betide them at the next election. It will be pushing up a very steep hill to stay in government after 2006 election. We can see that it is just smoke and mirrors; it is really just a matter of feints, ducking and weaving, weasel words, WMDs or ways and means of distracting the people. That is what this premier is all about. He really needs to get his frontbench together—and we know how poorly they are performing at the moment—and do a proper job for the people of South Australia.

INTERNATIONAL WOMEN'S DAY

MS THOMPSON (Reynell): I have been inspired by the comments made by the member for Florey about International Women's Day to contribute some remarks on this matter, in recognition of the fact that International Women's Day will occur while this house is in recess. The member for Florey referred to an International Women's Day breakfast held by the member for Elizabeth, and I understand that this is a tradition that has gone on for some years now with great success. That inspired me to look at the appropriateness of holding some sort of celebration in the southern areas and, indeed, we have now held—I think—some four dinners to celebrate International Women's Day in the south. We have added a couple of aspects to the dinners, and one is to recognise the contribution of particular local women to our community. Nominations come from members of the community, and last year it was simply far too difficult to choose only one woman to be recognised, as the contributions were so strong. Therefore, we paid recognition to four community members: one was Daphne Ricketts from the Neporendi Centre, recognising the work that she had done with the Aboriginal community; and another was a member of the Hackham West Community Centre's women's group, who has overcome a number of difficulties herself to enable other women to get together and face some of their common difficulties and find ways around their problems.

Both these nominations were particularly important in that they came from service providers in the area—the service providers working for state government agencies who recognised that the voluntary and unpaid work done by these women was really making a significant difference in the area. I am pleased that this year the Minister for Health, the Hon. Lea Stevens, will be attending the southern International Women's Day dinner and will be able to address the women present on the important issues of health and women, and particularly the way women will be affected by the Generational Health Review and its implications in the south. My conversations with some of the women intending to attend indicate that they really see the value of service delivery of health being taken closer to where they live. This mode and approach of service delivery is particularly important for women, as they are the ones who usually have to take children to the doctors, hospitals and specialist services. This is particularly important where children have chronic conditions.

Talking about International Women's Day in this way takes us quite some distance from the issues raised by the member for Florey, when women were banding together to obtain safer working conditions and decent pay to recognise the contribution that they made and to stand up for themselves in a society where just about all the rules were made by men and where, indeed, they had very little opportunity to participate in the decision-making processes of the day.

International Women's Day is still necessary because, despite the fact that there are some areas in which boys and men have particular problems, there are still many areas in which women have particular problems. On International Women's Day it is important that we recognise particular barriers that women face in achieving full participation in our community in whatever form their full citizenship is impeded. The focus for this year is to look at the particular needs of women and how their family responsibilities (which they often incur to a far greater extent than men) can be affected by appropriate service delivery and a new look at the way in which we are delivering important health services.

LAND AGENTS (INDEMNITY FUND—GROWDEN DEFAULT) AMENDMENT BILL

The Hon. I.F. EVANS (Davenport) obtained leave and introduced a bill for an act to amend the Land Agents Act 1994 and make a related amendment to the Conveyancers Act 1994. Read a first time.

The Hon. I.F. EVANS: I move:

That this bill be now read a second time.

The reason why we are here today all stems from the fact that I received the following letter back in 1997. The letter reads:

Dear Mr Evans,

I am not really sure why I write this letter to you. I guess to let you know how disappointed—no, I think disgusted would be the right adjective, with the government, both federal and SA. I have been fighting now, or struggling would be more correct, for a year to try and get the government to help the investors in the terrible fraud that has been used to rob so many thousands of SA people. I will enclose cuttings from the Secretary of the Finance Brokers Institute and a cutting from *Business Review Weekly*, which I think tells a story. It is a story of one of the largest frauds carried out on the South Australian people. In June '95, when the state government handed over the operations of the finance brokers from the Office of Consumer Affairs to the auspices of the ASC [Australian Securities Commission], it was the duty of the ASC to see that the people of South Australia had some sort of umbrella in the case of fraud.

We find that Growden's, the firm that has committed fraud on a massive scale, was allowed to set up operations with insurance that did not even cover fraud, that the FBI [Finance Brokers Institute] has only $120 000 in all and that Growden has only a $2 million indemnity in it, anyway, and then not for fraud as such.

Surely the government will not stand idly by and watch thousands of South Australian voters go to the wall without helping them. We have fraud on such a large scale it really does need help far beyond what the ordinary guy can do. Even the ASC says it's too big for them. I and some 4 000 investors cannot understand why the government of the day in 1995 let these people begin to operate with no safeguard with just a few dollars in their kitty.

Government licensed valuers gave valuations of $1 600 000 on 9 or 10 sheet pages of documents which turned out to be worth some $200 000, if that. Multiply that a score of times and think of how many SA people need help. I cannot believe that you people will not help. I really thought that that was when our government, for whom we voted, would say, 'You need a hand, move over.' Can I be so wrong? If that be so, heaven help South Australia.

Yours faithfully. . .

I will not embarrass the person who wrote that letter by disclosing their name. It was that letter that triggered my interest in the Growden's issue and it is that letter, I think,

that sets out the feelings of a large number of South Australians who have been done in the eye by the collapse of the Growden group in 1996 and 1997.

I do not intend to go through a history of the collapse of the Growden group. I think that is well known to members through the contribution of the Hon. Terry Cameron in another place, when he sought a select committee. Suffice to say that a large number of South Australians were hurt by the collapse of the Growden group, which was operating with mortgage financing.

I want to go through a little of the background in relation to the time frame regarding this issue. On 26 November 1992, the then government, through minister Levy, introduced the Land Agent, Brokers and Valuers (Mortgage Finances) Amendment Bill. The effect of the bill was in part to remove the indemnity cover of the agents indemnity fund from people involved in mortgage financing. This was to take effect from 1 June 1995. It was intended that, after that date, those involved in mortgage financing would be covered by an indemnity scheme to be operated by the Finance Brokers Institute. To make the public aware of the proposed changes, the then minister committed the government to two things. The first was as follows:

> . . . to prescribe a form of simple notice that agents and brokers will have to hand over to clients if they are doing any mortgage financing business with them.

The notice was to emphasise to the client that the type of business would not be covered under the Agents Indemnity Fund. The second commitment given by the minister of the day in another place (which appears in *Hansard*) was that a public awareness campaign would be undertaken. It took some three years for the Finance Brokers Institute and the Australian Securities Commission to agree to an exemption from some aspects of the Corporations Law that would allow the Finance Brokers Institute members to continue to offer pooled mortgage investments. The exemption was granted on 31 May 1995 and the new scheme started the next day, 1 June 1995.

The agreed exemption required that the Finance Brokers Institute—not the government—set up an indemnity fund for its members. Growden's was a member of the Finance Brokers Institute. The Growden's collapse occurred, of course, in late 1996 and 1997, with non-performing loans estimated to be at least $20 million. The Finance Brokers Institute Indemnity Scheme had just over $100 000—I understand about $120 000—in it at that time and folded very quickly. As a result of the collapse of the Finance Brokers Institute Scheme, those involved in mortgage financing through Growden's were left to seek other avenues to find reimbursement for their losses. This has taken years—seven years from the collapse of Growden's, and 12 years since the bill was originally introduced.

In 1999, the Hon. Terry Cameron moved for a select committee to be established in another place. The matter was again raised in the parliament by the Hon. Terry Cameron in 2001, and he again sought that a select committee be established. That move was supported by the Hon. Nick Xenophon and the Democrats. I take this opportunity to recognise the significant amount of work done by the Hon. Terry Cameron on that issue on behalf of the people affected by the Growden's matter and also the support of Mr Xenophon and the Democrats at that time.

Those who suffered loss looked everywhere to recoup their losses. The Financial Brokers Institute Fund was inadequate and it collapsed. The Growden's insurance policy was void because it did not cover losses caused through fraud. Growden himself was bankrupted denying access to those assets. The companies involved were liquidated denying access to those assets. An application of grace was even made to the federal government (which is equivalent to our ex gratia payment, as we would know it in this parliament) which was declined. Every door approached by the people who suffered losses in this exercise was closed to them. Those who suffered losses had approached the state agencies about the state Land Agents' Indemnity Fund. Some were told they were not eligible to claim from that fund. Others were told they may be eligible but that it was a fund of last resort and, as it was a fund of last resort, they were directed to fight the matter in court. Good money was thrown after bad. Some did pursue the matter in court; others chose not to pursue the matter in court simply because of the cost and risk involved. Having lost money with Growden's, some were not prepared to risk their last dollars on an unsure and costly court case.

Frankly, who could blame them for taking that particular decision? If you had lost hundreds of thousands of dollars on the Growden's issue, in reality, that may have been the only money you had left to spend on a court case of any description. They then had to go to court to establish that they were eligible to claim out of the state Land Agents' Indemnity Fund. So, they are in court fighting against the state's own Commissioner for Consumer Affairs with respect to what claims are or are not eligible under the fund. I make the point that these people have gone to extraordinary lengths to try to seek some redress for their losses. They have tried a number of different avenues to try to recoup their losses.

I put to the house that I believe that this bill is their last chance to seek some redress for what has happened to them in their lives in relation to the mortgage financing issue. As of today, some people have received small pay-outs from the Land Agents' Indemnity Fund. However, in October last year, about $16 million of potentially successful claims were deemed not eligible due to a court decision. The Commissioner for Consumer Affairs had recently advised me that he had provisioned for some $17 million of possible pay-outs from the fund in relation to Growden's; but in October 2003 a court decision ruled out about $16 million of those claims, leaving just $1 million of possible eligible claims remaining.

Generally, claims are eligible from the fund if fiduciary default has occurred. However, in October 2003 the court found that if material facts were hidden from clients this did not necessarily constitute fiduciary default. For example, material facts were hidden in the case of a broker raising a $925 000 mortgage on a property supposedly valued at just over $1 million when the broker knew that it was being transferred at a value of only $435 000. This fact was known to be false, the value was known to be false and it was hidden from the client. In my view that should be under the definition of fiduciary default for the purposes of the bill, for the purposes of the act and for the purposes of the fund.

In another example, a mortgage broker represented to an investor the material fact that he had completed a current satisfactory credit inquiry when the fact was that the mortgage broker knew that to be totally incorrect. In fact, they knew that the borrower had been made a bankrupt; or, alternatively, in some cases, they knew they had made no such credit inquiry at all. These were material facts hidden from the people involved in the mortgage financing issue, and the court has decided that they do not come into the definition

of fiduciary default, which means that they cannot claim under the act. It is my—

The Hon. M.J. Atkinson: Quite so.

The Hon. I.F. EVANS: The Attorney-General says, 'Quite so.' It is my view that the hiding of such facts should be a fiduciary default for the purposes of this particular act. The court found that they did not constitute fiduciary default as the act stands. That is a snapshot history of the issue. Now, some 400 families have lost money and, in many cases, their life's savings and, in some cases, people have lost their quality of life. They have nowhere left to seek compensation for their loss than this house of parliament. They turn to the parliament now for assistance. I believe they should be compensated for their loss because the system that we administer as politicians, and the government in particular (that is, both this government and the previous government), has let them down.

I now outline the reasons why I believe it is the government's fault, and whenever I use the word 'government' I mean it in a non-partisan sense. I say the government is at fault for a number of reasons.

The Hon. M.J. Atkinson interjecting:

The Hon. I.F. EVANS: Yes; the Attorney says that I was a cabinet minister. I accept that. I will be freely criticised for that, and I will come to that later in this contribution. I make no partisan criticism in this speech, Attorney, of your government or mine other than that I think we have not acted in the best interests of our South Australian constituency. The government is at fault, I believe, for two reasons: first, the minister of the day gave a clear commitment in *Hansard* when debating the legislation that there would be a public education campaign and notification to lenders.

The public education campaign consisted of one advert on one day in *The Advertiser* dated 19 June 1995. Also, one article was written by an alert journalist on 5 June 1995. If you were not in town on those days, bad luck; that was the public education program put in place by the government of the day. The advert was not even badged as a government advert: it was badged as an advert placed by the Finance Brokers Institute. As a public awareness campaign it was inadequate to the point, in my view, of being negligent. The advert states:

> Important notice. Mortgage financing. Persons who lend money through South Australian land agents and conveyancers (formerly known as land brokers) on the security of mortgages over land are not now able to claim compensation through the agents' indemnity fund in the event of a default by the agent or conveyancer. Businesses carrying on activities involving the—

I cannot read that word in the advert, I am sorry—

> of prescribed interest, including pooled mortgage financing, will be regulated under the Corporations Law with the involvement of the Finance Brokers Institute of South Australia. These changes apply to new investments and reinvestments only.

And there is then a contact number. There is not even a crest of the parliament or a government logo to indicate that this is an official government announcement. It is simply a message from the Finance Brokers Institute of South Australia, but that one advert was the total public awareness campaign arranged by the government. I seek leave to continue my remarks.

The SPEAKER: I think that the appropriate motion being sought by the honourable member is to extend the time.

The Hon. I.F. EVANS: Yes, Mr Speaker. I move:

> That standing orders be so far suspended as to enable me to complete my remarks, explanation and second reading.

Motion carried.

The Hon. I.F. EVANS: The effect of that is that the public were not properly notified. It is the government's duty to notify properly. It has simply breached its duty of care to the residents of South Australia by not conducting an appropriate public awareness campaign. We then come to the other commitment made by the minister: notification to lenders that was to be handed out to clients. This never occurred. No notification was put in place (such as a handout) to tell clients that the indemnity fund that used to cover that particular investment now covered it. So, the two commitments made by the government of the day were not put in place by the next government. The system has let these people down and, in my view, there is no doubt about that. Denying them the proper notification and denying them a proper public education campaign denied them the opportunity to make a properly informed decision. The government, in my view, was clearly at fault.

A further reason that the government is liable is that the government helped negotiate the transaction of the coverage for consumers from the state fund to the commonwealth. The Attorney-General advised me of that fact in one of the many letters we have exchanged on this particular issue. The state government was right there negotiating with the federal authorities in regard to the transition of the coverage for consumers from the state fund to the commonwealth. Then on what basis was the state government of the day negotiating to put them into a fund that had no money?

The Financial Brokers Institute Fund, which was established as a result of this change, commenced with no money. According to the annual reports of the Commissioner for Consumer Affairs, for the previous seven years, the average loss due to finance for mortgage broking was $2 million a year. The state government started a fund with no money in it. They knew the loss was $2 million a year, but they agreed to start a fund federally with no money in it. Surprise, surprise, three years later it has $120 000 in it. Growden's comes along with a $20 million claim, and it collapses. In my view, that was a breach of duty of care on behalf of the state agencies. Whether it be the minister of the day or the Commissioner for Consumer Affairs, the system set up a fund that did not have the capacity to meet even projected losses. It was well known that they were losing $2 million a year, but they did not even set up a fund to meet that, let alone any extraordinary claim.

So, I say that the government of the day breached its duty of care in that regard. How is that protecting consumers' interests? The state knew, the Australian Securities Commission knew, the Finance Brokers Institute knew, and the commonwealth knew that the Financial Brokers Institute Fund had no money, yet the average claim on the Agents Indemnity Fund for the seven years prior to that was $2 million a year. On what basis did the system allow an industry-based indemnity fund to be established with no money when it knew from history that it would need $2 million a year? I don't care who is to blame; it can be me as a former cabinet minister, it can be the former attorney-general, the former government or this government—I really do not give a tinker's damn about who is to blame. The reality is that the system in this case has let these people down. We did not properly notify them; we did not give them an identification on their contracts when making the loans; we did not even set up an appropriate fund when we transferred it out of the state's responsibility. So, I lay the blame for this matter fairly on this chamber and on both houses of parliament.

Whom does the bill seek to help? The bill seeks to assist those people who loaned and lost money through Growden's to gain access to the Agents Indemnity Fund that exists under the Land Agents Act. Generally, these people fall into two classes. One class is those who are currently denied access to the fund because they loaned through Growden's after 1 June 1995. In theory, they should have accessed a fund that had only $120 000 in it after three years. So, this particular bill opens up the current Land Agents Indemnity Fund for those people who invested after 1 June 1995. I outlined earlier my reasons for why I believe that the public notification and education process was not put in place.

I have been asked how many people invested after 1 June 1995. It is hard for me to collect all that evidence, but one lawyer has confirmed for me that, of his clients, there were 194 defaulting loans and only 55 were entered into prior to 1 June 1995. In other words, the vast proportion of the principal loss is therefore not covered by the current act but would be covered by this bill. The other class are those who cannot claim because there was no fiduciary default on their mortgage. I outlined previously how I believe that definition has been narrowly interpreted by the courts. The bill therefore seeks to broaden the definition of 'fiduciary default' and also to allow claims for loans made after 1 June 1995.

If the parliament needs more convincing about how bad was the process that was put in place, the Commonwealth Ombudsman investigated this matter on behalf of some constituents and received a letter from the Australian Securities Commission. The letter from the Commonwealth Ombudsman states:

> The response from the commission has now been received. The commission—

the Australian Securities Commission (now known as ASIC)—

> has advised that it strongly denies any suggestion that the grant of the exemption to the Finance Brokers Institute—

which set up the fund—

> constituted negligence. In this regard, the commission states that while the benefit of hindsight demonstrates the initial provision for default by members of the institute was inadequate for claims that were ultimately made, the commission considers the arrangements it imposed were adequate for the circumstances it could reasonably foresee.

So, even the Australian Securities Commission says that the process was inadequate, but I dispute the second point that they could not foresee the level of default. Certainly, they could have foreseen at least the $2 million a year level of default.

What does the bill do? The bill allows claims in regard to capital losses (not interest or legal fees) incurred through the Growden's collapse to be paid out of the Agents Indemnity Fund. To protect the fund which may suffer claims from its normal areas of operation, a flaw is placed in the fund in regard to the Growden's matter. That is, an amount in the fund above $15 million can be applied at the commissioner's discretion to pay out the capital losses incurred through the Growden's collapse. If the amount in the fund falls below $15 million, the commissioner must stop paying the Growden's claims and pay out other claims (if any) until the fund is again above the $15 million where payments to the Growden's investors can resume at the commissioner's discretion.

I guess some will ask: can the Agents Indemnity Fund accommodate a pay-out of $17 million? The answer to that question is yes. How do we know that the answer is yes? Because both the Attorney-General and the Commissioner for Consumer Affairs have confirmed that the fund provisioned a $17 million payment for claims in respect of the Growden's matter subject to the court case resolved in October 2003. So, up until October 2003 the fund was ready to pay out $17 million if the court ruled the other way. So, the money is there and it can be paid out, no problem at all, it will not have that big a detrimental effect on the fund. In evidence to the Economics and Finance Committee only last week, the Commissioner for Consumer Affairs was asked: 'If the $17 million is paid out, can the fund still operate?' and the answer was: 'Yes, the fund can still operate.' So, we know the money is there. We know the fund can still operate, and we know that these people have suffered, in my view, a grave injustice.

So, there is no doubt that the Agents Indemnity Fund can accommodate a pay-out of $17 million. The fund has nearly $27 million in it. It receives about $5 million in income per year, and of course there are lessening claims (at this stage, they are few and far between), and there have been some minor payments to the Real Estate Institute and the Conveyancers Institute which total about $500 000 a year. There is no doubt that the fund can afford to pay the $17 million, if that is the parliament's will. What do we know?

The Hon. M.J. Atkinson: Is there any reason you didn't introduce this when you were in government?

The Hon. I.F. EVANS: The Attorney asks—and I am happy to answer this question—why I did not move to introduce this legislation while I was in government. I went to the attorney-general of the day, but I could not convince him of the merits of the case. There were still court cases going on. The Attorney knows that some of those court cases finished only in October 2003, well after I was out of government and well after I was a minister.

The Hon. M.J. Atkinson: It's pretty convenient for you, isn't it?

The Hon. I.F. EVANS: With due respect, the Attorney knows that this is not a matter of convenience for me. The Attorney knows that I have had an interest in this matter for some time.

The Hon. M.J. Atkinson: No, only since you got into opposition.

The Hon. I.F. EVANS: That's not true. I can name a number of people who can speak to the Attorney privately to tell him about my interest in the matter. He can have my file, if he wants. I have tried to raise this issue—

The Hon. M.J. Atkinson: You have said nothing publicly.

The Hon. I.F. EVANS: I have tried to raise this issue to resolve the matter for my constituents—and my constituents know that.

The Hon. M.J. Atkinson: You only went public when you went into opposition.

The SPEAKER: Order! The Attorney-General will have an opportunity.

The Hon. I.F. EVANS: It is generally not the practice for cabinet ministers to move private members' matters.

The Hon. M.J. Atkinson: It depends what your priorities are, doesn't it? It depends whether your priorities are you or your constituents.

The Hon. I.F. EVANS: I will do the Attorney a courtesy and make this point. I frankly do not give a damn about the party politics on this issue. Criticise me all you want; I don't care. All I want, Attorney, is the right vote on the day.

The Hon. M.J. Atkinson: You do now.

The Hon. I.F. EVANS: All I have ever wanted is the right vote on the day. You can play politics; I am not interested, and I do not think the parliament is interested. There are 400 families affected—

The Hon. M.J. Atkinson interjecting:

The SPEAKER: Order!

The Hon. I.F. EVANS: I am not prepared to play politics with this.

The Hon. M.J. Atkinson interjecting:

The SPEAKER: Order! The Attorney-General will come to order! He knows that leave has been granted. The member for Davenport will be heard in silence.

The Hon. I.F. EVANS: In summary, what do we know? We know that some 400 families have lost about $17 million or more through the Growden's collapse. We know they cannot get money from the Australian Securities Commission; we know they cannot get money from the commonwealth; we know they cannot get money from Growden's insurance; we know that they cannot get money from the Growden's company; we know they cannot get money from Growden himself; and we know they cannot get money from the Agents Indemnity Fund unless the bill is passed.

We know that the government of the day promised a public education program and that the next government delivered just one advert on just one day; we know that the government promised a notification system that was never put in place; and we know that the government negotiated the transition from a state scheme to one run by the Financial Brokers Institute, which had no money in it. We know that those who suffered losses were told that it was a fund of last resort and to go fight it in court. Some have done that, to the best of their ability, but others do not have the financial capacity to do that.

We know that they have nowhere else to turn. We have seen suicide, divorce, mental breakdown, family break-up, stress driven by ill-health, and a group of citizens suffer because the system has let them down. We know that there is money in the fund to pay out the claims; we know that the government was prepared to pay out the losses if the court case went against the government; we know that the fund can continue to operate if the $17 million is paid out over a number of years; and we know that the bill will pass if the parliament wants it to. Is the parliament really going to say that it will deny the citizens access to this fund? I hope not.

If ever there was an issue with which the parliament should not play politics, it is this one. There are some 400 families who deserve better than some cheap political point-scoring exercise. I was a member of the government that administered the state and therefore this scheme for much of the time, and I admit that we could have done it much better, and I personally wish we had. The current government now administers the scheme. It can do it better, and I sincerely hope it does. I took up this issue because I genuinely believe that there are a number of ordinary South Australians who have been let down by the system. We have in this place to correct past mistakes, and it is now a matter of whether we have the political will to do so. I commend the bill to the house. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Land Agents Act 1994*

3—Insertion of section 29A

It is proposed that the indemnity fund under the Act will be divided into two parts (Parts A and B). Part A is to be maintained at $15 million. Part B will consist of so much of the money standing to the credit of the fund that is not held in Part A. Part A will continue to be held for the benefit of the indemnity scheme that already exists under the Act. Part B will relate to the scheme to be established by this Bill (new Schedule 2A). The fund will again be amalgamated when new Schedule 2A expires.

4—Amendment of section 50—Agreement with professional organisation

5—Amendment of Schedule 2

These are consequential amendments.

6—Insertion of Schedule 2A

The new schedule will establish a scheme under which claims will be able to be made by persons who have made "qualifying capital investments".

Essentially, ***qualifying capital investment*** means—

(a) any investment of money effected by making a payment to Growden Investments, or to another person on the advice of Growden Investments, on or after 1 June 1995, on the understanding that the money would be lent to a person on the security of a mortgage; or

(b) any reinvestment of money effected by Growden Investments, or on the advice of Growden Investments, on or after 1 June 1995, where the money was originally paid to Growden Investments, or invested on the advice of Growden Investments, on the understanding that the money would be lent to a person on the security of a mortgage (including in a case where the original payment or investment occurred before 1 June 1995).

A claim will be for any capital loss arising from a qualifying capital investment. The claim will need to be made within 3 months after the commencement of Schedule 2A (unless an extension is granted by the Court). The claim will be made to the Commissioner, who will determine eligibility and the amount that can actually be claimed. The Commissioner will be able to make various arrangements for the payment of claims, depending on the state of the fund (being Part B of the indemnity fund). The Governor will be able to bring the scheme to an end when the Commissioner has certified that all eligible capital losses have been fully compensated (either by payments under the scheme or from other sources).

Part 3—Amendment of *Conveyancers Act 1994*

7—Amendment of Schedule 2

This is a related amendment to ensure that a failure to disclose material facts with respect to the investment of trust money will be taken to constitute a fiduciary default.

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

LEGISLATIVE REVIEW COMMITTEE: REPORT ON REGULATIONS MADE UNDER THE CONTROLLED SUBSTANCES ACT

Mr HANNA (Mitchell): I move:

That the report of the committee on regulations made under the Controlled Substances Act 1984, No. 172 of 2002, be noted.

This report concerns the reduction from three to one in the number of plants a person may grow in their backyard without incurring the full force of the criminal law but, rather, pay a penalty by way of an expiation notice. Members would be aware that in the 1980s, for two very good reasons, an expiation notice scheme was introduced by the Labor government in relation to cannabis plants. The two principal reasons were that there was demonstrable congestion of the courts with relatively minor matters, and the beginning of the trend of enabling offences such as this to be expiated rather than to trawl thousands of people through the court each year

in a more time-consuming and expensive manner. The other reason, of course, is that hundreds of young people were apprehended each year smoking or possessing small quantities of cannabis, and it was thought at the time that for them to be dragged through the criminal courts and incur the stigma that comes with a drug conviction was an unnecessarily harsh means of dealing with people in that position, particularly if it was a matter of youthful experimentation rather than a matter of a criminal career.

The system originally was that there would be a limit of 10 plants, the discovery of which could lead to an expiation notice being served upon the person, in other words, a relatively minor financial penalty. That was the case until relatively recently when the number of plants was reduced to three. Clearly, the limit of 10 plants had led to abuse in the sense that syndicates were running a series of houses (often tenanted houses) growing 10 plants each. The Labor government recently moved to reduce that limit of three down to one.

The Legislative Review Committee heard evidence that the amount of marijuana that could be harvested from a single plant would be ample for one person's use. However, there was also evidence that to grow an adult female plant to obtain the amount desired for an individual person's use it would be necessary, statistically, to plant two or three plants because of the rate of attrition and the risk of growing a male plant—in this business, the males are useless compared with the females. So, there was a division of the committee. The majority—comprising the Labor and Liberal members of the committee—were comfortable reducing the expiable number of plants from three to one, and their final conclusion was that the majority noted that the scheme strikes a balance between protecting the community from the harmful effects of cannabis and enabling some offenders to avoid criminal prosecution and the consequences associated with a conviction for a drug offence.

On the other hand, in their dissenting report the Democrats and the Greens pointed to a couple of consequences of the change. One was that more people will face criminal prosecution, so, the rationale behind the introduction of expiation notices in this branch of the law would be dishonoured by the passage of this measure. Secondly, another foreseeable outcome is that young people could be looking to experiment with other drugs such as amphetamines, in other words, using pills that will fry their brains instead of taking risks with marijuana. Ironically, this so-called tough law and order policy, which does nothing to educate people, help them to end their drug addiction problems or assist with health problems or psychological problems that might be associated with drug abuse, ironically, this measure could have the perverse effect of encouraging young people to experiment with substances that are even worse for them than cannabis. So, with those dissenting remarks, I present the report, representing those majority views and those dissenting views to the parliament.

Mr BROKENSHIRE (Mawson): I wish to speak briefly with respect to this report. First and foremost, just to correct the honourable member for Mitchell, it was actually the Liberal Party that moved that there be expiation notice available in relation to only one non-hydroponic cannabis plant, back from three. It is important to put on the record that, when the Labor government was last in office, in the 1980s, with its soft approach to illicit drug use, in particular cannabis, they had up to 10 plants available under expiation notice. It is also important in this debate to put on record the fact that, whilst we see the Premier and the Attorney-General leading their government now on the so-called tough on law and order stance, it took two years of solid debate when we were in government to engage our now Premier and Attorney-General in supporting our call for zero tolerance on hydroponic cannabis.

Having said that, I also acknowledge that, whilst it took a long time, finally I thank the Attorney-General for supporting me in getting the zero tolerance on hydroponic cannabis bill through the parliament. Now we see a situation where the majority of the members of this Legislative Review Committee put in a report, both Liberal and Labor, basically confirming that what we did with respect to the reduction in expiation notice capability of non-hydroponic cannabis, and indeed what we did with zero tolerance of hydroponic cannabis, was correct. I think the parliament and the mainstream parties have come some way in realising the damage that cannabis does do to society.

It is interesting listening to the member for Mitchell, because I have a different view to the member for Mitchell when it comes to illicit drug use. My understanding of what the honourable member was saying was that, if indeed you get too tough on cannabis, then you are going to push people, particularly younger people, into even harder drug use such as amphetamines, heroin and cocaine and the like.

Mr Hanna: Wake up, it is happening!

Mr BROKENSHIRE: Indeed it is happening. There is no doubt about that and I agree with him on that, but let us have a look at where most of these people get their illicit drug interest from in the first place. Almost without exception—and I acknowledge that there are some people who go straight into the use of fantasy and ecstasy and amphetamines—people start with cannabis. Having studied this for several years, I think the best anecdotal examples of this whole matter can be seen—and the Minister for Emergency Services would know this too—from the information that comes from the ambulance carriage of people who have overdosed on illicit drug use. When you look at some of the long term damage and, indeed at times, sadly, the deaths that occur with respect to illicit drug use, you find that almost without exception there is evidence in their system of a polycocktail of drug use, and almost without exception there is cannabis within that polycocktail of drugs.

When you sit down and talk to members of your electorate, and I am sure that the electorate of Mitchell is no different in this aspect from any other electorate in the state, parents will tell you when they see the worst happening in a loved one, often a young loved one, that that loved young one started the downhill slide with illicit drug use through cannabis. It was so readily available, so cheap and quite cool to take before and after school and, sadly, at times even in the toilet blocks during school.

Of course, we all know that, sadly, South Australia had the largest cannabis leaf production of any city in most of the southern hemisphere when an international report was issued a few years ago. That concerned me immensely. So, I do not have a problem with the fact that it is very difficult for people to grow one plant and get sufficient quantities for their own use. I do not have a problem with that at all. In fact, I am happy to say that that was my intention when I pushed for the reduction to one plant. I was hoping that they would get only a male plant. I know that there is a lot less opportunity of getting the benefit from that male plant by way of an illegal substance—and I emphasise the word 'illegal'—because that

was always my intention. So be it that it is difficult for those people, because I think that we are doing them a favour—contrary to what the member for Mitchell as saying. What worries me is that, even with all this effort, when you look at police reports on the news and you read the media you realise that far too much cannabis is still available in this state. More work needs to be done on why, despite our introducing all these initiatives over the last four or five years, we still have so many people growing cannabis.

Of course, that cannabis is taken interstate—often on coaches—and it is cashed in. When I was police minister, I can remember viewing about $1 million worth of cannabis all bagged up and ready to go on the coach to Queensland, where the buyer was waiting, and they were coming back with not just cash but also harder drugs. It was a beautiful tax-free, illegal, cash economy for them, but they were doing so much damage to the community of South Australia. Even if those members in the minority report had good intentions (and I do not think that they necessarily were good intentions) with the soft approach of the late 1980s, the fact is that that model failed; it did not work. We have gone beyond that now, and we now have a situation where we have confirmation that toughening up on cannabis, with an absolute majority of the members of the Legislative Review Committee, was correct.

Interestingly enough, when you look at the debate in the report from the committee, almost at the same time (in fact, within a few days) the annual report from the Controlled Substances Advisory Council was tabled in the parliament. The council's report of last year raised concerns about the fact that we should be letting people know how damaging cannabis is. We know that the THC in cannabis does unbelievable damage to one's mental health and wellbeing. We know that it causes schizophrenia and other such conditions. Members should sit down with some constituents in their electorate and listen to the sad stories that they tell about family members who have become involved in illicit drug use. They have stolen from their own families to the point where, if mum and dad went out for a meal, when they came back they found their DVD player had gone to one of the stores that trade in second-hand goods. Where had that money gone? Illicit drugs have already been bought with it. People are stealing from their own families because they are absolutely addicted to illicit drugs. How does it start? More often than not, it simply starts with cannabis.

The Controlled Substances Advisory Council stated that it agreed that it was important that the community be informed of the new cannabis legislation. I absolutely agree with that statement because, given how soft we were on this issue for so long as a parliament, people are confused. They do not realise that, although it is an expiation notice for one plant, it is still illegal and still an offence. It is not acceptable to grow even one cannabis plant, but many people do not realise that. Well, let us get out there and make sure that they do. The advisory council states that they should be informed. I also point out to the house that the advisory council states that it thinks that we should involve the insurance companies in informing the community of the risks people take when carrying out hydroponic production. That tells me that it is still concerned about how much of this hydroponic production is still occurring. It also tells us to work with the Department of Primary Industries and Resources and the hydroponic industry to consider ways to reduce hydroponic cannabis production.

Even with all the work that we have done in the parliament, there is still a lot more to do. I look forward to fighting this evil with all those members on all sides of the house who want to give us a hand in fighting what is destroying the basic fabric of a lot of young people in the community. Let us get out there and take a genuinely tough approach on this issue and not return to the soft, sappy ways that we used in the past, because they did not work and were not in the best interests of the long-term future of South Australia.

Mr SNELLING (Playford): I wish to address a few matters that have arisen in this debate. First, I turn my attention to the comments of the member for Mawson, who seemed to be saying that somehow the government had been slow to act on this question of the number of plants that could be grown and still be an expiable offence. In the previous parliament I served on the select committee inquiring into a heroin trial. From what I recall (and this was in about 1998 or 1999, so it was five or six years into the previous government), the police gave fairly strong evidence that they had been trying to get the previous government to move on this issue of the number of plants. They wanted it reduced from 10 plants. They had been asking the previous government for this, but it had been sitting on its hands, and the police could not get any change. The police explained to the committee how the 10 plant rule was being used by crime syndicates for the commercial cultivation of marijuana. Whenever they raided a house that was growing 10 plants in what was clearly a commercial operation, all that they could do was to slap on a $50 fine, as it was at the time.

It is a bit rich for the member for Mawson to criticise this government on being slow to act. The reduction from three plants to one plant was, from my recollection, one of the government's first initiatives in this area. The government was very quick to act to reduce the number of expiable plants that could be grown from three plants to one plant. It was one of the first things it did—in contrast with the previous government, which took five or six years to fix up the far greater problem of 10 plants being grown for purely commercial reasons.

Secondly, the member for Mawson touched on the member for Mitchell's claim that, if you reduce the availability of cannabis, young people who are unable to get cannabis will turn to harder drugs. I am not sure whether the member for Mitchell makes that claim on any evidence whatsoever. I invite him to tell the house what evidence there is that this is happening. I do not know whether the member for Mitchell is claiming that somehow cannabis is a safe alternative to other, harder drugs. Cannabis is dangerous in its own right, and to try to advocate cannabis or its increased availability as some sort safe alternative is just not an option.

My second point on this matter is that the literature is fairly conclusive that cannabis is a gateway drug; that most people who have become addicted to those harder drugs—heroine and cocaine, and so on—started their drug-taking career on cannabis or other so-called soft drugs. So, to make the claim that cannabis might somehow be useful in preventing young people from going on to harder drugs is, I think, a complete furphy. I am pleased that the majority of the Legislative Review Committee saw differently from the member for Mitchell and endorsed the government's sensible approach to this issue of marijuana.

Motion carried.

PUBLIC WORKS COMMITTEE: ANGASTON PRIMARY SCHOOL REDEVELOPMENT

Mr CAICA (Colton): I move:

That the 198th Report of the committee on the Angaston Primary School Redevelopment, be noted.

The Public Works Committee has examined the proposal to apply $5.205 million of taxpayer funds to the Angaston Primary School Redevelopment. The committee is told that the proposed redevelopment is required to upgrade the facilities of the Angaston Primary School. The oldest building on the school site was built in 1878 and the balance of the current accommodation is a combination of former residences, 1970s teaching blocks and timber transportables dating from the 1940s to the 1960s. The school has also been using a large galvanised iron shed as an activity space, which does not meet DECS standards.

The committee is told that the current proposal is to redevelop the Angaston Primary School facilities as well as provide a multipurpose activity hall and relocate the Angaston preschool to the primary school site. The major components of the project are:

- the construction of a new building to provide new general learning areas, a library resource centre, a practical activity area and withdrawal spaces;
- upgrading an existing building to provide refurbished general learning areas, curriculum support spaces and a teacher preparation area;
- upgrading of a heritage building to provide refurbished accommodation for administration functions, staff facilities and amenities;
- the construction of a standard primary school multipurpose activity hall on property purchased adjacent to the school site;
- site works, including additional car parking, landscaping, playgrounds and upgrading of grassed areas;
- upgrade of site infrastructure;
- demolition of three ageing transportable buildings; and
- the construction of a new 41-place preschool on property purchased adjacent to the primary school.

Currently the school is bisected by Newcastle Street. Part of the project will involve closing Newcastle Street and integrating the reclaimed land into the school as additional play and car parking areas.

The capital works will affect teaching facilities, and the proponents have staged the works to try to minimise the impact on students and staff. Part of this strategy is the provision of temporary teaching spaces through the duration of the project. The committee is told that passive design principles are built into the project with a number of energy-saving features and building material recycling measures being incorporated. The aims of the project are to provide modern educational accommodation, to remediate contaminated or hazardous materials, to meet legislative compliance requirements and to deliver benchmark accommodation for primary and preschool students. The collocation and the resultant sharing of facilities has further economic and educational benefits in the long term.

The project has a GST inclusive capital cost of $5.205 million. Recurrent costs are not anticipated to be above the current school's levels. Of the three options examined by the proponents—do nothing, a new school or a redevelopment project—the current proposal provides the best educational and most cost-effective financial outcome. Financial analysis suggests that the proposal has a net present value of approximately $12.2 million (with a 7 per cent discount). The committee understands that the project will be constructed in four stages, commencing in February 2004 and being completed in August 2005.

The committee supports the provision of improved primary and preschool facilities to the Angaston community. The committee is concerned, however, by the history of cost escalation experienced with respect to this project. The committee understands that the project's construction costs were originally budgeted at $2.6 million but, through a series of design amendments and tender issues, has arrived at a total capital cost (excluding GST) of more than $4 million. The committee notes the problems encountered during the design and tender process as related by the proponents, but believes that the original cost management processes failed to provide adequately for the final cost of the project. The committee is deeply concerned that a project that initially perceived a possible shortfall of the order of $70 000 to $170 000 should, after the tender process, be faced with a final shortfall of more than $1.2 million, and the significant funding and process alterations that result from that.

The committee also has concerns about the staging of the construction works and its effect on staff and students. The committee understands that some interface between the works and school users is inevitable but is concerned that the temporary facilities provided while the project is progressing do not undermine the ability of students and staff to perform their work. The committee believes that the health and educational wellbeing of the school users should be of primary importance throughout the project's capital works stage, and that any periods of inconvenience or disruption should be minimised as much as possible.

The committee notes that, at the time the project came before it, there had been no acquittal of the school's ESD features by the Office of Sustainability (OOS) but that the proponents were confident of OOS approval. The committee notes the various energy efficient features incorporated into the project, but is concerned by the assumption of OOS approval and a persistent trend towards privileging capital costs over long-term recurrent savings with regard to ecologically sustainable features. The committee notes that mandated government policies relating to OOS acquittal were not in operation at the time of the current proposal's development. The committee looks forward to viewing the result of OOS involvement in future capital works development. Pursuant to section 12C of the Parliamentary Committees Act 1991, the Public Works Committee recommends the proposed public work.

Mr VENNING (Schubert): I rise with much pleasure to support the Presiding Member of the Public Works Committee, and I hope that the house will agree with the recommendations, because I certainly do. Sir, as you would know, the Angaston Primary School is in my electorate, and this has been a very long, drawn out process. In fact, this upgrade was approved midway through the term of the previous government. It was certainly a project that needed to be undertaken. It was probably one of the three key priorities that I pursued, as the local member, along with a new Barossa hospital and the heritage buildings at the Kapunda school, which will be addressed shortly. I was overjoyed when the word came through from the previous government that this project would get off the ground. I want to pay tribute to those involved. The local school council, through the then chair, Mrs Annabel Hill-Smith, was very active and took a very proactive part in relation to the design of the school. But that did have a down side, because it prolonged the process. I warned them that the

election was coming up and that, if they had not finalised the development, anything could happen with a new government—and, of course, it did happen. However, all is well that ends well, and now we have seen the approval of the amount of money, which is somewhat larger than was originally budgeted—

An honourable member: Somewhat!

Mr VENNING: The minister says 'somewhat', and I acknowledge that. When criticisms were levelled at the people who attended the committee, I said to the members of the committee that they could not all be blamed for that, because getting it right took some extra time, and I think we can all share in some of the blame, if there is any blame to be levelled, in relation to the delay. I would not take the bureaucrats to task on this matter, because there was a blow-out. But I think that, in the end, we are still getting good value and a very good product, and it certainly will be very much appreciated by the Angaston community and, indeed, the Barossa community.

A lot went into this project, because a road divided this campus in two right down the middle. When the council eventually agreed to close the road it brought about some urgency to get the rest of it sorted before the community forced the council to change its mind. Certainly, there were a lot of pressures. However, we ended up with a good result, because the road is closed and it will now be part of the campus. You do not have children ducking across the school and you do not have the road closed during certain parts of the day, as was the case previously. The road used to be closed off with beams during school hours, and it used to cause all sorts of problems. That is now behind us. We also have the involvement of the kindergarten on-site, which in itself was a bit of a divisive issue in the local community because of where it was to be put. But that is now on campus, and that is very good too. The previous minister and I often visited the school to meet with the school representatives, and we sat in a shed. The shed could be classed as heritage, but how can you class galvanised iron and timber with white ants as heritage? It was just a shed. It was a disgrace to have to meet them there, because when it was windy we were blown out of it. That was the only place that they had in which to meet as a school, and that is what they did. But that will all be rectified now. I believe that Angaston school has been ailing, because the other schools had all drawn a fair bit of attention from government in the last four or five years and this school had received nothing. But now we see this large upgrade. As I said, the conditions were bad.

As the member for Colton has just very capably said, the problem we now have is the conditions that the students and staff have to put up with while we go through the building process. They are in temporary arrangements, and there is a fair bit of hardship on both staff and students. They are cramped and often dusty. I hope that during winter they will not get wet, but it will not be too comfortable. I only hope that we can make pretty quick progress and get this project through. I am not sure whether we would be able to rig any temporary classrooms easily and conveniently. I doubt that we could do so without incurring huge extra cost. But we should do the best we can, because I am sure that the staff and, indeed, the students, understand that their temporary discomfort will be for their long-term good and that of the school. I certainly offer my support to them. If there are any problems in that area, no doubt they know my telephone number, and if we can do anything to assist we certainly should do so. I will be making regular inspections and also calling the school and making sure that it is not too bad.

Finally, I want to congratulate the Public Works Committee. I have the transcript of the meetings and I have read what the witnesses had to say and the questions they were asked. The committee does not give these people an easy time. The chairman is a very good-natured person; he does his job well and these people are cross-examined in a professional way. As I said, in this instance there is a cost blow-out. I do not believe that the public servants at the time should be blamed completely. I certainly support this project and I am very pleased that, at last, the new Angaston Primary School is under way.

Motion carried.

EDUCATION (COMPULSORY EDUCATION) AMENDMENT BILL

Ms CHAPMAN (Bragg) obtained leave and introduced a bill for an act to amend the Education Act 1972. Read a first time.

Ms CHAPMAN: I move:

That this bill be now read a second time.

It is with some pleasure today that I introduce my first private member's bill. In September 2000 the former Liberal government proceeded with the drafting of new integrated legislation which was to replace the Education Act 1972 and the Children's Services Act 1985 and which was intended for introduction into parliament in 2002. It was of concern to the previous government and a priority for it that South Australia deserved a modern, integrated act to help our children and students remain at the leading edge of education.

Accordingly, between July 2001 and September 2002 there was considerable consultation with the community and stakeholders about the proposed Education and Children's Services Bill 2001. This was to be a comprehensive bill to develop a single legislative framework, which would increase flexibility in the use of resources, improve the effectiveness of the system of care in education and a number of other important aspects. That bill was a product of extensive consultation. Indeed, more than 3 000 individuals were involved in the public meetings and focus groups during the initial consultation period and almost 6 000 submissions were received.

Almost 1 000 people were involved in the consultation of the draft bill and over 200 submissions were received. As is well known now, in February 2002 the election brought with it a change of government. This had the effect of interrupting the comprehensive review and updating of the Children's Services Act. In June that year the new Labor government introduced legislation to increase the compulsory attendance age at school to 16, which had been part of the proposed reform of the Liberal government. In December 2003 this new Labor government continued the school fees legislative requirement with some Independent and Liberal member amendments.

However, in the last two years, that was it as far as reform presented by this government. I think that is a sad indictment on this government, a government which had professed to be concerned about the education of South Australians, and its children in particular. After two years of government no comprehensive review has been undertaken. It is with that background that I bring to the parliament at least one aspect which, I think, is important and pressing for South Australian

children. This bill will effectively replace part 6 of the Education Act 1972, which provides for compulsory attendance at schools.

It makes provision for compulsory enrolment, compulsory attendance and powers to act in relation to suspected truancy. This bill proposes to shift the emphasis from compulsory school attendance to compulsory education thereby highlighting the importance of participation in education as distinct from mere attendance at school. It is proposed that the bill will enable a choice of participation in education (which is currently available) by providing for the compulsory education obligation to be met in a variety of ways: parents can and may fulfil their obligation to ensure a child is participating in education through enrolment in a government school, a registered non-government school, complying with the attendance requirements of a school or by home educating their child.

These will be preserved, and it is a very important aspect for the Liberal Party that choice remains offered. As I have indicated, consistent with OECD countries, increasing the school leaving age to 16 years and providing a compulsory period of education for 10 years (from six years to 16 years) has already been implemented by this government. The bill proposes further to address the irregular student attendance by providing an enhanced support to parents and children in the case of persistent contravention of the compulsory educational requirement.

It will provide for the minister to have the power to establish a panel to make recommendations as to the course of action to promote effective participation in education in each particular case. The panel, if established by the minister, would comprise a teacher, a person with expertise in behavioural problems and persons with knowledge of services available according to the circumstances of the case. Additionally, a person may be appointed to act as an advocate of the child, and the panel can then make recommendations to the minister as to the course of action to promote effective participation in education.

Apart from having strong community and stakeholder support in dealing with this important issue, I refer to the situation as it stands, including the two-year period of this government which has, to its credit, implemented some programs, and I acknowledge that, but regrettably without any effective dealing of this issue. Essentially, the position is as follows: there is a frequent absence of students from school. This, of course, makes it difficult for teachers who continually have to provide materials and reteach skills to students. We have a situation where being absent for five days a term—from reception to year 10—adds up to more than a year of missed schooling.

We know that students who are frequently absent from school are over-represented in the juvenile justice system. Research clearly shows that students who are often absent from school are likely to learn less as adults than their peers. Statistics for 2002 that have been provided to us tell us that nearly 37 per cent of absences are recorded as unexplained; 9.1 per cent students are absent for more than one day a week; the average number of days absent for a student ranges from 3½ days a term in year 3 to six days in year 10; and, probably not surprising to anyone in the chamber, student absence is most frequent on Fridays.

Whilst absence rates vary significantly amongst individual students, there is an identified group of children and young people who can be described as chronic non-attenders. These include children involved with the child protection system and alternative care, those under the guardianship of the minister, and young people who have offended. Reasons for non-attendance may be related to difficulties experienced at school or at home, and they may be associated with severe behavioural problems or cultural issues. International research shows—and I am sure the government would agree with this as it has been canvassed in other arenas—that poor attendance and participation increases the likelihood of social isolation, delinquency and mental health problems later in life. According to *The Sunday Mail* of February this year, 10 000 children are away from school every day in South Australia, and *The Advertiser* of 17 October 2003 states that in some large Adelaide schools more than 100 students are absent at any one time.

Some action has been undertaken by schools in an attempt to deal with this, and I will refer to that later. However, let me say, first, that the government's plans to date have not provided any new answers or addressed the real problem. All they have done is forced 15-year-olds to stay at school until they are 16. There is some argument about whether children will receive any benefit if forced to stay at school whether they want to or not. I make quite clear that the Liberal opposition supported the government in this move in a genuine belief that it would benefit children, because we know that those who have an education are likely not to show up in the juvenile justice system and to have a more productive working life. The government took the view that the retention rate of students was the basis upon which they secured this advance. That was never accepted by the Liberal Party. We have always said that the government needs to come clean on its misleading claim that retention rates are as low as 56 per cent.

ABS figures in an Australian school snapshot released yesterday show that there are 28 858 part-time school students in Australia in 2003 and that South Australia has the second highest proportion of part-time students at 2.8 per cent. This group needs to be encouraged and protected from leaving the system altogether, but the government continues to insult them by excluding them from its statistics of the children who count. In fact, one of the first references it gave to the Social Inclusion Initiative when it was formed in 2002 was to look for ways to improve school retention. For the record, Business Vision 2010 has also demonstrated the inaccuracy of the government's claims of a free-fall in retention rates during the past administration. It states:

> In 2001, the estimated Year 12 completion rate for all students in South Australia was 68 per cent, identical to the national rate. The Year 12 estimated completion rate for South Australia has been gradually increasing over the 1997-2001 period and compares favourably with the national rate. (Business Vision 2010—Indicators of the state of South Australia 2003).

A parliamentary select committee on DETE-funded schools in 2000 also highlighted the importance of understanding that South Australia was a leader in this area and it stated that, when part-time students were included, the year 10 to 12 student retention rate rose to 79.4 per cent (above the national rate of 72.4 per cent).

That is the clear position. The government has tried to use that to distort the statistics. However, some schools have adopted initiatives to try to deal with the aspect of truancy. Last year, Morphett Vale High School offered to negotiate with local businesses to create a gold card discount reward scheme to acknowledge attendance, punctuality and homework performance. Palm Pilots have been issued to every teacher to download twice-daily to enable them to keep track

of their students. We acknowledge that, in combating truancy, we need to address a number of complex social problems. It is important to deal with the students and to support them. Simply tackling the issues only in relation to students is not sufficient.

Last year schools began trialing a system of sending SMS messages to parents of truant schoolchildren. This system recognises that it is the parents' responsibility to ensure that children attend school, which I am happy to support, but it is also the schools' responsibility to make it worthwhile for students to be there. For many students, that means making school relevant, particularly for children not destined for university. Many students feel excluded from schools, and it is the responsibility of this government to address that. So, I hope members will consider supporting this bill as an aid to dealing with this issue.

I will briefly refer to the bill itself and the indicated rewriting of part 6. It is necessary to amend the definition of 'child of compulsory school age' to 'child of compulsory education age'. Section 74 effectively replaces the obligations (but still maintains them) for parents both to enrol and to comply with the attendance requirements of a school. That will replace existing sections 75 and 76. Penalties are increased from $100 and $200 to $1 250. Not employing children of compulsory school age is a protective mechanism which is perpetuated to ensure that children are not engaged in employment. There is a penalty for parents and employers who interrupt their capacity to attend school and of course to learn.

The exemption provisions are protected. New section 77 replaces section 80 and provides for authorised officers to stop and detain and deal with children who are not at school but who of course should be. I am pleased to say that we have removed some rather unpleasant language from the bill, and I will refer to that in due course. I commend the bill to the house. I hope it will be given favourable consideration by the government and members of this parliament.

Mr KOUTSANTONIS secured the adjournment of the debate.

MATTER OF PRIVILEGE

Mr BRINDAL (Unley): I rise on a matter of privilege. Mr Speaker, with great respect and out of concern, I draw your attention to turn 515 of *Hansard* of another place of today's date. In answer to a question today, the Minister for Urban Development and Planning made a number of statements to this house, which a member in another place has categorically and flatly stated are wrong, that the information presented to this house is not in any way accurate. I ask you either to look at this matter or request the minister who is present (if it be orderly) to clarify this matter for the house.

Mr Hanna: Are you saying he misled the house?

Mr BRINDAL: Yes.

The SPEAKER: I am curious as to where the member for Unley expects me to go. By way of observation, for his benefit and that of all honourable members, can I say: the minister is allowed to be wrong. We are all human. However, the minister—if this is where the member for Unley is coming from—is not allowed to mislead the house.

Mr BRINDAL: Yes, Mr Speaker, I absolutely accept your ruling, which is why I raise this matter now and I trust that there was just a mistake and that the matter can be clarified. However, the Hon. Mr Redford, in fact, asserts that the minister has made an allegation which is misleading for the house and therefore—

The SPEAKER: We cannot get into quarrels between the chambers.

Mr BRINDAL: I understand, sir. Nevertheless, if he has given—

The SPEAKER: Of all the Speakers there have ever been in this chamber, this Speaker is very emphatically not going to get into disputes between chambers.

Mr BRINDAL: I understand that.

The SPEAKER: However, should the minister be aware of the matter to which the member for Unley is drawing attention—is the minister, in consequence, willing to make any remark in explanation of it? I do not know the truth or otherwise, the accuracy or otherwise, and I am not in a position to judge. The member for Unley has produced no allegation of misleading or, for that matter, factually identified where any such misleading—should it have occurred or should he have ever made that allegation—did occur. So, for the meanwhile I will be alert to it and be ready to deal with it over the ensuing few minutes between now and the dinner adjournment. However, with the member's indulgence, and that of the house, I will proceed of the business so that we can resolve the matter as expeditiously as possible and with as little acrimony as possible.

Mr BRINDAL: Thank you for your ruling, sir. I think that is very sensible.

ROAD TRAFFIC (DRUG TESTING) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 3 December. Page 1080.)

Dr McFETRIDGE (Morphett): I rise to speak on this bill and to support the intent of this bill. There is a need to come down hard on anyone who drives whilst affected in any way, shape or form by any drug or substance that will inhibit their ability to control a motor car. Those people should be condemned and any legislation that will crack down on them should be supported, and that is the intent of this legislation. In introducing this bill, the member for Schubert indicated that he wants to ensure that the police have the power to take blood samples from people who, in their opinion, are affected by drugs.

In the world of horseracing, a drug is defined as any substance that affects the performance of a horse. In this case, whether it is marijuana, amphetamines, alcohol or a dose of valium, or some other drug, whether it is legal or whether illicit, is something that has to be determined, and it also needs to be determined whether it is affecting the ability of the driver to drive a car. This is done by observation by the police and then verified by more than just a breath test—which may be developed for many drugs. In this particular case, a blood test is necessary.

The member for Schubert has informed me that he has undertaken negotiations on this matter with the minister. Although the minister cannot be here today (I understand that he is attending the Magic millions Race Carnival at Morphettville, down near the wonderful electorate of Morphett, as part of his ministerial duties), I ask that he be allowed to respond to the intentions of the member for Schubert in introducing this bill, which is to achieve safer roadways for the people of South Australia. I hope that this bill succeeds in being passed.

I do not know what those negotiations entail, but I understand that the member for Schubert is more than happy with what the minister is proposing.

I do not know whether it will be this bill or another bill that will be passed, but I trust the member for Schubert, who is a very sensible member of parliament who represents his electorate and the people of South Australia in a distinguished manner, will undertake some rigorous negotiations with the minister to enable the intent of this bill to be met to the nth degree.

Mrs GERAGHTY secured the adjournment of the debate.

ENVIRONMENT PROTECTION (PLASTIC SHOPPING BAGS) BILL

Adjourned debate on second reading.
(Continued from 22 October. Page 577)

Mr HANNA (Mitchell): I can inform the house that the major parties have determined their position in relation to this bill. My position is clear; the Greens position is clear. The damage done to the environment by plastic shopping bags is immense, and we need to do something about it sooner rather than later. Therefore, we should proceed at once to a ban. When I say at once, I mean giving the industry a reasonable amount of time to adapt, and the bill that I have put forward does give several months in which to do just that. It is great to see the progress that is being made on a voluntary basis, but the way I look at it is that, even if the amount of plastic bag use has dropped a few percent, that is still upwards of 80 percent too much.

The SPEAKER: I am reminded by the Clerk that, contingent upon this matter coming before the house, the Minister for Environment and Conservation wanted to move a motion. It can be found on page 9 of the *Notice Paper*. Due notice of that had been given to the chamber. It is a pity the minister was not here but, with the indulgence of the member for Mitchell—

Mr HANNA: Yes, of course; I would not want the minister to miss out.

The SPEAKER: The minister has the call.

The Hon. J.D. HILL (Minister for Environment and Conservation): I move:

That all words after the word 'be' be left out and the words 'withdrawn and referred to the Environment Resources and Development Committee for its report and recommendation' be inserted in lieu thereof.

Motion carried.

The Hon. J.D. HILL: Thank you, Mr Speaker. I thank the member for Mitchell for his provision of time for me to speak on this. I apologise to the house for not being present when this was discussed. The government would like to have this matter referred to the Environment, Resources and Development Committee for its consideration. There is a similar, though different, measure before the other place which was moved by one of the Democrats and which I understand seeks to impose a levy on plastic bags sold in South Australia. So, there are two propositions, one from this chamber, one from the other, both dealing with plastic bags, both suggesting measures that should be taken to reduce the amount of plastic bags. At this stage I certainly support the principles that are contained within the provision of the bill that the member for Mitchell has put before the chamber. I believe that plastic bags ought to be banned. The process that the government has gone through to get to this stage, however, is different from the one contemplated by the member for Mitchell.

At the national meeting of environment ministers I put the proposition that we should do something about this issue, and all the ministers—both state and federal ministers—agreed with the proposition and collectively we decided on a course of action. That course of action gave the supermarket chains up to five years to voluntarily rid themselves of the use of single use plastic bags and set a couple of targets for them to achieve that along the way. The first of those targets is to be achieved within 12 months of the decision by the ministers, and that is a reduction of about 25 percent in the use of single use plastic bags and a 50 percent reduction by the end of two years. They are quite significant targets for the centres to achieve. As I indicated in answer to a question yesterday, there is some movement in South Australia, which suggests that at least the first target will be met.

I say this, not as apologist for the chains, but rather as a pragmatist who is trying to achieve a good outcome across Australia, not just in our state. If we can get all the Australian states to embrace this campaign, we will be able to remove about 7 billion single use plastic shopping bags from the waste stream each year. So, I think it is worth doing on a national basis. If we were just alone in South Australia, we would be removing only 8 or 9 percent. I think it is important to do it on a national basis and it is important to try to get the co-operation of the other states and the supermarket chains. I have to say that I would have preferred a tighter time line than the one that the ministers agreed to, but when you are dealing with a variety of jurisdictions you have to make compromises. That is the nature of the business of politics that we are in. If you are trying to get an outcome and you want to work with other people, they all have equal rights to have a say and you have to make a joint agreement. So, that is what we have done.

However, I think it would be useful if this parliament were to refer this matter and the matter raised by the Democrats in the other place to the appropriate committee to investigate, take evidence, talk to the chains, take evidence from the general community and generally keep the pressure on. I think that would be an effective thing to do. If, by the end of the two-year time frame for the reduction of 50 percent, the chains have not achieved the outcome that they are committed to, I have no doubt that the ministers at a national level will take precipitate action. That could well be embracing the proposition that the member for Mitchell has put before us. So, I think it would be sensible if we were to look at that provision quite closely, see whether it requires more work so that it can in fact be practicable and go through that process of examination that I have already explained. I say all these things, because I do not want to say that I disagree with the propositions that the member for Mitchell is putting—I do. But the government has already embarked on or embraced a particular strategy and I would be undermining that strategy if I were to support the passage of this legislation today. So, I would encourage the house to support the way forward that I have just described.

Mr HANNA: I speak against the motion. It is a stalling tactic. There are a couple of problems with what the minister has put forward. One is that South Australia used to be the leader in environmental and social reform. Why can we not have those days again, or at least in respect of plastic bags? Why can we not be ahead of the pack, ahead of the other states, leading the way in terms of cleaning up our environ-

ment? Secondly, according to the logic of what the minister puts forward in saying that he is a hostage to the deal already done with retailers and other environment ministers, even if the Environment, Resources and Development Committee comes down with a report in six or twelve months saying, 'Ban the bags now,' he will say, 'We can't do that anyway.' So, what is the point, after all, in referring it to the committee? The minister said that he favours the principle underpinning this legislation. Why then do we need a committee to look at it? That is why I say it is a stalling tactic.

The house divided on the amendment:

AYES (20)

Atkinson, M. J.	Bedford, F. E.
Breuer, L. R.	Caica, P.
Ciccarello, V.	Conlon, P. F.
Foley, K. O.	Geraghty, R. K.
Hill, J. D. (teller)	Key, S. W.
Koutsantonis, T.	Lomax-Smith, J. D.
Maywald, K. A.	McEwen, R. J.
O'Brien, M. F.	Rankine, J. M.
Rau, J. R.	Stevens, L.
Such, R. B.	Weatherill, J. W.

NOES (16)

Brindal, M. K.	Brown, D. C.
Evans, I. F.	Goldsworthy, R. M.
Gunn, G. M.	Hall, J. L.
Hamilton-Smith, M. L. J.	Hanna, K.(teller)
Matthew, W. A.	McFetridge, D.
Meier, E. J.	Penfold, E. M.
Redmond, I. M.	Scalzi, G.
Venning, I. H.	Williams, M. R.

Majority of 4 for the ayes.

Motion carried.

TAFE PLACES

The Hon. J.D. LOMAX-SMITH (Minister for Employment, Training and Further Education): I seek leave to make a personal explanation.

Leave granted.

The Hon. J.D. LOMAX-SMITH: Earlier this afternoon, I quoted a figure of 13 241 in relation to TAFE places. I want to withdraw that figure, because I think it is a few in error. I will produce the correct number tomorrow.

ENVIRONMENT PROTECTION (INTERACTION WITH OTHER ACTS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 26 November. Page 918.)

Mr HANNA (Mitchell): This is another bill on which the major parties have already made up their mind. It is an issue concerning the ability of the Environment Protection Authority to examine and investigate uranium waste and what is done with that waste in respect of operations in South Australia. I have already outlined the need for this measure. It does away with an exemption in the Environment Protection Authority Act, and I commend the matter to the house.

The house divided on the second reading:

The SPEAKER: There being only one vote for the ayes, the second reading is negatived.

SITTINGS AND BUSINESS

The Hon. P.F. CONLON (Minister for Infrastructure): I move:

That the sitting of the house be suspended until the ringing of the bells.

Motion carried.

The Hon. G.M. GUNN: I have a point of order, sir. I do not want to prevent what is going to take place, but I think it is important to point out to this house that this is a particularly unusual set of circumstances. We had a piece of paper put on our desks at question time today, and the purpose of this building and the purpose of our being here is to transact—

The SPEAKER: The member for Stuart cannot debate a point of order. If he has a point of order, make the point and allow the chair to rule. To engage in some precursory statement is not orderly. The house has chosen to adjourn. Is there some disorder to which the member for Stuart—

The Hon. G.M. GUNN: Yes, there is, Mr Speaker.

The SPEAKER: Under what standing order?

The Hon. G.M. GUNN: The house was advised only this afternoon by this memo, which I currently have in front of me, of a course of action that was going to take place this evening. I do not mind about that, but the point of order is that this parliament and this chamber is for the process of transacting parliamentary business. That is why we are all drawn from all over South Australia and some of us—

The SPEAKER: The honourable member is now engaging in a debate—

The Hon. G.M. GUNN: I think I have made the point. It should not happen again.

The SPEAKER: The member for Stuart needs to know that the deputy leader—indeed, all members—knew that this conference was on, and the deputy leader was advised in the course of discussion about government business last Wednesday that this chamber would be used for this purpose. It is entirely appropriate to do so. I thank honourable members for their understanding and apologise for any inconvenience it may cause them. In the meantime, I look forward to seeing them on the resumption of the sitting of the house at the ringing of the bells which, all honourable members can confidently expect, will be no later than 7.45 p.m. and may still be at 7.30 p.m. I therefore ask that if members have papers which they regard as confidential either to put them in the drawers under the benches or take them with them as they leave the chamber.

Mrs MAYWALD: I have a point of order, Mr Speaker.

The SPEAKER: The sitting of the house has been suspended.

[Sitting suspended from 5.59 p.m. to 7.45 p.m.]

STATUTES AMENDMENT AND REPEAL (AGGRAVATED OFFENCES) BILL

Adjourned debate on second reading.

(Continued from 22 October. Page 591.)

Ms CHAPMAN (Bragg): At the 2002 election, the Labor Party adopted the following policy:

We will double the penalties for assault, robbery or fraud, where the victim is aged 60 or older, or has a disability or is vulnerable.

and further:

We'll crack down on those who commit crimes against older South Australians. Labor will amend SA's crime laws to make it an aggravating circumstance that a crime has been committed against an elderly person. This will increase maximum gaol sentences in situations where the victim is aged 60 years or more or is suffering from a significant physical or intellectual disability:

- for assault, from two to four years;
- for assault occasioning actual bodily harm, from five to 10 years;
- for robbery, from 14 years to 20 years;
- for fraud and false pretences, a doubling of the penalties.

In introducing this bill, the Attorney-General claimed that it fulfilled these ALP promises. Further, he said:

This bill carries out these policies using the approach adopted by the Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General.

However, this bill does more than Labor's policies contemplated. In fact, the bill highlights the shallow rhetoric and simplistic prescriptions of this government's rhetoric.

Labor's policy has been implemented by burying it in a complex and highly complicated new criminal law regime. Given this government's antipathy towards lawyers, it is ironic that this bill will provide more room for argument, more complications, more appeals and more income for lawyers. More importantly, the cost of running criminal trials will, certainly in the short term, be increased and the certainty of gaining convictions will be undermined. That said, the Liberal opposition will support the bill if we can be satisfied that in the longer term there will be benefits in adopting the partial codification proposed by the Model Criminal Code Officers Committee. During the course of this response I will be posing a number of questions to seek clarification from the government on important matters of principle. The information should be put on the public record.

I now turn to the substance of the bill. The bill does four things. First, it redefines 13 separate offences in the Criminal Law Consolidation Act by five new offences of 'causing harm'. There are five degrees of causing harm: causing serious harm with intent, causing serious harm recklessly, causing harm intentionally, causing harm recklessly, and causing serious harm by criminal negligence. I will be asking some questions of the Attorney-General about the proposed new offence of causing harm by criminal negligence because the second reading speech and the detailed explanation of clauses is strangely silent on this topic.

Secondly, the bill establishes a new penalty structure for all offences against the person, that is, the five newly-named causing harm offences and the other 16 offences against the person already in the Criminal Law Consolidation Act. These offences range from rape to robbery and include two rather anomalous offences which are not against the person, namely, deception and dishonest dealings. Each offence will have two parts—the basic offence, with a penalty which is the same as the existing penalty; and an aggravated offence, with a higher penalty. These penalties are all conveniently set out in table 3 which was incorporated in *Hansard*.

Thirdly, the bill reconstructs the offences of assault and kidnapping in a way which is consistent with the new causing harm offences as well as the new aggravated penalty structure. It will repeal the Kidnapping Act 1960 and incorporate the kidnapping offence in the Criminal Law Consolidation Act, where it should be. I mention at this stage that the new kidnapping offence (proposed section 39) includes not only traditional kidnapping—that is, taking a person with the intent of holding him or her to ransom or as a hostage—with the lesser, but still serious, offence of wrongly taking a child out of the jurisdiction. Taking a child out of the jurisdiction is a very serious offence, as is reflected in the maximum penalties of 15 years for the basic offence and 19 years for an aggravated offence. However, we do not believe that taking a person out of the jurisdiction should be regarded as kidnapping. To call that offence kidnapping is really to undermine the seriousness of traditional kidnapping, which is one of the most heinous crimes in our criminal calendar. During the committee stage I will be moving amendments to ensure that appropriate terminology is used in this area.

Fourthly, this bill will amend the Summary Offences Act in relation to the obstruction and disturbance of rituals such as weddings and funerals. Presently, the disturbance of those rituals is only proscribed if they are part of a religious service. The bill will extend this to non-religious or secular rituals, and the Liberal Party does not have any objection to that amendment.

Aggravated offences. Offences against the person will be divided into basic offences, with the same maximum penalty as at present, and aggravated offences, with penalties approximately 30 per cent higher. The aggravating circumstances are contained in clause 5AA which, it is proposed, will be inserted into the Criminal Law Consolidation Act. They are:

(a) using torture;
(b) having an offensive weapon;
(c) knowing the victim to be acting in the capacity of police officer, a prison officer or other law enforcement officer, or committing the offence in retribution for something done by the victim in this capacity;
(d) trying to deter or prevent someone from taking or taking part in legal proceedings or in retaliation for their doing so;
(e) knowing the victim to be under the age of 12 years;
(f) knowing the victim to be over the age of 60 years;—

The DEPUTY SPEAKER: The members for Colton and Mitchell and the Attorney will come to order. It is an unlikely troika. The member for Bragg.

Ms CHAPMAN: I continue:

(g) the victim being a family member;
(h) committing the offence in company with another person or persons;
(i) abusing a position of authority or trust;
(j) knowing the victim to be in a position of particular vulnerability because of physical or mental disability;
(k) (i) knowing the victim to be in a position of particular vulnerability at the time of the offence because of the nature of his or her occupation or employment;
(ii) knowing that the victim was, at the time of the offence, engaged in a prescribed occupation or employment and the offender knowing this and the nature of that prescribed occupational employment;
(l) almost acting in breach of an injunction or court order relevant to the offending conduct.

Generally speaking, we agree with the aggravating indicia. One way of meeting the Labor Party's policy objectives would have been to amend the Criminal Law Consolidation Act. By that means the sentencing regime rather than the maximum penalty regime could have been adjusted by requiring courts to impose higher penalties where aggravating

circumstances exist. Of course, at present, tribunals already take account of aggravating circumstances in the ordinary sentencing process. There is a good deal of scepticism in the community about maximum penalties. Everyone knows that very few criminals are ever sentenced to the maximum.

Apart from sentences of life imprisonment, I request the Attorney to inform the parliament of the number of occasions in the last five years in South Australia when a court has imposed a maximum penalty. I request him to put that on the record. However, the government has chosen to use the maximum penalty rather than a sentencing regime, and the opposition does not propose embarking on the futile task of seeking to insert this new scheme into the Sentencing Act. There are a number of problem areas in the circumstances of aggravation. First, subparagraphs (e) and (f) contain arbitrary age limits, that is, 12 years for children and 60 years for older people.

The stipulation of a particular age can be criticised. Why is it more serious to assault a child aged 11 years and 11 months than it is to assault one aged 12 years and one month? Why 12 years and not 13 or 11; likewise with 60? There was a time when people aged 60 might have been considered old or elderly, but not so now. Many people aged 60 are very active. However, we do accept that the stipulation of age rather than other criteria of vulnerability is inevitable. We accept that there are already in the criminal law age limits, such as the age of consent, the age at which children can give evidence, etc.

There are also similar arbitrary age stipulations in other areas of the law, such as contractual capacity, qualification to vote, eligibility for pensions, etc. The same subparagraphs raise another issue. In each case it is an aggravated offence to assault a victim when the offender knows the victim to be over or under a particular age. In other words, it will be necessary for the prosecution to prove actual knowledge on the part of the offender. The same issue arises in subparagraphs (c), (j), (k)(i) and (k)(ii) of new section 5AA. If this government were really interested in the interests of victims, as it pretends, it would have removed the element of knowledge and imposed a strict liability on offenders. In other words, if you attack a child without knowing their age, you run the risk that they may be under 12 and you may be exposed to the possibility of a higher penalty.

I note that new paragraph (k)(ii) refers to persons engaged in a prescribed occupation. The second reading explanation gives as an example of a prescribed occupation a sheriff's officer. We would prefer to see these officers described in the legislation. It is simply not good policy to have the criminal law extended by regulations: all elements of criminal offences should be on the statute book.

In relation to new paragraph (l), I note that an aggravating factor is acting in breach of an injunction or court order. We certainly agree that acting in defiance of a specific court order is a very serious matter and should be visited with serious consequences. The example of domestic violence orders is given. I ask the Attorney whether he has given any consideration to the application of this law in relation to Family Court orders or orders made under other commonwealth legislation? It is a notorious fact that many Family Court orders are the subject of alleged breaches, and no doubt these breaches are in contempt of the court. It could be argued that we should not superimpose a regime of criminal penalties over the civil redress that is available. However, the opposition is content to support this aspect of the legislation in the belief that the common law rule of double jeopardy will apply and people will not be subject to double penalties for the same conduct. However, I would be pleased if the Attorney-General would put on the record his advice in relation to the interaction between these aggravated penalties under state law with penalties for contempt of court, especially contempt of commonwealth courts.

I note the new provision that, where a jury finds a person guilty of an aggravated offence and two or more aggravating factors are alleged in the same instrument of charge, the jury must state which of the aggravating factors it finds to have been established. This would appear to be contrary to the usual rule that a jury is not required, in effect, to identify its reasoning. Can the Attorney-General give other examples of similar instances where juries are required by law to state factors? I note that proposed new section 5AA(4) refers to a jury. As we have trials by judge alone, should not this subsection impose the obligation on a judge in the case of a trial by judge alone? I note that the definition of 'spouse' includes de facto spouse. Was consideration given to including same-sex spouses and, if so, why was it rejected?

Causing harm. I turn now to the new provision in division 7 (or part 3) of the Criminal Law Consolidation Act. Division 7 is currently entitled 'Acts causing or intended to cause danger to life, or bodily harm.' This title is amended, and division 7 will now comprise one section (that is, section 20), which will set out for the first time the statutory definition of 'assault' and maximum penalties of imprisonment for two years for a basic offence and three years for an aggravated offence. The second reading explanation states that the newly defined offence of assault 'reflects the case law on what constitutes assault'. That is our understanding and it is also the view of the Criminal Law Committee of the Law Society which, in a letter dated 16 February 2004 to the Attorney-General, describes the definition as 'previously defined by the common law'.

By way of an aside, I commend the Criminal Law Committee of the Law Society for its long letter in relation to this bill. In accordance with the politically neutral stance of the Law Society and following longstanding practice, the society's comments on legislation are addressed to the government but circulated to the opposition and other members of parliament. In the present case, the letter of the Law Society is dated 16 February. Therefore, we have not had as much time to consider and absorb the society's comments as we would have liked. I certainly do not blame the Law Society for this because the bill is complex and, quite frankly, its title is deceptive. It is referred to as the aggravated offences bill, but, as I mentioned earlier, this bill goes a lot further than simply introducing the notion of aggravated offences for vulnerable victims. Members of the Law Society are not paid for commenting on legislation: they do it out of a sense of public duty. Given the sneering and strident references to criminal lawyers by the Premier, and snide remarks by his Attorney-General about residents of leafy suburbs, members of the legal profession would be justified in ignoring this government's legislation. However, I commend them for not adopting that attitude.

In relation to the new description of assault, new section 20 provides:

> However, conduct that lies within limits of what would be generally accepted in the community as normal incidents of social interaction or community life cannot amount to an assault.

We seriously question the utility of provisions such as this. The sentiment expressed is fair enough. It is a description of a concept with which we generally agree and which reflects

current legal policy. Inserting a subsection of this kind is akin to extracting one sentence out of a judicial decision and then setting it in concrete in a statutory definition. The advantage of leaving these issues to the courts is that they can be developed on a case by case basis. They can be refined and explained. When they are put into statute and the common law is sidelined the result is an inflexible rule or, as the Law Society puts the matter, it creates a degree of inflexibility. This trend is not new. We see it in section 238 of the Criminal Law Consolidation Act in relation to offences of a public nature introduced in 1992, which attempts to define the concept of acting improperly. That section provides:

> If the officer knowingly or recklessly acts contrary to the standards of propriety generally and reasonably expected by ordinary and decent members of the community.

New section 20 speaks about what would be generally accepted in the community as a normal incident of social interaction. It might be argued that many things which would be generally accepted as normal are not in fact acceptable, for example, domestic violence. Until recently a lot of people in the community seemed to have accepted that domestic violence was normal. That does not mean that the law should adopt that standard. We fear that this provision is just one of a number of provisions in this bill which will give rise to endless argument, debate, uncertainty and cost.

New division 7A, 'Causing physical or mental harm', repeals sections 20 to 27 and substitutes new offences for the following: impeding a person endeavouring to save himself from a shipwreck (old section 20); wounding etc. with the intent to do grievous bodily harm (old section 21); malicious wounding (old section 23); choking or stupefying to commit an indictable offence (old section 25)'; and maliciously administering poison with the intent to injure, aggrieve or annoy any other person (old section 27)—and Emily comes to mind at that point.

In place of these offences, new general offences are enacted: intentionally causing serious harm; recklessly causing serious harm; negligently causing serious harm; intentionally causing harm; and recklessly causing harm. Members should note the distinction will be drawn between serious harm and harm. Harm includes both physical and mental harm, and the former includes infection with a disease such as HIV.

The proposed section 21 incorporates a number of definitions, eg harm, mental harm, physical harm, recklessly, serious harm. New section 22 is a long section which describes 'conduct falling outside the ambit of this Division'. The very fact that such a long section describing what is not covered is necessary highlights the difficulty of this approach. Generally speaking, statutes on the criminal law define what is included, not what is excluded.

It is obvious that the draft of this legislation realised that there are some forms of 'harm' which would otherwise be caught by the legislation. For example, a parent smacking a child, a teacher disciplining a child, the circumcision of a male child, participants in sporting activities. The example given in the section is a boxer—perhaps rugby players might have been a better example. The views of the Law Society on these sections is worth placing on the public record:

> It is well arguable that the definition of harm is very wide and incorporates psychological harm and emotional reactions where they result in psychological harm. Psychological harm is not directly defined other than clearly meaning mental harm. Difficulties directing a jury on the issue of harm may well arise. The observation that grievous bodily harm, meaning really serious harm, can also be made of the definition 'serious harm'. . . and/or 'protracted impairment'.

There will undoubtably be a period of increased litigation on such issues.

> Clause 22 defines and deals with the issue of conduct falling outside the ambit of the Division. This refers to the conduct of what would generally be accepted in the community as normal incidence of social interaction or community life. Conceivably, a person may act morally inappropriately or reprehensively and this may not be generally accepted in the community as appropriate behaviour. Harm could arise negligently or deliberately in the area of personal relationships, particularly of a mental nature for the termination of a relationship in circumstances which may not necessarily be accepted as normal incidents of social interaction or community life but heretofore have been not within the ambit of criminal charges. A victim who suffers from a psychiatric reaction such as depression at the termination of a relationship where one party acts inappropriately or reprehensively. It is not clear that such conduct would be excluded under clause 22. Not being defined is too vague and uncertain. If this is desirable to be included then it perhaps should be defined as requiring diagnoses of a mental illness or disorder, or otherwise appropriately.

They make a very good point. The Attorney-General's second reading explanation simply fails to address the issue raised by the Law Society. I can put the question more bluntly. This law will make it a criminal offence, punishable for up to 20 years, for causing 'mental harm' to another person. The definition says that mental harm:

> does not include emotional reactions such as distress, grief, fear or anger unless they result in psychological harm.

In other words, if emotional reactions such as distress, grief, fear or anger do result in psychological harm, they will constitute 'harm' for the purpose of this new criminal offence. Anyone who causes such harm will be stigmatised as a criminal and liable to be jailed.

As the Law Society points out, this means that if a former domestic partner suffers a psychiatric reaction, such as depression, because of the actions of the former partner in terminating the relationship, that former partner might be exposed to criminal liability. This issue is simply not addressed in the second reading speech. Nor is it addressed appropriately in the report of the Model Criminal Code Offices Committee.

The parliament and the public are entitled to an explanation from the Attorney-General on the record. I would be obliged if the Attorney does not come back with a glib response based on section 22(4), which excludes conduct which:

> lies within the limits of what would be generally accepted in the community as normal incidents of social interaction or community life.

There may well be cases in many relationships, indeed in many marriages, where the behaviour of one or both parties is so appalling that it might be beyond what is generally accepted. But does that mean we have to stigmatise this conduct as criminal, even in cases where one party or the other does in fact 'intend to cause mental harm' or where the defendant's 'primary purpose' was to cause such harm.

No doubt such conduct is totally reprehensible. The question is should the criminal law intrude into private relationships in this way? Notwithstanding our reservations, these provisions may be fair enough. They may be reasonable. However, the point I make on this occasion is that the government never announced it was intending to introduce these new offences: it was not part of its election policy. More importantly, the Attorney-General's second reading explanation glosses over the issue in two paragraphs with the

assurance that 'the ordinary disappointments of life should not be elevated into criminal offences'.

We agree with that sentiment, but the point is: does the bill achieve that objective? I ask the Attorney-General to indicate whether any other state or territory has adopted these provisions and, if so, would he provide the opposition with a list of the relevant comparable sections in other legislation? I also ask the Attorney-General to place on record whether he has received any advice from the Police Commissioner, or the Director of Public Prosecutions, to indicate that there have been examples of conduct which will be covered by these sections and which is presently going unpunished because of the absence in our criminal law of appropriate provisions to prosecute them. When was that advice obtained and what is its substance? Finally on this point, is the Attorney-General aware of any case in which a person who would be liable to be prosecuted under these provisions has not been prosecuted?

I turn now to criminal negligence. The second reading explanation acknowledges that the new 'causing harm offences' will include a new offence of causing harm by criminal negligence (*Hansard* page 585, column 1). Later in the same speech, the 'newness' of this offence was discounted in the following passage (*Hansard*, page 585, column 2):

> To ensure the new harm offences cover the same conduct that is proscribed by existing offences, the concepts of harm, consent, recklessness and criminal negligence have been defined with great care. . .

In that passage the government is trying to assure the parliament and the community that these new offences 'cover the same conduct'; in other words, that these are merely new descriptions of offences which are already proscribed by our criminal law, be it statute law or common law. So far as I can see the subject of criminal negligence is not again mentioned in the second reading explanation or in the detailed explanation of clauses.

The Law Society has correctly identified that 'the inclusion of criminal negligence widens the scope to which criminal law will now be applied to criminal actions' (paragraph 4.10); and later: 'The inclusion of criminal negligence will broaden the cover of activities which may have previously not been elevated to criminal conduct'. This new offence is proposed to appear in new section 23(4), which states:

> A person who causes serious harm to another, and is criminally negligent in doing so, is guilty of an offence.
> Maximum penalty: Imprisonment for five years.

There are two more serious offences in the same bracket of offences; that is, intending deliberately to cause serious harm, 20 years (new section 23(1)), and recklessly causing serious harm, 15 years. It is important to note that the new offence of causing harm by criminal negligence applies in cases where the defendant does not intend to cause the harm.

So far as I am aware, the expression 'criminally negligent' does not apply elsewhere in our statute law. Section 19A of the Criminal Law Consolidation Act deals with causing death by dangerous driving. It refers to a person who:

> . . . drives a motor vehicle in a culpably negligent manner, recklessly, or at a speed or in a manner dangerous to the public.

As the Attorney-General well knows, most charges under that section are based upon driving in a manner dangerous to the public, and there are well-established rules. However, the expression used in that section is 'culpably negligent' and it is equated with 'recklessly'. If we already have the notion of culpable negligence in our statute dealing with criminal law, why introduce a new concept of criminal negligence? In this context, I therefore also request that the Attorney-General provide responses to the following questions in relation to this issue. Has any other state or territory adopted these model provisions? If so, will the Attorney provide the opposition with a list of the relevant comparable sections in other legislation? I also ask the Attorney-General to place on record whether he has received any information from the police commissioner, the Director of Public Prosecutions or anyone else to the effect that there is conduct of a kind which will be covered by this section and which is presently going unpunished because of the absence in our criminal law of an offence of causing harm by negligent conduct.

We are concerned about the implications of this new offence. More importantly, we are concerned about the apparent absence of public consultation on this new offence. The opposition has examined the report of the Model Criminal Code Officers Committee on this subject. It is fair to say that the officers' discussion on this topic was very brief. The officers refer to the fact that there is a similar provision in section 24 of the Victorian Crimes Act, which section provides:

> A person who, by negligently doing or omitting to do an act, causes serious injury to another person is guilty of an indictable offence—five years maximum.

It appears from the report that this offence has been on the statute books in Victoria for more than 100 years. The offence was introduced:

> . . . as a consequence of a major train accident on the Ballarat line, and the mover intended the standard of negligence to be comparable to that for manslaughter.

The report refers to the Victorian decision of R v Shields (1981) Victorian Reports, page 717. In that case, the Full Court held that the standard of negligence required under section 24 was the same as the standard for 'criminal negligence manslaughter'. The committee expressed the view that an offence of negligently causing serious harm should be included in the Model Criminal Code. The committee gave two reasons for its inclusion. The first was its perception that existing judicial decisions were inadequate and that a gap needed to be filled. The second reason was:

> Such an offence is necessary in order to criminalise those instances of gross negligence that cause serious harm, such as the removal of safety equipment in the workplace.

The possibility that this legislation might apply unfairly in the workplace is, I know, a concern for the member for Davenport, the shadow minister for industrial relations and workplace services. I am sure that he will raise some issues and important points in relation to this aspect. It is clear from a close perusal of the report that support for the inclusion of such an offence in the Model Criminal Code was not unanimous. For example, the report notes that the judges of the Queensland Supreme Court had reservations about incorporating negligence into the criminal law. On pages 45 and 46 of the report they were quoted as criticising the proposed definition of criminal negligence on the ground that:

> That definition may be regarded as falling short of the high level of negligence necessary to constitute criminal negligence. Currently, 'recklessness involving grave moral guilt', 'gross negligence', 'culpable conduct' and 'callous disregard' are commonly used in summing up the notion. . . the judges think that the present proposal substantially widens the range of matters which may be criminally charged so that matters not traditionally regarded as crimes may now be tried in the criminal courts. Indeed, a high percentage of defendants in the familiar motor vehicle and master and servant cases

may be liable to prosecution if the present proposal is brought into law.

The Model Criminal Code Officers Committee simply dismissed that criticism, saying that it was following the test for criminal negligence approved by the High Court in the South Australian case of Wilson, 1992, and further developed in subsequent High Court cases. The committee says that the offences existed in Victoria for many years without adverse results. However, unless and until the opposition receives a satisfactory explanation for the incorporation of criminal negligence into our criminal law, it will not support this proposal. It is interesting to note that the landmark study of the criminal law did not recommend extending the concept of negligence into the criminal law (see the Mitchell Report on Criminal Law and Penal Methods, Fourth Report, the Substantive Criminal Law, 1977, page 54).

I now turn to the proposed new section 23(2), which enables a court to impose a higher penalty than the maximum proscribed in section 23(1). In other words, the court may impose more than 20 years for a basic offence and more than 25 years for an aggravated offence. This section seems to be contrary to the general scheme of criminal law statutes, which is to impose a maximum penalty for the worst possible case. If you have an indefinite maximum sentence, as contemplated by this new subsection, how does the court know what parliament says is the maximum for the worst offence? It appears that the parliament is delegating to the courts its role to set the maximum. I ask the Attorney-General to indicate in his response the following:

1. Does any other jurisdiction have a comparable provision?

2. Who recommended the inclusion of this provision?

3. In light of recent High Court decisions, has the Attorney received any advice about the constitutional validity of an indefinite maximum penalty?

4. Is this provision motivated by a desire to see South Australian courts adopt the American system of sentencing people to 100 year gaol terms?

I now turn to alternate verdicts. It is appropriate for there to be a special provision relating to alternate verdicts. Existing section 24, to be appealed by this bill, contains similar provisions. However, the Law Society has written in relation to this matter:

> There may be a number of alternate verdicts available in relation to aggravated offences, given that a jury is to find a person guilty of an aggravated offence or within the categories of serious harm and harm. These are separate offences, all of which need to be highlighted to a jury. The potential for appeals and increased court work is significant.

Accordingly, I invite the Attorney-General to provide information and argument to refute those assertions by the Law Society. I also ask him to indicate whether the DPP has given any advice in relation to the difficulties in relation to instructing juries under this section. If so, what is that advice? If not, will the Attorney agree to obtain the advice of the DPP and inform the parliament of it? I also ask whether the judges have commented on this. I understand the Attorney has indicated that there has been some correspondence from them and that that will be provided to the opposition.

Finally, on proposed section 25, I note again that it refers to a jury. As we have trial by judge alone, it may be appropriate for this expression to be widened to include a court or tribunal. I mentioned earlier in relation to kidnapping that, in our view, in the heading to proposed division 9 and the marginal note to section 35 the single word 'kidnapping' is inept to describe all the offences in that section. Those headings ought to be expanded to include 'wrongful removal of children' or similar language.

I wish to briefly comment on serious criminal trespass on non-residential buildings in relation to clause 22. This clause will amend section 169 of the Criminal Law Consolidation Act which presently imposes a maximum of 10 years imprisonment for serious criminal trespass in a non-residential building. If the offender is armed or commits the offence in company with others, the maximum penalty is already 20 years. In other words, the existing law already contains an aggravating circumstance. Consistent with the scheme of this bill, that specifying aggravated circumstance is removed, and the general provisions of section 5AA will apply. However, in relation to this matter, the Law Society observed:

> This clause can still create injustice where dealing with youthful offenders although over the age of 18 and with limited prior criminal history, and where there are present aggravating features

Has the Attorney General considered this criticism and, if so, what is his response?

In relation to obstructing or disturbing secular weddings and funerals, I have already indicated that the Liberal opposition will support this amendment, but I ask the Attorney-General to put on the record who suggested this amendment. Will he inform the house of any circumstances that he is aware of in which an obstruction of a secular service has occurred but could not be prosecuted by reason of the absence of this provision? Could he also indicate the number of prosecutions of offences against existing section 7A of the Summary Offences Act that have occurred in the past 10 years?

Finally, will he put on record his response to the criticism by the Law Society that the definition of religion is deficient in that it only accommodates philosophies and systems of belief which are generally recognised in the Australian community?

The Hon. M.J. Atkinson: Public, not community. Community is a subset of the public.

Ms CHAPMAN: That is what they said; it is their quote.

The Hon. M.J. Atkinson interjecting:

The DEPUTY SPEAKER: Order!

Ms CHAPMAN: In conclusion, we seek answers to the questions posed in my contribution. I am sure that other questions will be raised in the second reading, and the answers to these should be on the public record and should be available before the bill goes into committee. I note the Attorney-General's indication that he will agree to an adjournment at the conclusion of the second reading debate tonight.

Finally, it is a matter for regret that the Attorney-General has allowed the government proposal for aggravated offences to be combined with a complex partial codification of an important part of the criminal law. If the Attorney-General had any practical experience of the operation of criminal law, he would not have introduced the bill in this form. We will support the second reading and, depending upon the answers given, will move amendments during the committee stage.

Mr SNELLING (Playford): I welcome this Bill. My constituents have been particularly appalled by crimes of violence against both children and the elderly. There appears to be a certain class of criminal who preys upon the elderly alone in their homes because that class of criminal views those people as an easy target, knows that they are easily subdued and terrified and also that more often than not they

have valuables in their home. So, I welcome this legislation. I think that, where a criminal deliberately seeks out an elderly or vulnerable victim, there should be an element of aggravation as far as the offence is concerned. I think this bill is another example of the government responding to disquiet in the community about these matters.

Mrs REDMOND (Heysen): I, too, wish to make a brief contribution and to indicate to the house that I have some disquiet about one particular aspect of the legislation which relates to the age of the person against whom a crime is perpetrated. I do not disagree with what the member for Playford indicated in his address, and I believe that there is some community disquiet about the nature of crime where particularly vulnerable people are the victims. The difficulty I have is that I believe that we should be concentrating on the issue of their vulnerability and not the issue of their age. It seems that it is just as likely that someone is very vulnerable at the age of 50, or not vulnerable at the age of 70. I think the courts already have sufficient discretion to recognise that there should be some differential within the sentencing of a person. If a young, fit man gets into a bit of a blue at the pub with someone of his own age and size, that is not generally treated in the same way in sentencing as someone who attacks a little old lady in the street.

It is the issue of vulnerability and not the age of the person who is attacked. I have a severe disquiet about it because it seems that what we are creating is dangerous. If you are 59 years and 11 months you can have the same crime perpetrated against your person as person of 60 years and one-month; yet the maximum penalty is going to be different. I believe that we should be indicating to the court that we do want circumstances where it is aggravated. I do not have any particular difficulty with the other aspects of the aggravation definition, but I do have difficulty with the idea that because someone is of a particular age, whether that be below the age of 12 or above the age of 60, then by virtue of their age and their age alone the category of offence changes and the consequences of the offence change. That is my only contribution to this matter. I simply point out to the house that I do not think it is good law to make laws based upon someone's age rather than leaving to the court the ability to assess the vulnerability of any particular circumstance of the particular victim—

The Hon. M.J. Atkinson interjecting:

Mrs REDMOND: The longer the attorney interrupts me, the longer I will speak. It is really just that issue that concerns me about this legislation. As I said, I am not worried about the idea that we want to indicate to the court that, where someone is vulnerable and particularly likely to suffer worse injury because of an offence such as an attack against their person, it should treat the perpetrator more harshly, but to say that because they are 60 that is the guiding principle I think is wrong. I believe that we should reconsider that and do it on the basis merely of the vulnerability of the person against whom the crime is committed.

The Hon. R.B. SUCH (Fisher): I will make a brief contribution. I can understand the intent of this provision and at the end of the day I am inclined to support it. However, I do not know how some of the provisions in relation to age are going to work in reality in the world—unless we tattoo on a person's forehead their age or some other identifying characteristic. I accept the fact that we do not want people breaking into the homes of the elderly and terrifying them and so on. I would have thought that there are ways of dealing with that issue, and one would hope that the courts have enough nous to provide a penalty which reflects society's concern about people intruding and attacking the vulnerable, in particular the elderly. I am not sure that this measure, though obviously well-intentioned, is really a step in the right direction.

I would argue that the more complicated you make the law, the less likely it is that the layperson will understand it and, probably, the less likely that people would accept it or see it as appropriate. Nowadays the law is already incredibly complicated, whether you are talking about civil law, criminal law or other variations. The answer to a lot of this is not additional penalties. One would hope that, in our society, through education and related emphasis on values and the family and so on, we might get to a point where people actually respect the elderly and respect others and not countenance the idea of breaking into their homes and assaulting them. It is like changing speed limits artificially. If the speed limit does not reflect the road situation, then motorists are unlikely to abide by it because they do not see it as relevant and appropriate.

What is happening in the quest for more (and so-called tougher) penalties is, I think, that we are moving away from the underlying issues related to the values in our society which should be reinforced. Essentially, what we have is an increasingly selfish society where there is less and less regard for other people. We cannot put on to the schools the complete responsibility for trying to fix up the ills of society. All people coming through our system of socialisation and education, formal and informal, and the family, should have an awareness, understanding and respect for others, particularly the elderly. It is one of the very strong characteristics of the cultures in Asia, particularly of the Chinese: the respect they have for the elderly. There is still some slight element of that remaining in traditional Aboriginal culture but, sadly, it is diminishing every day.

As I said at the start, I can see what the government is trying to do in sending a signal to people that if you attack the elderly, break into their homes or those of the very young, you are going to get an extra penalty or an additional consideration by the court of possibly a longer jail sentence. However, I do not think that it is the real answer. As the members for Heysen and Bragg alluded to, there is a real difficulty in laws that are based on an assessment of age by an offender. If you attack someone who is 11, vis-a-vis someone who is 13, at the end of the day you really are splitting hairs. In either situation it is an outrageous thing to do and unacceptable behaviour.

With those concerns, I trust that we do not just go into a situation calling for more and longer penalties where they are never implemented anyway. The maximum penalty is rarely ever implemented. Judges and magistrates are not silly; they will take into account the particular circumstances and I would have thought that there were simpler, more effective ways of doing that rather than another complicated piece of legislation which will mean that even the everyday criminal will need to have formal training in the law and certainly will need to be able to determine the age of a potential victim. I do not want to be flippant about it but I think that there is a danger that the government might be responding to legitimate concerns in the community but creating a whole lot of hammers—I am not saying to crack a nut, but it is a serious issue. However, I am not sure that this approach is the appropriate one or is not somewhat out of sync with what is really required. With those reservations, I trust that this

measure will, at the end of the day, be something that is workable and not simply an exercise in calling for or having increased penalties that do little to protect the vulnerable or anyone else in the community.

The Hon. I.F. EVANS (Davenport): I want to raise some questions in this second reading debate for the minister to take on board so he can provide some answers to the house. Depending on the minister's response, we may or may not need to flesh them out if we ever go into committee on this bill.

The Hon. M.J. Atkinson: In this parliament.

The Hon. I.F. EVANS: Yes, in this parliament. In my industrial relations portfolio, I have some interest—

The Hon. M.J. Atkinson: Industrial manslaughter?

The Hon. I.F. EVANS: Yes. I have an interest in the workplace effects of this bill. Proposed new section 23(4) raises issues such as the implications of the proposed offence of causing serious harm by criminal negligence. On my reading of it, the bill appears to expand the concept of criminal negligence, and I am just wondering whether the Attorney is aware of any examples of cases in which a person would be liable to be prosecuted under these new provisions but cannot be prosecuted because of the absence of such an offence under the current law. In other words, I am asking the Attorney to explain what is the deficiency in the current law that suddenly requires the introduction of this concept of criminal negligence, in particular, to the workplace.

Secondly, I would be interested to know, prior to introducing this bill, what consultation the government undertook with the business community and the unions in relation to the proposed new offence. I would also be interested to learn what the reaction of the business community and the union movement was in relation to the proposed introduction of an offence of causing serious harm by criminal negligence. In particular, I would be interested to know whether the UTLC has been informed that workers will be exposed to criminal prosecutions in addition to prosecution under section 58 or 59 of the Occupational Health, Safety and Welfare Act 1986, and what has been the response of the unions. If they have not been consulted on that concept, will the minister undertake to consult with them between the second reading and the committee stage so we can be made aware of their response?

The Hon. M.J. Atkinson: However great that gap may be.

The Hon. I.F. EVANS: Yes, however great that gap may be. Has Business SA been told the same in relation to employers, in that they will be exposed to criminal prosecutions? If so, what was their reaction? We would also be interested to hear that prior to the committee stage, whenever that might be. I understand that similar offences may exist in other states. Will the Attorney supply the house with examples of the cases that have been prosecuted in other states, in particular those cases involving workplace situations?

I ask these questions because, although I have not had a briefing directly from the agency on it, my reading of it, the Law Society's reading of it and a quick look at the bill today by business groups suggest that there may be an expanded range of what is known as criminal negligence that may be applied in the workplace under this bill. The business community would be concerned if this was a step towards an industrial manslaughter type provision by stealth, which has caused great consternation in other states when attempts have been made to introduce it. We seek clarification of exactly what the ramifications are for the business community, whether they be employers or employees, in regard to this section of the bill. I will not debate other measures in the bill. I understand the member for Heysen's concern in relation to some of the matters raised in the bill and I think she put that quite eloquently. At this stage, the Attorney can look at these questions in the gap, however long that may be, and if I am still in the parliament when he responds I will be happy to consider his arguments at that time.

The Hon. J.D. HILL secured the adjournment of the debate.

AUSTRALIAN CRIME COMMISSION (SOUTH AUSTRALIA) BILL

The Hon. M.J. ATKINSON (Attorney-General) obtained leave and introduced a bill to make provision for the operation of the Australian Crime Commission in South Australia; to repeal the National Crime Authority (State Provisions) Act 1984; to make related amendments to other acts and for other purposes. Read a first time.

The Hon. M.J. ATKINSON: I move:

That this bill be now read a second time.

The National Crime Authority was created by the commonwealth National Crime Authority Act 1984 and started on 1 July 1984. It was created owing to inquiries into organised crime in Australia in the early 1980s and was a national recognition of the need to create a specialist national law enforcement agency to combat organised crime. For obvious constitutional reasons, it was necessary for that body to have underpinning and coordinated state legislation. In South Australia, that was the National Crime Authority (State Provisions) Act 1984.

At the Summit on Terrorism and Multi-jurisdictional Crime on 5 April 2002, Australian government leaders agreed to replace the National Crime Authority with an Australian Crime Commission. Commonwealth legislation to establish the ACC, the Australian Crime Commission Act 2002 (the commonwealth act), started on 1 January 2003. The ACC builds on the strengths of the NCA while removing barriers to its effectiveness. The ACC is a crucial element in the investigation and prosecution of complicated and organised criminal activity of a sophisticated kind. It is important to note that the ACC has a new criminal intelligence role that includes criminal intelligence collection, analysis and dissemination nationally. This function accords with a growing policing emphasis at all levels for intelligence led investigations of serious and organised criminal activity.

Ms Chapman interjecting:

The Hon. M.J. ATKINSON: Yes, that exists. Complementary state and territory legislation is necessary to provide for the operation of the ACC under state and territory law, so as to ensure that the ACC can operate effectively to combat organised crime across jurisdictional boundaries. The state bill will enable the ACC to conduct its operations into activity that breaches state law, whether or not those offences have a federal aspect. I commend the bill to members. I seek leave to have the balance of the second reading explanation incorporated in *Hansard* without my reading it.

Leave granted.

At its meeting on 5 November, 2002, the Inter-Governmental Committee on the NCA (the IGC-NCA, now the IGC-ACC) agreed to arrangements for the preparation of a model States' and Terri-

tories' Bill to complement the Commonwealth Act. Specifically, the IGC-NCA endorsed the preparation of a model Bill by the Parliamentary Counsel's Committee (PCC). A model Bill was finalised by the PCC, in consultation with officers in each State and Territory and the Commonwealth.

Broadly, the model Bill:

- provides for the functions of the ACC under South Australian law, including the functions of conducting investigations and intelligence operations into relevant criminal activity;
- establishes and provides for the new functions of the Board and CEO under South Australian law. The functions complement the provisions of the Commonwealth Act that establish the ACC's governance;
- provides for the authorisation of special intelligence operations and special investigations by the Board (special ACC operations/investigations). The Board's authorisation of special ACC operations/investigations will be subject to a number of safeguards in the form of special requirements for the composition of the Board, special voting requirements and a power for the IGC-ACC to revoke the authorisation;
- provides for the investigatory powers of the ACC under South Australian law, including search powers under warrant and coercive examination powers. These powers will only be available to the ACC in special ACC operations/investigations. The ACC's examination powers under South Australian law will be exercised by examiners, who will be independent statutory officers appointed under the Commonwealth Act;
- creates offences for failure to comply with the provisions of the Act smoothing the effective performance of the ACC's functions under South Australian law. These offences will include failing to attend an examination or failing to answer questions, and failing to produce documents or things when required to do so by a summons. The offences in the Bill will reflect the offences contained in the Commonwealth Act and the existing South Australian NCA legislation; and
- repeals the existing South Australian NCA legislation and contains necessary transitional provisions to smooth the transition from the NCA to the ACC under State law and consequential amendments to other Acts that are necessary because of the NCA's replacement by the ACC.

In general terms, the Bill is a part of complementary legislation enacted both in other States and Territories and at the Commonwealth level to ensure that Australia has an enhanced and effective national framework to allow the new ACC to fight serious organised crime.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal.

3—Interpretation

This clause defines the words and expressions for the purposes of the Bill. Clause 3(1) includes the following key words and expressions:

ACC operation/investigation means an ACC State intelligence operation or an ACC State investigation. This covers both the ACC's function in relation to intelligence operations and its function in relation to investigating relevant criminal activity.

Relevant criminal activity is defined in the Commonwealth Act to mean any circumstances implying, or any allegations, that a serious and organised crime may have been, may be being, or may in future be, committed against a Commonwealth, State or Territory law. This Commonwealth definition is applied to the Bill under the operation of clause 3(2).

ACC State intelligence operation means an intelligence operation that the ACC is undertaking under clause 5(b). This covers the ACC's function in undertaking intelligence operations in relation to relevant criminal activity relating to State offences.

ACC State investigation means an investigation that the ACC is conducting under clause 5(a). This covers the ACC's function in conducting investigations in relation to relevant criminal activity relating to State offences.

intelligence operation means the collection, correlation, analysis or dissemination of criminal information and intelligence relating to a relevant criminal activity. Intelligence operation has a broad meaning to ensure that the ACC is able to undertake fully its criminal intelligence role under State law.

serious and organised crime is defined to cover a wide range of serious offences that are the same as those contained in the equivalent definition in the Commonwealth Act, except for certain offences under the Commonwealth *Proceeds of Crime Act 2002* that are not relevant in a State context. The offences listed in the definition of "serious and organised crime" in the Bill mirror the offences that the former NCA could investigate, with the addition of offences that involve firearms and cybercrime. Cybercrime has been added to enable the ACC to respond to this emerging issue. Firearms offences have been added to the list to ensure that the ACC has a clear power to investigate the illegal trafficking of firearms.

The definition of serious and organised crime covers a listed offence that is punishable by 3 years' imprisonment or more and that is not committed in the course of a genuine industrial dispute of a specified kind. It does not include an offence in relation to which the time for commencement of prosecution has expired.

The wide range of serious offences included within the definition of "serious and organised crime" will ensure that the ACC has a broad basis on which to undertake its investigatory and criminal intelligence functions.

The definition of serious and organised crime covers a listed serious offence where there are also specified organised crime elements involved in the offence in question. In particular, the offence must also—

- involve 2 or more offenders and substantial planning and organisation; and
- involve, or be an offence of a kind that ordinarily involves, the use of sophisticated methods and techniques; and
- be an offence that is committed, or is of a kind that is ordinarily committed, in conjunction with other offences of a like kind.

special ACC operation/investigation means an ACC State intelligence operation or an ACC State investigation that the Board has determined to be a special operation or investigation. This is an important definition as the ACC can only access its special powers, such as search warrants and examinations, as part of a special ACC operation/investigation. It cannot access these powers for other ACC investigations or operations authorised by the Board.

Clause 3(2) applies definitions of terms contained in the Commonwealth Act to the Bill unless the Bill indicates a contrary intention.

Clause 3(3) extends the meaning of the term "serious and organised crime" under the Bill to include incidental offences that are connected with a course of activity involving the commission of a serious and organised crime.

Clause 3(4) makes it clear that references in the Act to a function include a reference to a power or duty, other than in Part 2 (which deals with the functions and governance of the ACC).

4—Act to bind Crown

Clause 4 provides that the Bill binds the Crown in right of the State and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

Part 2—The Australian Crime Commission, the Board and the Inter-Governmental Committee

Division 1—The Australian Crime Commission

5—Functions of ACC

Clause 5 sets out the functions of the ACC. This clause complements section 7A of the Commonwealth Act, which provides for the functions of the ACC under that Act.

Clause 5(a) provides for the investigatory function of the ACC, which is similar to the investigatory function previously undertaken by the NCA. This provision will enable the ACC to investigate relevant criminal activity where the Board has consented to the ACC doing so under the Commonwealth Act. The ACC will only be empowered to investigate relevant criminal activity to the extent that it is, or includes, a State offence or offences.

Clause 5(b) provides for the ACC to undertake intelligence operations. This function reflects the new role that the ACC has in relation to criminal intelligence, in addition to the investigatory function previously undertaken by the NCA. This provision will enable the ACC to undertake intelligence operations where the Board has consented to the ACC doing so under the Commonwealth Act. As with its investigatory function, the ACC will only

be empowered to undertake intelligence operations in connection with State offences.

Clause 5(c) provides that the ACC must provide reports to the Board on the outcomes of its investigations and intelligence operations.

Clause 5(d) provides that the ACC has such other functions as are conferred on it by other provisions of the Bill or any other Act. For example, functions could be conferred on the ACC by other State laws creating investigative powers, subject to the necessary legislative consent under the Commonwealth Act.

6—CEO to manage ACC operations/investigations

Clause 6 provides that the CEO's functions are to manage, coordinate and control ACC operations and investigations, determine the head of an ACC operation or investigation and arrange for an examiner who is to be able to exercise his or her powers under the Bill in relation to a special ACC operation/investigation. This provision complements a similar provision contained in section 46A of the Commonwealth Act. It should be noted that under section 46A of the Commonwealth Act, the CEO is also responsible for the day to day administration of the ACC.

7—Counsel assisting ACC

Clause 7 enables the CEO to appoint a legal practitioner to assist the ACC. This complements an equivalent provision in section 50 of the Commonwealth Act.

Division 2—The Board of the ACC

8—Functions of Board

Clause 8 sets out the functions of the Board. This clause complements section 7A of the Commonwealth Act, which provides for the functions of the ACC under that Act. This clause should be read together with section 55A(3) of the Commonwealth Act, which requires Board consent under that Act for the ACC to undertake an ACC State intelligence operation or ACC State investigation.

Clause 8(1)(a) provides that the Board has the function of determining whether an ACC operation or investigation is a special operation or investigation, which then allows for the exercise of coercive powers under the Bill.

Clause 8(1)(b) provides that it is a Board function to determine the classes of persons to participate in an ACC State intelligence operation/investigation. For example, the Board may determine that members of a Police Force of a State that are seconded to the ACC are to participate in a particular ACC State intelligence operation/investigation.

Clause 8(1)(c) provides that it is a function of the Board to establish task forces. A task force is one means by which the ACC could conduct an ACC State intelligence operation/investigation.

Clause 8(1)(d) provides that the Board has such other functions as are conferred on it by other provisions of the Bill.

Clauses 8(2) and 8(3) set out threshold tests for the authorisation by the Board of the use of special powers under the Bill.

Before determining that an operation is a special operation, the Board must first consider whether methods of collecting the criminal information and intelligence that do not involve the use of those powers have been effective.

Before determining that an investigation is a special investigation, the Board must first consider whether ordinary police methods of investigation into the matters are likely to be effective.

These provisions provide an important safeguard on the authorisation by the Board of the use of special powers under the Bill.

Clause 8(4) sets out the details that must be contained in a written determination of the Board authorising the use of special powers. The determination must—

- describe the general nature of the circumstances or allegations constituting the relevant criminal activity; and
- state that the serious and organised crime is, or the serious and organised crimes are or include, an offence or offences against a State law; and
- set out the purpose of the operation or investigation.

These details set the parameters for the operation or investigation and represent another safeguard on the exercise of special powers under the Bill.

Clause 8(5) requires the Chair of the Board to provide to the IGC a copy of a determination authorising the use of special powers within 3 days of the determination being made. This is necessary to facilitate the IGC's oversight function under clause 16 in relation to the authorisation of special powers.

Clause 8(7) makes it clear that the provisions in clauses 9 to 15 relating to Board meetings have effect in relation to the Board's functions under the Bill. The provisions in clause 9 to 15 complement equivalent provisions in sections 7D to 7K of the Commonwealth Act.

9—Board meetings

Clause 9 provides for the manner in which Board meetings are to be held. The Chair must ensure that Board meetings are convened in accordance with the complementary provisions governing Board meetings in section 7D of the Commonwealth Act.

10—Presiding at Board meetings

Clause 10 provides that the Chair of the Board or another eligible Commonwealth Board member nominated by the Chair must preside at a Board meeting. An eligible Commonwealth Board member is defined in the Commonwealth Act to mean, in effect, another Commonwealth member of the Board, other than the CEO.

11—Quorum at Board meetings

Clause 11 provides that a quorum of the Board is 7 members, excluding the CEO.

12—Voting at Board meetings

Clause 12 sets out the voting procedures that apply at Board meetings. The CEO is a non-voting member of the Board.

Generally a simple majority vote will determine decisions of the Board. However, special voting requirements apply to Board determinations authorising the use of special powers, as an additional safeguard on the exercise of these powers. The Board can only determine that an ACC operation or investigation is a special operation or investigation if at least 9 Board members agree, including at least 2 eligible Commonwealth Board members.

13—Conduct of Board meetings

Clause 13 provides that the Board may regulate proceedings at its meetings as it considers appropriate and requires minutes of Board meetings to be kept.

14—Resolutions outside of Board meetings

Clause 14 allows decisions of the Board to be taken by resolution out of session to enable the Board to make decisions without a formal meeting being held. The special voting requirements that apply to a determination of the Board authorising the use of special powers will continue to apply to any such determination that is made out of session.

15—Board committees

Clause 15 enables the Board to establish committees to assist in carrying out its functions. This provision recognises the need for the Board to operate by committees where appropriate. However, there are a number of limitations imposed on the establishment and functions of committees to ensure sufficient accountability in relation to the exercise of Board functions by committees. These limitations include the following—

- a committee can only be established with the agreement of all members of the Board (other than the CEO, who is a non-voting member); and
- a committee must comply with any directions given to it by the Board; and
- the Board can dissolve a committee at any time.

Importantly, the Board's function of determining whether an ACC operation or investigation is a special operation or investigation cannot be exercised by a committee. This function can only be exercised by the full Board.

A committee may regulate proceedings at its meetings as it considers appropriate and must ensure that minutes of its meetings are kept.

Division 3—The Inter-Governmental Committee

16—Functions of Committee

Clause 16 provides for the functions of the IGC in relation to the revocation of special determinations made by the Board, and complementary powers for the IGC to obtain further information about a special determination from the Chair of the Board. These provisions complement equivalent provisions in section 9 of the Commonwealth Act. Section 9 of the Commonwealth Act also provides more generally for the oversight and monitoring role of the IGC in relation to the ACC and the Board.

Clauses 16(1) to 16(5) set out procedures for the IGC to obtain further information from the Chair of the Board in relation to a Board determination authorising the use of special powers. The

Chair of the Board must not provide information requested by the IGC if the public disclosure of the information could prejudice a person's safety or reputation or the operations of law enforcement agencies. If the Chair of the Board decides, on this ground, not to provide the information sought, the IGC can refer the request to the State Minister, who must determine whether disclosure of the information could prejudice a person's safety or reputation or the operations of law enforcement agencies. This mechanism for referral of the matter to the State Minister provides an additional check on the provision to the IGC of information that it may require in determining whether to revoke a special determination under clause 16(6).

Clause 16(6) provides for the IGC by resolution to revoke a special determination made by the Board. Such a resolution can be made with the agreement of the member of the IGC representing the Commonwealth and at least 5 other members of the IGC. The IGC's power to revoke a special determination is a further safeguard on the exercise of the special powers under the Bill.

Clause 16(7) requires the IGC to notify the Chair of the Board and the CEO if it revokes a special determination. The revocation takes effect when the CEO is so notified.

Part 3—Examinations

17—Examinations

Clause 17 provides that an examiner may conduct an examination for the purposes of a special ACC operation/investigation. This clause complements an equivalent provision in section 24A of the Commonwealth Act.

The power to conduct examinations, which includes coercive powers to produce documents and answer questions, is a powerful investigative tool that is central to the role and functions of the ACC.

Examiners are independent statutory officers appointed by the Governor-General under the Commonwealth Act. Under the Commonwealth Act, an examiner must have been enrolled as a legal practitioner for at least 5 years.

The independence of examiners is an important safeguard on the exercise of the special powers under the Bill. While clause 6(4) enables the CEO to allocate an examiner to a particular special ACC operation/investigation, this does not interfere with the statutory discretion of the examiner in exercising his or her powers.

18—Conduct of examination

Clause 18 regulates the conduct of examinations. This clause complements an equivalent provision in section 25A of the Commonwealth Act.

Clause 18(1) provides that an examiner may regulate the conduct of proceedings as he or she thinks fit.

Clause 18(2) provides for legal representation of witnesses and, in some circumstances, non-witnesses.

Clause 18(3) requires than an examination must be held in private and empowers the examiner to give directions regarding the presence of persons during an examination.

Clause 18(4) makes it clear that such a direction does not prevent the presence of the legal representative of a witness, or the legal representative of a non-witness if the examiner has consented to his or her presence.

Clause 18(5) precludes the presence of a person (other than approved ACC staff members) at an examination unless the examiner has given a direction under clause 18(3) permitting the person to be present or clause 18(4) applies.

Clause 18(6) provides for the examination and cross-examination of witnesses.

Clause 18(7) requires an examiner to inform a witness of the presence of a non-witness at an examination and allow the witness to comment on that person's presence.

Clause 18(8) makes it clear that a non-witness does not cease to be entitled to be present at an examination if the examiner fails to comply with clause 18(7) or a witness comments adversely on the presence of a non-witness. For example, if the ACC is coordinating its activities, in accordance with clause 37(2), with the functions of an overseas authority that performs similar functions to the ACC and a representative of that authority is present at an examination, the examiner must inform a witness of that person's presence.

Clause 18(9) enables an examiner to make a non-publication direction prohibiting the publication of—

- evidence given at an examination or documents or things produced to the examiner; or
- information that might enable a witness to be identified; or
- the fact that a person has or may give evidence at an examination.

This provision would enable an examiner to make a non-publication direction if, for example, the publication of matters relating to the conduct of an examination might compromise the effectiveness of an ACC operation or investigation. An examiner must make a non-publication direction if the failure to do so might prejudice the safety or reputation of a person or the fair trial of a person who has been or may be charged with an offence.

Clauses 18(10) and 18(11) provide for the CEO to revoke a non-publication direction made by an examiner under clause 18(9). This power is consistent with the CEO's functions of managing, regulating and controlling ACC operations and investigations under clause 6(1).

Clause 18(12) sets out a procedure under which a court can require evidence given before an examiner that is subject to a non-publication direction under clause 18(9) to be made available to the court. A court can require evidence to be made available if a person has been charged with an offence and the court considers that it may be desirable in the interests of justice that evidence given before an examiner be made available to that person or his or her legal practitioner. Once the evidence has been made available to the court, clause 18(13) enables the court to make that evidence available to the charged person or his or her legal practitioner.

Clause 18(14) makes it an offence to be present at an examination contrary to clause 18(5) or to contravene a non-publication direction given by an examiner under clause 18(9). The maximum penalty is a fine of $2200 or imprisonment for one year.

Clause 18(15) requires an examiner to give the head of the special ACC operation/investigation at the conclusion of an examination a record of proceedings of the examination and any documents or things given to the examiner.

19—Power to summon witnesses and take evidence

Clause 19 provides for an examiner's powers to summon witnesses and take evidence. This clause complements an equivalent provision in section 28 of the Commonwealth Act.

Clause 19(1) enables an examiner to summon a person to appear before him or her to give evidence and to produce documents or things. The examiner must be satisfied it is reasonable to do so and must record his or her reasons for issuing the summons.

Clause 19(3) requires a summons to be accompanied by a copy of the determination of the Board that the State ACC intelligence operation or investigation is a special operation/investigation.

Clause 19(4) requires a summons to set out the general nature of the matters in relation to which the examiner intends to question the person, unless this would prejudice the effectiveness of the special ACC operation/investigation.

Clauses 19(5) and 19(6) empower an examiner to require a person appearing at an examination to produce a document or thing and take evidence on oath or affirmation.

Clause 19(8) makes it clear that the powers to summon witnesses and take evidence under clause 19 can only be exercised in relation to a special ACC operation or investigation. This means that these powers will be subject to the safeguards that apply under the Bill to the authorisation of the use of special powers.

20—Power to obtain documents

Clause 20 provides for an examiner's power to obtain documents. This clause complements an equivalent provision in section 29 of the Commonwealth Act.

Clause 20(1) enables an examiner, by written notice, to require a person to attend before the examiner or a member of staff of the ACC to produce specified documents or things relevant to a special ACC operation/investigation. The examiner must be satisfied it is reasonable to do so and must record his or her reasons for issuing the notice.

Clause 20(3) makes it clear that a notice may be issued in relation to a special ACC operation/investigation regardless of whether an examination before an examiner is being held.

Clause 20(4) provides that a person must not fail or refuse to comply with a notice to produce documents or things and clause 20(5) makes a contravention of that provision an offence. The maximum penalty is a fine of $22 000 or 5 years' imprisonment.

Clause 20(6) applies the provisions of clause 23(3) to (5) and (7) in relation to a person required to produce certain things under clause 20.

The offence provision at clause 23(6) is applied by clause 20(7) in respect of a contravention of clause 20.

21—Disclosure of summons or notice may be prohibited

Clause 21 provides for the inclusion of a non-disclosure notation in a summons or notice issued under clause 19 or 20 to prohibit the disclosure of information about the summons or notice or any official matter connected with it. This clause complements an equivalent provision in section 29A of the Commonwealth Act.

Clause 21(2) sets out the circumstances in which an examiner may, or must, include a non-disclosure notation in a summons or notice issued under clause 19 or 20. A notation—

- must be included if the examiner is satisfied that failing to do so would reasonably be expected to prejudice a person's safety or reputation, the fair trial of a person or the effectiveness of an ACC operation or investigation; and
- may be included if the examiner is satisfied that failing to do so might prejudice a person's safety or reputation, the fair trial of a person or the effectiveness of an ACC operation or investigation. An examiner may also include a notation if he or she is satisfied that the failure to do so might otherwise be contrary to the public interest.

Clause 21(3) requires that a written statement setting out a person's rights and obligations under clause 22, which creates offences for the contravention of a notation, must accompany the notation.

Clause 21(4) provides for the automatic cancellation of a notation in certain circumstances where it is no longer necessary to prevent disclosure of information about a summons or notice.

Clause 21(5) requires the CEO to serve written notice of the cancellation of a notation to each person who received the summons or notice containing the notation.

22—Offences of disclosure

Clause 22 creates offences for disclosing certain information about a summons or notice that contains a non-disclosure notation under clause 21. These offences reflect equivalent offences in section 29B of the Commonwealth Act.

Clause 22(1) makes it an offence for a person who receives a summons or notice containing such a non-disclosure notation to disclose information about the summons or notice or official matters connected with the summons or notice. The maximum penalty is a fine of $2200 or one year's imprisonment.

Clause 22(2) sets out exceptions to clause 22(1) in which disclosure is permitted. This recognises that there will be circumstances in which it is necessary and appropriate to disclose information about a summons or notice. A person who receives a summons or notice containing a non-disclosure notation can disclose information about the summons or notice or an official matter connected with it—

- in accordance with any circumstances specified in the notation; or
- to a legal practitioner for the purposes of obtaining legal advice or representation; or
- if the person is a body corporate—to an officer or agent of the body corporate to ensure compliance with the summons or notice; or
- if the person is a legal practitioner—for the purposes of obtaining the consent of another person under clause 23(3) to the legal practitioner answering a question or producing a document before an examiner.

Clause 23(3) will apply where a legal practitioner is required to answer a question or produce a document that would disclose communications protected by legal professional privilege, and he or she seeks the agreement of the person to whom the privilege applies to answer the question or produce the document.

Where a person receives information about a summons or notice in accordance with clause 22(2) or (4), clause 22(4) sets out the circumstances in which that person can disclose the information. These are—

- if the person is an officer or agent of the body corporate that received the summons or notice, he or she may disclose the information to another officer or agent to ensure compliance with the summons or notice or to a legal practitioner for the purposes of obtaining legal advice or representation; or
- if the person is a legal practitioner, he or she may disclose the information for the purposes of providing advice or representation.

Clause 22(3) makes it an offence for a person who receives information about a summons or notice in the circumstances set out in clause 22(2) or (4) to disclose information about the summons or notice or official matters connected with the summons or notice in certain circumstances. These are—

- While the person who has received the information remains a person of a kind to whom a disclosure is permitted to be made, he or she cannot disclose information about the summons or notice except in accordance with clause 22(4). For example, a legal practitioner who receives information about a summons or notice for the purposes of providing legal advice or representation can only make a disclosure for that purpose.
- While the person who has received the information ceases to be a person of a kind to whom a disclosure is permitted to be made, he or she cannot disclose information about the summons or notice in any circumstances. For example, a legal practitioner who receives information about a summons or notice for the purposes of providing legal advice or representation cannot disclose that information for any purpose if he or she ceases to be a legal practitioner.

The maximum penalty for contravention of clause 22(3) is a fine of $2200 or one year's imprisonment.

Clause 22(5) provides that the disclosure offences in clause 22 will cease to apply when the notation contained in the summons or notice is automatically cancelled under clause 21(4), or 5 years after the summons or notice has been issued, whichever is sooner. This recognises that once 5 years have elapsed after the issue of a summons or notice, the interests affected by the contravention of a non-disclosure notation in the summons or notice will no longer be such as to warrant criminal punishment for the contravention.

23—Failure of witnesses to attend and answer questions

Clause 23 provides for offences for failure to attend and answer questions at an examination and deals with self-incrimination and use immunity. This clause complements an equivalent provision in section 30 of the Commonwealth Act.

Clause 23(1) provides that a person must not fail to attend an examination in answer to a summons.

Clause 23(2) provides that a witness at an examination must not refuse or fail to take an oath or affirmation, refuse or fail to answer a question or refuse or fail to produce a document or thing in answer to a summons.

Clause 23(3) enables a legal practitioner to refuse to answer questions or produce documents at an examination on the ground of legal professional privilege, subject to a requirement that the legal practitioner provides the name and address of the person to whom the privilege applies if required to do so by the examiner.

Clauses 23(4) and 23(5) set out provisions dealing with self-incrimination and use immunity in relation to evidence given at an examination.

Clause 23(4) sets out the circumstances in which a person may claim the privilege against self-incrimination. A person can claim the privilege if—

- before answering a question that the person is required to answer at an examination; or
- before producing, in answer to a summons, a business document that sets out details of earnings received by the person in respect of his or her employment and does not set out any other information; or
- before producing a thing in answer to a summons,

the person claims that the answer, document or thing might tend to incriminate the person or make the person liable to a penalty.

Clause 23(5) limits the use that can be made of certain evidence if one the situations in clause 23(4) exists. If one of these situations exists, the answer, document or thing cannot be used as evidence against the person, except in confiscation proceedings or proceedings in relation to the falsity of evidence given by the person. However, any evidence that is derived from the answer, document or thing may be used against the person.

Clause 23(6) makes it an offence to contravene clause 23(1), (2) or (3). The maximum penalty is a fine of $22 000 or 5 years' imprisonment.

Clause 23(7) clarifies that clause 23(3) does not affect the law relating to legal professional privilege. Thus, where a legal practitioner is required to provide certain information to an examiner and to do so would disclose privileged information, the legal practitioner may refuse to produce that information, unless the person to whom the privilege applies consents to its disclosure.

24—Warrant for arrest of witness

Clause 24 empowers a Judge of the Federal Court or the Supreme Court to issue a warrant for the arrest of a person in specified circumstances upon an application made by an examiner. This is an important power to ensure that the investigatory process of the ACC is not thwarted. This clause complements an equivalent provision in section 31 of the Commonwealth Act.

Clause 24(1) sets out the grounds for issue of such a warrant. The Judge must be satisfied by evidence on oath that there are reasonable grounds to believe that—

- a person who has been ordered to surrender his or her passport under clause 28 is nevertheless likely to leave Australia to avoid giving evidence before an examiner; or
- a person is attempting or is likely to attempt to evade service of a summons to appear at an examination that has been issued under clause 19(1); or
- a person has committed an offence under clause 23(1) by failing to attend an examination in answer to a summons.

Clause 24(2) enables a warrant to be executed by any person to whom it is addressed. The person executing the warrant is empowered to break and enter premises etc to execute it.

Clause 24(3) precludes a member of the Australian Federal Police from executing a warrant unless he or she is also a member of staff of the ACC. This limitation is intended to ensure that the warrant provisions in clause 24 are within the legislative powers of the State.

Clause 24(4) enables a warrant to be executed even if the warrant is not in the possession of the person executing it.

Clause 24(5) makes it clear that reasonable force can be used in the execution of a warrant.

Clause 24(6) sets out the procedure for dealing with a person who is apprehended under a warrant. He or she must be brought as soon as practicable before a Judge of the Federal Court or the Supreme Court and the Judge or Court may admit the person to bail, order the continued detention of the person to ensure his or her appearance as a witness before an examiner or order the release of the person.

Clause 24(7) requires a person who is detained under clause 24 to be brought back before a Judge of the Federal Court or the Supreme Court within 14 days, or any other period fixed by the Judge or Court. The Judge or Court is then empowered to exercise any of the powers under clause 24(6) in relation to the person.

As the coercive examination powers under the Bill are only available in connection with a special ACC operation/investigation, the power to arrest and detain a person to ensure his or her appearance before an examiner will be subject to the safeguards that apply under the Bill in relation to the authorisation of the use of special powers.

25—False or misleading evidence

Clause 25 makes it an offence to give false or misleading evidence at an examination before an examiner. The maximum penalty is a fine of $22 000 or 5 years' imprisonment. This offence reflects an equivalent offence contained in section 33 of the Commonwealth Act.

26—Protection of witnesses from harm or intimidation

Clause 26 allows an examiner to make arrangements to protect a person who is appearing or has appeared at an examination before an examiner or proposes to give, or has given, information or other documents other than at an examination. An examiner can make arrangements to ensure that the safety of a person is not prejudiced or a person is not subject to intimidation or harassment. This clause complements an equivalent provision in section 34 of the Commonwealth Act.

27—Legal protection of examiners, counsel and witnesses

Clause 27 provides, in relation to an examination before an examiner, the same legal protection and immunity for examiners, witnesses and legal practitioners assisting the ACC or an examiner or representing a witness as would apply in proceedings in the High Court. This ensures that the conduct of an examination is not constrained by a risk of tortious liability that may otherwise arise from things said or done in the conduct of an examination. This clause complements an equivalent provision in section 36 of the Commonwealth Act.

28—Order for delivery to examiner of passport of witness

Clause 28 enables an examiner to apply to a Judge of the Federal Court for an order that a person who has been summonsed in connection with a special ACC operation/investigation to appear before the examiner, or who has appeared before the examiner, must surrender his or her passport to the examiner. This clause complements an equivalent provision in section 24 of the Commonwealth Act.

There must be reasonable grounds for believing that the person may be able to provide evidence, documents or things, or further evidence, documents or things, that could be of particular significance to the special operation/investigation. In addition, an order may only be made where there are reasonable grounds for suspecting that the person intends to leave Australia.

An order can authorise an examiner to retain a person's passport for a specified period of up to one month. This period can be extended, upon application, for a further period of up to one month, up to a maximum total period of 3 months.

As an order for the delivery of a passport can only be made in connection with a special ACC operation/ investigation, this power will be subject to the safeguards that apply under the Bill in relation to the authorisation of the use of special powers.

Part 4—Search warrants

29—Search warrants

Clause 29 enables an eligible person to apply to an issuing officer for a search warrant. This clause complements an equivalent provision in section 22 of the Commonwealth Act.

An eligible person is defined under section 4(1) of the Commonwealth Act to mean an examiner or a member of staff of the ACC who is also a member of the Australian Federal Police or a State police force. An issuing officer is defined under clause 3(1) of the Bill to mean a Federal Court Judge, a Federal Magistrate or a Judge of a State court.

Clause 29(1) provides that an eligible person can apply for a search warrant if he or she has reasonable grounds to suspect that there may be in any premises or other specified place a thing of a particular kind connected with a special ACC operation/investigation which he or she believes on reasonable grounds might be concealed, lost, mutilated or destroyed if a summons for the production of the thing were issued.

This means that a search warrant application can only be made in circumstances where the power to issue a summons for the production of a thing would be effective to secure the production of the thing in question.

Clause 29(2) sets out the things that a search warrant may allow an authorised person to do. An authorised person can enter and search the premises or other specified place and seize any things of the relevant kind, and deliver them to any person participating in the special ACC operation/investigation. An authorised person can use force, if necessary, to execute the warrant.

Clause 29(3) precludes a member of the Australian Federal Police from being an authorised person to execute a warrant unless he or she is also a member of staff of the ACC. This limitation is intended to ensure that the search warrant provisions in the Bill are within the legislative powers of the State.

Clause 29(4) sets outs conditions for the issue of a warrant. An affidavit must have been provided setting out the grounds on which the warrant is sought, the applicant must have provided any further information required by the issuing officer as to why the warrant is sought, and the issuing officer must be satisfied that there are reasonable grounds for issuing the warrant.

Clause 29(5) requires the issuing officer to state the grounds on which a warrant has been issued.

Clause 29(6) specifies the details that must be included in a warrant. The warrant must—

- state the purpose of the warrant, including a reference to the relevant special ACC operation/investigation with which the things the subject of the warrant are connected; and
- state when entry can be made pursuant to the warrant; and
- describe the kind of things that can be seized; and
- specify when the warrant ceases to have effect. The maximum period for which a warrant can be valid is one month.

Clause 29(8) makes it clear that reasonable force can be used in the execution of a warrant.

Clause 29(9) provides for the seizure of evidence of an offence that is found in the course of searching for things of the relevant kind under a warrant. Such evidence can only be seized if the person executing the warrant reasonably believes that the seizure is necessary to prevent its concealment, loss, mutilation or destruction or to prevent the evidence being used to commit an offence.

Clauses 29(10) and 29(11) provide for the retention and delivery of things seized under warrant. Clause 29(10) enables the head of a special ACC operation/investigation to retain a thing seized

under warrant for as long as is reasonably necessary for the purposes of the relevant special ACC operation/investigation. If it is not, or ceases to be, reasonably necessary to retain a thing for such a purpose, the thing must be delivered—

- if it may be admissible evidence in proceedings by the Commonwealth, a State or a Territory for a civil remedy, to the relevant person or authority responsible for taking the proceedings; or
- otherwise, to the person who appears to be entitled to the possession of the thing.

These obligations do not apply if the CEO has already given the thing to the relevant Commonwealth or State Attorney-General or to a law enforcement agency or prosecuting authority in accordance with clause 34(1)(a), (b) or (c). That clause requires the CEO to assemble evidence that would be admissible in the prosecution of an offence and give it to the relevant Commonwealth or State Attorney-General, law enforcement agency or prosecuting authority.

Rather than delivering a thing seized under warrant to the person who appears to be entitled to it in accordance with clause 29(10), clause 29(11) enables a participant in a special ACC operation/investigation to deliver the thing to the Attorney-General of the Commonwealth or a State or to a law enforcement agency if it is likely to assist in the investigation of a criminal offence.

Clause 29(12) makes it clear that clause 29 does not affect other rights to apply for a warrant or other powers to issue a warrant. For example, clause 29 would not prevent a member of staff of the ACC who is also a member of the police force of the State from applying under other South Australian laws for a warrant in connection with an offence that is the subject of ACC State investigation.

30—Application by telephone for search warrants

Clause 30 allows an application to be made by telephone where a warrant is required urgently. This clause complements an equivalent provision in section 23 of the Commonwealth Act.

Where an application is made by telephone, the eligible person must first prepare an affidavit setting out the grounds on which the warrant is sought. However, if necessary, the application may be made before the affidavit has been sworn.

Clause 30(3) requires an issuing officer who issues a search warrant by telephone to inform the applicant of the terms of the warrant and the date it was issued and record the reasons it was issued on the warrant.

Clause 30(4) provides that a member of the staff of the ACC or a member of the Police Force of the State may complete a form of warrant in the terms indicated by the issuing officer, and must record the issuing officer's name and the date and time of issuing.

Clause 30(5) requires the applicant, by no later than the day after the warrant expires, to send the issuing officer the completed form of the warrant together with the applicant's sworn affidavit.

Part 5—Performance of functions and exercise of powers

31—Consent of Board may be needed before functions can be performed

Clause 31 provides that the conferral of functions on a Commonwealth body or person is subject to the consent of the Board under the Commonwealth Act. This provision complements section 55A(5A) of the Commonwealth Act, which provides that the CEO or an examiner cannot perform a duty or function or exercise a power under State law relating to the investigation of a relevant criminal activity or the undertaking of an intelligence operation unless the Board has consented to the ACC doing so.

32—Functions not affected by State laws

Clause 32 makes it clear, for the avoidance of doubt, that a Commonwealth body or person is not precluded by any State law from performing functions under the Act.

33—Extent to which functions are conferred

Clause 33 provides that the Act does not purport to impose any duty on a Commonwealth body or person to perform a function if the imposition would be beyond State legislative power. This provision is intended to ensure that the Act does not contravene any constitutional doctrine that restricts the duties that may be imposed on Commonwealth bodies or persons.

Clause 33 does not limit clause 35, which makes it clear that a function conferred on a federal judicial officer under the Act is conferred on him or her in a personal capacity. In addition, clause 33 does not limit section 22A of the *Acts Interpretation Act 1915*. That section is a general interpretative provision, which will apply such that the Bill will be read so as not to exceed State legislative power.

34—Performance of functions

Clause 34 imposes obligations on the CEO in relation to what he or she must do with information obtained by the ACC and provides for the CEO to make law reform recommendations to Ministers. This clause complements an equivalent provision in section 12 of the Commonwealth Act.

Where admissible evidence is obtained during the course of an ACC operation/investigation, the CEO must assemble the evidence and give it to the relevant Commonwealth or State Attorney-General, law enforcement agency or prosecuting authority. This obligation applies under clause 34(1) in relation to evidence that would be admissible in the prosecution of an offence and under clause 34(2) in relation to evidence that would be admissible in confiscation proceedings.

Clause 34(3) enables the Board to make a law reform recommendation or a recommendation for administrative reform to Ministers.

Clause 34(4) provides that where the ACC obtains information or intelligence in the course of performing one of its functions, that information or intelligence may be used for the purposes of other ACC functions. For example, information obtained during an intelligence operation may be used during an investigation into relevant criminal activity. This provision recognises the integrated nature of the ACC's intelligence and investigatory functions and ensures that the use of information by the ACC is not artificially restricted.

35—Functions of federal judicial officers

Clause 35 makes it clear that a function conferred by the Act on a federal judicial officer (which is defined to mean a Judge of the Federal Court or a Federal Magistrate) is conferred on that person in a personal capacity and not as a court or member of a court, and the federal judicial officer need not accept the function conferred. This provision is intended to ensure that the Act does not breach any constitutional doctrine that restricts the duties that may be conferred on federal judicial officers.

Clause 35(4) affords a federal judicial officer performing a function under the Act the same protection as a member of the court of which he or she is a member. This ensures that the performance by federal judicial officers of functions under the Act is not constrained by a risk of tortious liability that may otherwise arise from the performance of those functions.

36—Limitation on challenge to Board determination

Clause 36 limits, in certain circumstances, the challenges that may be made in relation to activities of the ACC. This clause complements an equivalent provision in section 16 of the Commonwealth Act.

Where the Board has determined that an ACC State intelligence operation/investigation is a special operation/investigation, then an act or thing done by the ACC because of that determination cannot be challenged in any court on the ground that the determination was not lawfully made. This prevents a court from looking behind a determination to see if it was properly made. For example, it prevents a challenge being made on the basis that there was an error in the procedure that led to the determination being made.

This provision does not prevent challenges in relation to the activities of the ACC once a determination is in place. Also, this limitation does not apply to proceedings initiated by the Attorney-General of the Commonwealth or a State.

37—Cooperation with law enforcement agencies and coordination with overseas authorities

Clause 37 makes it clear that the ACC must cooperate with other law enforcement agencies, so far as practicable, in performing its functions under the Act. The ACC may also coordinate its activities with the functions of overseas authorities that perform similar functions to those of the ACC. This clause complements an equivalent provision in section 17 of the Commonwealth Act.

38—Incidental powers of ACC

Clause 38 empowers the ACC to do all things necessary in connection with, or reasonably incidental to, the performance of its functions under the Act. This clause complements an equivalent provision in section 19 of the Commonwealth Act.

Part 6—General

39—Double jeopardy

Clause 39 makes it clear that a person is not liable to be punished for an offence under the Act if he or she has already been punished for the offence under the Commonwealth Act. This

clause complements an equivalent provision in section 35A of the Commonwealth Act.

40—Arrangements for Board to obtain information or intelligence

Clause 40 provides that the State Minister may make an arrangement with the Commonwealth Minister for the Board to receive information or intelligence from the State or a State authority relating to relevant criminal activities. This provision complements section 21 of the Commonwealth Act.

This provision is intended to facilitate the making of Ministerial level arrangements in relation to the provision of State information or intelligence to the Board. It is not intended to preclude or limit the provision of information or intelligence to the Board from the State or State agencies by other means, for example, the provision to the Board of information or intelligence directly by the Police Force of the State.

41—Administrative arrangements with the Commonwealth

Clause 41 enables the State Minister to make an arrangement with the Commonwealth for the provision of human resources by the State to perform services for the ACC. This provision complements section 58 of the Commonwealth Act.

42—Judges to perform functions under the ACC Act

Clause 42 makes it clear that a judge of a State court may perform functions conferred on him or her by section 22, 23 or 31 of the Commonwealth Act. Section 22 of the Commonwealth Act empowers an issuing officer, which includes a Judge of a State court, to issue a search warrant and section 23 of the Commonwealth Act enables such a warrant to be issued upon a telephone application. The powers contained in sections 22 and 23 of the Commonwealth Act are equivalent to those contained in clauses 29 and 30, respectively, of the Bill. Section 31 of the Commonwealth Act empowers a Judge of a State Supreme Court to issue a warrant for the arrest of a witness, similarly to the power contained in clause 24.

43—Furnishing of reports and information

Clause 43 deals with the dissemination of reports and information about the performance of the ACC's functions to relevant persons. This clause complements equivalent provisions in section 59 of the Commonwealth Act.

The Chair of the Board must keep the Commonwealth Minister informed of the general conduct of the ACC in the performance of its functions under the Act. This recognises the role of the Commonwealth Minister in monitoring the general conduct of the ACC, as a Commonwealth body established by Commonwealth legislation.

The Commonwealth Minister may also request from the Chair of the Board information concerning a specific matter relating to the performance by the ACC of its functions under the Act.

A State Minister who is a member of the IGC may also request from the Chair of the Board information concerning a specific matter relating to the performance by the ACC of its functions under the Act. This enables the State Minister to obtain information independently about the conduct of the ACC functions as the Minister responsible for the administration of the Act.

The Chair of the Board must comply with the request unless the Chair considers that disclosure of information to the public could prejudice the safety or reputation of a person or the operations of law enforcement agencies. The IGC may request the Chair of the Board to—

- provide information to the IGC concerning a specific matter relating to an ACC operation/investigation that the ACC has or is conducting; and
- inform the IGC about the general conduct of the ACC in the performance of its functions under the Act.

The Chair of the Board must comply with such a request from the IGC, subject to a requirement that the Chair must not furnish a matter the disclosure of which to members of the public could prejudice the safety or reputation of a person or the operations of law enforcement agencies.

In addition to the IGC's power to request information from the Chair of the Board, the Chair of the Board—

- may inform the IGC at such times as he or she considers appropriate about the general conduct of the ACC in the performance of its functions under the Bill; and
- must provide to the IGC a report on the findings of any special ACC operation/investigation conducted by the ACC for transmission to the Governments represented on the IGC,

subject to a requirement that the Chair must not furnish a matter the disclosure of which to members of the public could prejudice the safety or reputation of a person or the operations of law enforcement agencies.

These provisions are intended to facilitate the role of the IGC in monitoring generally the work of the ACC.

Clause 43(8) enables the CEO to disseminate any relevant information that is in the ACC's possession to another law enforcement agency, foreign law enforcement agency or prescribed government authority. The CEO can only disseminate such information if it appears to him or her to be appropriate to do so, and the dissemination would not be contrary to a Commonwealth, State or Territory law that would otherwise apply.

The CEO is also empowered to provide, in specified circumstances, any information that is in the ACC's possession to—

- authorities responsible for taking civil remedies on behalf of the Commonwealth, a State or a Territory, where the information may be relevant for the purposes of taking such remedies in connection with Commonwealth, State or Territory offences; and
- a Commonwealth or State authority or a Territory Administration, where the information relates to the performance of the authority or Administration; and
- the Australian Security Intelligence Organisation, where the information is relevant to security as defined in section 4 of the Commonwealth *Australian Security Intelligence Organisation Act 1979*.

Clause 43(11) sets out a general prohibition on a report under the Act being made available to the public if it—

- contains a finding that an offence has been committed; or
- makes a recommendation for the prosecution of an offence,

unless the finding or recommendation indicates that it is based on evidence that would be admissible in the prosecution of a person for that offence. This provision is intended to ensure that the publication of a report containing these matters does not compromise the fair trial or reputation of a person.

44—Secrecy

Clause 44 imposes secrecy obligations on specified ACC officers. These officers are the CEO, a member of the Board, a member of staff of the ACC (including a person appointed as counsel assisting the ACC or a person who performs services for such a person) and an examiner. These obligations are intended to ensure that information that could jeopardise the effective conduct of the ACC's functions is not improperly disclosed, and complement similar obligations contained in section 51 of the Commonwealth Act.

Clause 44(2) makes it an offence for a specified ACC officer to record, divulge or communicate information acquired by him or her in the course of performing his or her functions under the Act, except for the purposes of, or in connection with the performance of his or her functions under, a relevant Act. This offence applies to conduct either while a person is a specified ACC officer or after he or she ceases to be such an officer. The maximum penalty for the offence is $5500 or one year's imprisonment.

Clause 44(3) ensures that a specified ACC officer cannot be required to—

- produce to a court documents that have come into the officer's possession in the course of performing his or her functions under the Bill; or
- divulge or communicate to a court matters that have come to the officer's notice in the performance of his or her functions under the Bill.

This is intended to preserve the secrecy of information relating to the ACC's functions in circumstances where a court would otherwise have power to require the production of documents or the answering of questions that would disclose that information.

Clause 44(3) provides for exceptions under which a specified officer can be required to produce the above documents or divulge or communicate the above matters. These are—

- where the ACC, the CEO, the acting CEO, a member of the Board or an examiner in his or her official capacity is a party to the relevant proceeding; or
- if it is necessary to do so to carry into effect the provisions of a relevant Act; or
- if it is necessary to do so for the purposes of a prosecution resulting from an ACC operation or investigation.

Clause 44(4) defines a relevant Act for the purposes of clause 44 to mean the Commonwealth Act, this Act or a corresponding Act

of another State or Territory. This definition is necessary to ensure that the secrecy obligations in this clause do not prevent the disclosure of information where this is necessary for the purposes of another Act that forms part of the ACC cooperative scheme.

45—Delegation

Clause 45 allows the CEO to delegate in writing any of his or her powers under the ACC Act to a member of staff of the ACC who is an SES employee. Clause 3(2) applies the definition of SES employee contained in the Commonwealth Act, which in turn applies the definition of this term under the Commonwealth *Public Service Act 1999*, SES employees consist of those Australian Public Service officers who are classified as Senior Executive Employees under the relevant classification rules under that Act.

This power of delegation affords the CEO flexibility in undertaking administrative matters, while ensuring that delegated powers are only exercised by appropriately senior persons. This clause complements an equivalent provision in section 59A of the Commonwealth Act.

46—Liability for damages

Clause 46 provides that a member of the Board is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith in the performance of functions conferred by this Act.

47—Obstructing, hindering or disrupting the ACC or an examiner

Clause 47 makes it an offence to obstruct or hinder the ACC or examiner in the performance of the ACC's or examiner's functions or to disrupt an examination. The maximum penalty is a fine of $22 000 or 5 years' imprisonment. This offence mirrors an equivalent offence contained in section 35 of the Commonwealth Act.

48—Public meetings and bulletins

Clause 48 provides for public meetings of the Board to inform the public about, or receive submissions in relation to, the performance of the ACC's functions. The Board can also publish bulletins to inform the public about the performance of its functions. This clause complements an equivalent provision contained in section 60 of the Commonwealth Act.

49—Annual report

Clause 49 provides for certain matters to be included in an annual report prepared by the Chair of the Board under section 61 of the Commonwealth Act.

This provision, together with comparable provisions in other States' and Territories' ACC legislation, will ensure that information included in the annual report under section 61 of the Commonwealth Act relating to the performance of the ACC's functions under that Act is supplemented with comparable information about the performance of the ACC's functions under State and Territory law.

Clause 49(2) requires an annual report under section 61 of the Commonwealth Act to include—

- descriptions of any special ACC investigations during the year; and
- descriptions of any patterns of criminal activity and the nature and scope of criminal activity that has come to the ACC's attention during the year; and
- any recommendations for legal or administrative reform the Board considers should be made; and
- the general nature and extent of information provided by the CEO to a law enforcement agency under the Act; and
- the extent to which ACC State investigations have resulted in prosecutions or confiscation proceedings during the year; and
- numbers and results of court proceedings involving the ACC in relation to its functions under the Act that were determined during the year.

Clauses 49(3) and (4) contain provisions to prevent an annual report identifying persons as having being suspected of, or as having committing offences (unless the persons have been convicted of those offences) or identifying a person where this would prejudice a person's safety or reputation or the fair trial of a person who has been or may be charged with an offence.

The State Minister is required to table an annual report within 15 sitting days of receiving the report from the IGC.

50—Things done for multiple purposes

Clause 50 provides that the validity of anything done for the purposes of this Act is not affected only because it was done also for the purposes of the ACC Act.

51—Regulations

Clause 51 provides for a regulation-making power under the Bill.

Schedule 1—Related amendments, repeal and transitional provision

Clauses 2 to 11 of Schedule 1 contain consequential amendments to a number of State Acts that are necessary because of the replacement of the NCA with the ACC and the repeal of the National Crime Authority (State Provisions) Act 1984. The consequential amendments will ensure that those other State Acts operate consistently with the provisions of the Bill.

Clause 12 of Schedule 1 repeals the National Crime Authority (State Provisions) Act 1984, which is the existing State legislation for the NCA, as a consequence of the replacement of the NCA with the ACC under the Commonwealth Act. As the ACC is a new law enforcement body with new governance arrangements and functions, it is appropriate that provision for its operation in South Australia be made under a new principal Bill.

Clauses 13 to 25 of Schedule 1 contain transitional provisions to ensure that the transition from the NCA to the ACC is as seamless as possible. These transitional provisions are necessary as a consequence of the commencement on 1 January 2003 of the Commonwealth Act and the repeal of the National Crime Authority (State Provisions) Act 1984 under clause 12 of Schedule 1.

Clause 13 of Schedule 1 sets out definitions that apply for the purposes of the transitional provisions in Part 7 of Schedule 1.

Clause 14 of Schedule 1 deems an ACC State investigation that relates to a matter that was the subject of an NCA investigation that had been commenced but not completed before 1 January 2003 to be a special ACC investigation. This means that if the Board consents to the ACC conducting an ACC State investigation into a matter that previously had been the subject of an incomplete investigation under the National Crime Authority (State Provisions) Act 1984, it will be unnecessary for the Board to make a new determination authorising the use of special powers under the Bill.

Clause 15 of Schedule 1 imposes on the ACC the obligation under section 34(1) of the Bill to assemble and give to the relevant prosecuting authority evidence that the NCA had obtained before 1 January 2003 but had not assembled and given to the relevant prosecuting authority under section 6(1) of the National Crime Authority (State Provisions) Act 1984 as if that evidence had been obtained by the ACC in carrying out an ACC operation/investigation.

Clause 16 of Schedule 1 ensures that where the State referred a matter to the NCA for investigation before 1 January 2003, the reference continues to be protected from challenges under section 8 of the National Crime Authority (State Provisions) Act 1984 after the repeal of that Act by the Bill. Section 8 protects a reference from challenge on the grounds that any necessary approval had not been obtained or was not lawfully given.

Clause 17 of Schedule 1 provides that an arrangement in force immediately before 1 January 2003 under section 11 of the National Crime Authority (State Provisions) Act 1984 between the State Minister and the Commonwealth Minister for the NCA to receive information or intelligence by the State or a State authority has effect as if it had been made under section 40 of the Bill.

Clause 18 of Schedule 1 ensures that where things seized pursuant to a warrant under section 12 of the National Crime Authority (State Provisions) Act 1984 are in the ACC's possession, the obligations under clauses 29(10) and 29(11) of the Bill regarding the retention and return of things seized under warrant apply to those things.

Clause 19 of Schedule 1 provides that where a non-publication direction was in force under section 16(9) of the National Crime Authority (State Provisions) Act 1984 immediately before 1 January 2003—

- the provisions in clauses 18(10) and (11) of the Bill regarding the revocation of directions and the offence of contravening a non-publication direction contained in clause 18(14)(b) of the Bill apply to that direction; and
- clauses 18(12) and (13) of the Bill, so far as they relate to the CEO of the ACC, apply to evidence that is the subject of such a direction.

These provisions enable a court to obtain evidence that is the subject of a non-publication direction in certain circumstances.

Clause 20 of Schedule 1 ensures that if a non-disclosure notation included in a summons or notice to produce documents was in force under section 18A of the National Crime Authority (State Provisions)

Act 1984 immediately before 1 January 2003, the notation is effective and it is an offence under clause 22 of the Bill to make a disclosure in contravention of the notation. If there is an ACC operation/investigation relating to the same matter to which the NCA investigation related, the provisions in clause 21(4) and (5) of the Bill relating to the automatic cancellation of a notation apply.

Clause 21 of Schedule 1 ensures that arrangements in force immediately before 1 January 2003 under section 24 of the National Crime Authority (State Provisions) Act 1984 made by a member or hearing officer of the NCA to protect witnesses from harm or intimidation have effect as if it they been made under section 26 of the Bill.

Clause 22 of Schedule 1 enables arrangements between the State and the Commonwealth that were in force immediately before 1 January 2003 under section 28(b) of the National Crime Authority (State Provisions) Act 1984 under which the State makes persons available to hold office as members of the NCA or to perform services for the NCA to have effect as if those arrangements had been made under section 42 of the Bill.

Clause 23 of Schedule 1 ensures that former officials, being persons who were at any time subject to the secrecy obligations under section 31 of the National Crime Authority (State Provisions) Act 1984, are subject to the secrecy obligations in clause 44(2) and (3) of the Bill.

Clause 24 of Schedule 1 ensures that the *Co-operative Schemes (Administrative Actions) Act 2001* continues to apply to administrative actions taken, or purportedly taken, under the National Crime Authority (State Provisions) Act 1984 as if that Act had not been repealed and were still a relevant State Act for the purposes of the *Co-operative Schemes (Administrative Actions) Act 2001*. The *Co-operative Schemes (Administrative Actions) Act 2001* validates certain invalid administrative actions undertaken by Commonwealth officers and authorities, including actions undertaken pursuant to the National Crime Authority (State Provisions) Act 1984, by giving them the effect they would have had if they had been taken by State authorities or officers. This transitional provision ensures that such administrative actions are validated up to time when the National Crime Authority (State Provisions) Act 1984 is repealed by the enactment and commencement of clause 12 of Schedule 1.

Clause 25 of Schedule 1 enables the making of regulations prescribing matters of a transitional nature if there is no sufficient provision in Part 7 of Schedule 1 dealing with the matter. Such regulations that provide that a state of affairs is taken to have existed, or not existed, may be back dated in their operation to 1 January 2003 to ensure that necessary transitional matters for the replacement of the NCA with the ACC can be addressed without gaps. An important safeguard is that such regulations with a backdated operation do not operate so as to—

- prejudicially affect the rights of a person (other than the State or an authority of a State) that existed before the date of the making of the regulations; or
- impose liabilities on any person (other than the State or an authority of a State) in respect of things done or omitted to be done before the date of making of the regulations.

In addition, regulations that are backdated in their operation can only be made up to 12 months after the day on which the National Crime Authority (State Provisions) Act 1984 is repealed by the enactment and commencement of clause 12 of Schedule 1.

Ms CHAPMAN secured the adjournment of the debate.

DOG AND CAT MANAGEMENT (MISCELLANEOUS) AMENDMENT BILL

In committee.

(Continued from 3 December. Page 1062.)

Clauses 2 and 3 passed.

Clause 4.

The Hon. J.D. HILL: I move:

Page 4, after line 11—Insert:

'park' means a park, garden, reserve or other similar public open space, or a foreshore area, within the area of a council;

This sets up the definition of the word 'park', and that is necessary for additional amendments which will allow us to have a system in place whereby councils can declare certain areas dog-free or require that dogs are on leashes.

The Hon. I.F. EVANS: The clause says that a park means a park and it is hard to argue against that, so we concur.

Amendment carried.

The Hon. I.F. EVANS: I have some questions about the definition section. Why do we need the definition of an area of a council, that is, being part of a council? For what purpose will that be used in the act?

The Hon. J.D. HILL: As I understand it, an area could mean the difference between the high and the low water mark; for example, along one of the beaches. Torrens Island, for example, which is not within a council area, would be treated under this bill as if it were and the area describes that piece of land. Also, the Outback Areas Community Development Trust, too, would have a similar requirement.

The Hon. I.F. EVANS: The definition of 'attack trained dog' states:

attack trained dog means a dog trained, or undergoing training, to attack a person on command;

I am just wondering whether the minister thinks that is too narrow, because someone could argue, 'I am not training it to attack a person: I am just training it to attack another animal', and therefore it is not an attack trained dog. I am wondering whether the definition should not be simply a dog trained or undergoing training to attack. Why has the minister narrowed the definition by including the words 'a person on command'. Surely the definition should be, 'an attack trained dog means a dog trained or undergoing training to attack on command'. The words 'a person' narrows the definition, and I am wondering whether that was the intention.

The Hon. J.D. HILL: I understand the point the honourable member is making, and there are a couple of answers to it. In relation to hunting or attacking animals, some dogs, I understand, are trained to chase and attack animals. A terrier is trained to attack rats, for example. It would place unnecessary burdens on those who have animals of that description. In addition, I understand that if the definition were broadened in the way the honourable member was suggesting it would capture Schutzen-trained animals. I understand that these animals are trained not to attack but really to defend. But the definition that might be suggested by the honourable member would capture that animal.

As I understand it, and I am not an expert in this, Schutzen-trained animals are probably the best trained animals and are the most 'under control' animals around.

The Hon. I.F. EVANS: I do not want to delay the house unduly on this debate.

The Hon. J.D. HILL: I am sorry, Mr Chairman, I may have got that quite wrong. I beg your pardon, I misunderstood that. It does cover Schutzen-trained animals: it does not cover hunting or gun dogs.

The Hon. I.F. EVANS: I think that the minister needs to look at that definition between houses and whether it achieves what he set out to achieve; because if I owned a dog and I was somehow charged under a provision that relates to this particular definition, I would argue that I never train my dog ever to attack a person on command: I had only ever trained it to attack an animal on command or, indeed, attack an animal without command, and I am therefore excluded from that provision. I am saying that the minister could, perhaps, look at it between the houses because I think there is a loophole in the definition in terms of what he is trying to

achieve. I do not intend to amend it at this stage. I think that the minister's officers can look at it.

Mr Koutsantonis interjecting:

The Hon. I.F. EVANS: Well, that is freedom.

The Hon. J.D. HILL: I am just trying to get my head around this clause as well. Contrary to what I said previously, this specifically deals with Schutzen-trained dogs, which is a well known, well described and understood form of attack training. Schutzen-trained dogs are trained to attack on command, not spontaneously, and dogs in that category can be identified relatively easily. However, I will do what the honourable member suggests and have a closer look at it to see whether or not it ought to be broadened.

The Hon. I.F. EVANS: The definition of guard dog in clause 4(7) means a dog that is kept on premises. How does the minister define 'kept'? Does 'kept' mean that the dog happens to be on the premises or that it lives on the premises? So, a dog that comes in on an eight-hour shift and then leaves is not kept on the premises and is therefore not a guard dog. Is that what the minister is intending, or does the word 'kept' mean 24 hours on the premises? I am not sure exactly what the minister means by the word 'kept'.

The Hon. J.D. HILL: That is an interesting question—

The Hon. I.F. Evans interjecting:

The Hon. J.D. HILL: Indeed, and I am giving an interesting answer. The member really has to read the whole clause. It is about 'being kept on the premises for the purpose of'. So, whether it is there eight hours a day or for the whole time, it is what it is there to do. If it is there for the purpose of guarding or protecting, it is considered to be a guard dog. This does not suggest a dog that is visiting on a one-off occasion, but something that has a regular involvement at those particular premises.

The Hon. I.F. EVANS: I will again leave the minister to contemplate this between the houses: I think the word 'kept' then narrows the definition. It could easily read: 'A guard dog means a dog that is on the premises primarily for the purpose. . . ' and then there could be an argument about the concept of 'kept'. It is a minor point in the scheme of things, but I raise it for the minister to look at. I think that some premises will be picked up where well-meaning people indicate on their house insurance policy that they have a 'guard dog' because they have a Rottweiler or whatever on the property to try to protect their person. That could, in unusual circumstances, end up meaning that they would need to comply with whatever clauses are in the bill in regard to guard dogs. Again, the minister can think about that.

The Hon. J.D. HILL: The key word there is 'primarily'.

The Hon. I.F. EVANS: Primarily in whose view?

The Hon. J.D. HILL: The court would work that out, because evidence would be presented and so on. A lot of people have a dog because it barks a bit and will chase strangers if they enter the property. So, it has a kind of guarding function, but its primary purpose is that of pet. However, some people have a rather large private property—not many in my electorate—where they keep guard dogs which are there primarily to protect the property. So, it would capture those dogs, as I understand it.

Dr McFETRIDGE: Can the minister make me 100 per cent clear on the definition of 'guide dog', not including privately trained dogs? Encompassed in the bill, or the regulations, is that a guide dog that has been trained by an accredited training organisation such as the Guide Dogs Association? I ask that question because I have been contacted by a chap who received a dog from one of these organisations, and he has now moved out to the country. He has had the dog for five years, and that organisation told him that the only way he could take the dog with him was by signing a release that he would never use it in harness again because the dog would not get enough work in harness.

The dog is clearly working in harness—and working well. This chap uses the dog around some country towns and to help him run his property. He has been threatened with legal action by this particular organisation if he uses the dog in harness out on the streets. I would want to be very certain that this definition of 'guide dog' does not refer only to guide dogs owned and trained by specifically registered organisations.

The Hon. J.D. HILL: I am advised that it does not exclude other providers of services. The Dog and Cat Management Board could provide coverage to the fellow to whom you are referring. My office is familiar with that case, and I understand there is a dispute about how well the dog has or has not been trained. I would assume that dogs trained by recognised guide dog associations would automatically get the tick. Someone would then be able to approach the board and say, 'I have trained this dog under these sorts of circumstances,' and it could be validated and approved.

Clause as amended passed.

Clause 5.

Mr RAU: If we look at the definition, new section 4(1) provides for accreditation by the board and directs our attention to new section 21A. Section 21A talks about the accreditation of disability dogs, guide dogs and so forth. Section 21A provides:

> (1) The board may, on application, accredit a dog, or renew the accreditation of a dog, as—
> (a) a disability dog; or
> (b) a guide dog; or. . .
> (2) An application for accreditation must—
> (a) be made to the board. . .

A process which is not mandatory is set forth. New section 4(7) defines a guide dog as a dog 'trained and used, or undergoing training to be used, for the purpose of guiding a person who is wholly or partially blind.' We are dealing with not only guide dogs that have completed training but also guide dogs still undergoing training. New section 45A(6) provides:

> A person who owns or is responsible for the control of a dog (not being an accredited guide dog) is guilty of an offence if the dog defecates in a public place and the person responsible for the control of the dog does not immediately remove the faeces and dispose of them in a lawful and suitable manner.

Only those blind persons with an accredited dog will attract the protection of subsection (6). We may have the anomaly where a blind person who has a guide dog, or a trainee guide dog which has not yet completed the compliance requirements of new section 21A, in a situation where that dog is therefore not accredited; that dog then defecates, the blind person is not aware of this of course, and they wind up being subject to serial penalties of $125. In view of what I suggest is an unhappy consequence that might flow from that, might we not remove the word 'accredited' from new section 45A(6) so that all guide dogs assisting blind people enjoy the protection new section 45(6) seeks to offer?

The Hon. J.D. HILL: This is going to be a long night, I think. I am surprised the member for Enfield has become so scatological so early in the piece. I assure him that the scenario that he has described is highly unlikely to occur and, if it were to occur, I am absolutely certain that any judicial

authority that reviewed it would find in favour of the blind person. In any event, trainee dogs can be accredited, so it is not a particular problem.

Mr RAU: The legislation does not require that they must be accredited. The definition of 'guide dog' is sufficient to cover all of them, and I am wondering why it is that they have to be an 'accredited dog' as opposed to a 'guide dog' before they protect their owner from being penalised when they defecate in a public place.

The CHAIRMAN: The member for Enfield has made that point.

Clause passed

Clause 6 passed.

Clause 7.

The Hon. J.D. HILL: I move:

Page 4, lines 28 to 39—Delete subclause (1) and substitute:

(1) Section 7(1)(a) and (b)—Delete paragraph (b) and substitute:

(a) the dog is in a public place (other than a park) or a private place without the consent of the occupier, and no person is exercising effective control of the dog by means of physical restraint: or

(b) the dog is in a park and no person is exercising effective control of the dog either—

(i) by means of physical restraint; or

(ii) by command, the dog being in close proximity to the person and the person being able to see the dog at all times.

I indicated that I would move this amendment to resolve the controversy that was raging about the apparent intention of the legislation to stop any dogs being exercised on any public place unless it had been designated as a place where dogs should be exercised. I have done this to clarify what the intentions were. We want councils over a period of time to identify areas—and they have got up to three years—where dogs can be exercised. This says that, in the meantime, dogs can continue to use public places which have not been otherwise prescribed.

The Hon. I.F. EVANS: This relates to dogs wandering at large, which is really the leashing clause. I think most people in the public would know it as that. I guess we go on record as saying we are pleased that the government has essentially changed its position from what was publicly announced when the bill was introduced to what is now before us by way of amendment. Essentially, they have moved from the position of where dogs are going to be on leashes virtually everywhere to what I think is now a more sensible approach to the issue. The opposition is pleased that the government has come back to a position that we, and indeed the dog community, advocated. Having been in the minister's chair, I understand the complexities of this issue, and I am sure he enjoyed the debate. I do not intend to hold the house for long, other than to place on the record the fact that the government did significantly change their mind in relation to this central issue.

Given that it was one of the main motivations of having the dog debate when I was minister—and the minister has followed this up and all credit to him for doing this, because it is not an easy issue—what monitoring process is there? What reporting process is now going to be put in place so that, in the future, people who hold that position get accurate information from the authorities so that we can see whether this response by the parliament actually works? Originally, the argument was you had to go to leashing everywhere to achieve the outcome. Now, leashing is a different arrangement. What is the reporting mechanism? How is the parliament going to find out? I am interested in that aspect.

The Hon. J.D. HILL: As the honourable member said, this is a complex issue. We are trying to achieve the right balance between the rights of dog owners to be able to enjoy their dogs and the rights of the public to feel safe, and it is a fine line. I think this gets there. We have asked all the councils to develop a management plan for dog management in their areas within three years, and we hope that they will consult with their community and say, 'These are the areas where dogs can be allowed to run without leashes under human supervision, these are the areas where you do not have dogs at all, and these are the areas where dogs will be on a leash.' We want to get that regime in place. That has always been the intended outcome. The Dog and Cat Management Board, which this legislation totally restructures (and I think the member for Davenport would understand why we are trying to do that), will be much more capable of doing some of the tasks that will be given to it, but we would also expect councils (which under our legislation will have the right to set fees) to invest in appropriate infrastructure and monitoring.

In addition, I have asked my colleague the Minister for Human Services to make dog attack a mandatory reporting matter, so that we get a better sense of what attacks occur in the community. I would that hope the Dog and Cat Management Board—and I certainly will instruct it along these lines—would report to parliament on an annual basis at least about how these provisions are being pursued because, as I have said to the dog community and the general community, if these measures do not work, we will have to look at more serious measures because I think the goal of both the opposition and the government is to make our community a safer place, and there is absolutely no reason why people walking along the street or in a public place should be subject to dog attack.

The Hon. I.F. EVANS: I want to explore something the minister said in his response. I was unaware, and I think the parliament generally was unaware, that the government has decided to make—

The Hon. J.D. Hill: I didn't say that we had decided.

The Hon. I.F. EVANS: I am sorry; I thought you said that you had asked the minister to make it a mandatory reporting provision.

The Hon. J.D. Hill: Yes.

The Hon. I.F. EVANS: The minister will consider that and report back. Will the minister undertake to report back to the parliament the outcome of that decision; and also on what basis is the mandatory reporting going to happen? Will it simply be that a dog bite occurred, or will you ask them to report on the breed, because if they are attacked, for instance it happens in the family home, most people know what breed—even if it is a mixed breed, they have a general idea—and that will give the parliament some idea in the future about the deeds of breeds, if I can put it that way.

The Hon. J.D. HILL: As I say, I have not yet heard from the minister, but it is my view that that should be a mandatory reporting process, and I will have further talks with her about some of that detail, because it would be useful to have a better understanding of where the attack occurred, under what circumstances, how old the child was (if it is a child) and what type of dog was involved in the attack.

Dr McFETRIDGE: In relation to the mandatory reporting of dog attacks, in the annual report of the Dog and Cat Management Board I note that in the past two years the numbers of dogs in South Australia has increased up from 287 672 to 297 741—an increase of 10 169 dogs—yet in the

same period the number of dog attacks has decreased from 2 648 to 2 410, which is a drop of 238. Are these real numbers that are being reported or just estimates? I have heard estimates of up to 20 000 dog attacks a year.

The Hon. J.D. HILL: I thank the member for drawing that particular report to my attention because it created much excitement in some of the media when it had not been released at the time that it should have been, and it was argued that I was holding it back because it contained information that was embarrassing to my case. If members read the figures over the past 10 years, they will see that the number of dog attacks is increasing. There was a small fall over the past 12 months, but in each of the previous three or four years there had been an increase in the number of dog attacks reported. These are dog attacks that are reported to local government authorities, not the number of dog attacks that occur.

Other statistics which came out of a whole range of other processes indicate that there are many more dog attacks than that. Not everyone who is attacked by a dog rings up the local council. In my rounds of doorknocking, I have been bitten on a number of occasions by dogs of various descriptions, particularly I remember one very mean, sly black dog that sidled up to me and then took a chunk out of my leg. It was obviously a Liberal voting dog. I did not report it to the council. I did not report the attack to anybody, except the next guy whose door I knocked on who gave me a cup of tea and some iodine. He was a minister of religion and was terribly sympathetic. He wanted to care for my soul! So, not everybody reports an attack to the council.

In addition, the number of dogs that are registered does not indicate the number of dogs in the community. More people are registering their dogs and, in the last week, I noted in the press that a couple of councils are undertaking doorknocking campaigns to ensure that there is a high rate of registration, so councils are obviously taking the issue more seriously. I do not think that it means that there are more dogs around; it just means that more dogs are registered, which is a good thing.

The Hon. I.F. EVANS: The act provides that dogs in vehicles are not wandering at large, and I understand that that provision remains. Dogs in vehicles are not deemed to be wandering at large; is that correct? The question is, if I am accurate in the way that I read the act: does the word 'in' mean 'on'? If a dog in a vehicle is taken to be not wandering at large, does that mean that the dog on the vehicle—that is, a ute or a traytop—is taken not to be wandering at large?

The Hon. J.D. HILL: The answer (and this is in the act) is that a dog within the vehicle is not considered to be wandering at large, nor is a dog on the vehicle—in a tray or a trailer, etc.—considered to be wandering at large.

Amendment carried; clause as amended passed.

Clause 8.

The Hon. I.F. EVANS: Minister, some members of my portfolio committee have raised this question, and I am not sure of the answer, so I thought you may be able to provide one. Clause 8 provides that 'the person is exercising effective control of the dog by means of chain, cord or leash', and one assumes that the judgment is about the capacity of the person to effect control. So, a small child with a large dog who cannot control the dog and is being dragged along by the dog therefore is not effectively controlling it. The mere fact that the dog is leashed does not automatically mean that it is under effective control; is that right?

The Hon. J.D. HILL: The member is absolutely correct. If a child of three has a dog on a chain, it is not in effective control.

The Hon. I.F. EVANS: Subclause (b)(ii) provides that the person has effectively secured the dog 'by tethering it to a fixed object by means of a chain', etc. What is my legal position as a dog owner when I go to a cafe and tie the dog up to a post, which is a fixed object? I have tethered it to a fixed object by a leash that is two metres long and have effectively secured the dog. If it then bites someone, does that mean that I do not have effective control? Where does the act leave me in that example?

The Hon. J.D. HILL: There are two offences: one is having a dog not under effective control and the other offence is having a dog bite someone. You are not only responsible for having it under effective control but also responsible if it bites someone. It would be unreasonable to have a savage dog tethered to a fixed object and then allow a child to go up to it. There are two separate offences.

Clause passed.

Clause 9.

Mrs HALL: Will the minister provide to the house information about a dog owned by the Crown when it is performing its duty and when it is off duty?

Mr Koutsantonis: Come on!

Mrs HALL: Excuse me! It is a very relevant question. I would like to know the minister's explanation of what protection is given to these off duty performing dogs.

The Hon. J.D. HILL: I guess we are mostly talking of police dogs in this case. A police dog is like a police officer—always on duty.

Ms Ciccarello: Like a member of parliament.

The Hon. J.D. HILL: Yes, like a member of parliament. A police dog is treated in the same way. If an off duty police officer were to assault somebody, there are offences under the Police Act that relate to that and, equally, if a police dog were to bite somebody while it was off duty there would be offences under the Police Act.

Mrs HALL: If it is an offence under the Police Act, what is the punishment for this off duty performing dog?

The Hon. J.D. HILL: It would be considered to be undue force and the liability would lie with the police rather than with the dog, so the person who was bitten would have a case against the police for using undue force.

Clause passed.

Clause 10.

The Hon. J.D. HILL: I move:

Page 6, after line 13—Insert:
(2) Section 12(5)—delete subsection (5).

It is a technical amendment and should have appeared in the original bill. It describes how the chair of the Dog and Cat Management Board is appointed. Under the current act the appointment is made by the Governor. It provides that one member, who must be one of the members representing the LGA, will be appointed by the Governor to chair the board; but under the new amendments the chair of the board will be appointed jointly by the LGA and the minister. If we had not taken out that section there would be two sections describing how a chair is appointed.

The Hon. I.F. EVANS: This clause generally deals with the composition of the board. There has been a lot of debate in the appropriate circles as to what should be the make-up of the board. My experience as minister was with a board that was essentially made up of LGA or local government

nominations, and in my view it is worth trying the new format, and I wish the minister luck with that. I think that having people on the board who come not only from an LGA perspective but also perhaps from the health or a training area, or whatever the minister thinks—and I notice that there is education and training and financial management, etc.—then I think that bringing in those extra skills will broaden the scope of the board, because my view was that the board at the time appeared to be more narrow than it needed to be in some of its discussions and in some of its views. So, we are not opposing the proposal by the government to change the make-up of the board, but we will reserve our judgment as to how successful it is by what happens over the next couple of years. My view as a former minister is that it is at least worth trying out the new format. We can look at it in a couple of years' time and see whether we are better placed and have a better management system under this board structure than under the previous board structure.

The Hon. J.D. HILL: I thank the member for those comments. I think that both having been ministers for this area we understand some of the frustrations associated with this particular construction. Really, the legislation currently establishes a board for which the government of the day is largely responsible but of which all the members other than one are appointed by local government. So, you end up with people on the board with whom you do not necessarily have any kind of day-to-day relationship, you do not necessarily know who they are, and they just have different agendas. I just do not think that it was properly structured. Either the whole thing should be in the hands of local government and they should run it completely, or the other option is to put it into state hands. At one stage I considered getting rid of the board altogether and just run it out of the department, but I was persuaded that there was some merit in having an authority which was able to adjudicate the kinds of complex issues that occurred in neighbourhoods between dog owners and people who do not own dogs. So, I was persuaded.

I guess what we are trying to do here is have a consensual model, or a model which is a partnership between local government and the state, so that half come from each side. We have been more explicit in the kinds of skills that are required, both on the government side and on the local government side and, as the member pointed out, we have explicitly referred to someone having an education and training background. I note that the member for Morphett has been critical that we have not emphasised that enough, and I want to assure him that, in fact, we want to emphasise that more, and that is one of the ways that we are demonstrating that commitment. But, as the member for Davenport says, I guess it is a case where we have to 'suck it and see.' I hope this board works. I am confident that it will, and I have had very good, positive and constructive conversations with the LGA which, I think, understands the need for reform in this area just as much as the member for Davenport and I do.

Amendment carried; clause as amended passed.

Clause 11 passed.

Clause 12.

The Hon. I.F. EVANS: On page 6, clause 12(2), which relates to section 21 of the act, gives the board various functions including the ability to accredit training programs for dogs and owners. What is to stop them accrediting only their own training programs and, therefore, running a fundraising scheme for the board?

The Hon. J.D. HILL: As I understand it, the board does not currently run any training programs for the general public; they do it for council officers. What is to stop them doing it? I guess competition policy these days might be something that could stop them doing it.

I am told that, as one of their functions, they do not have the power to run training programs. They can instigate and encourage and do all of those kind of things, but they are not set up to run training programs or to have training authority.

The Hon. I.F. EVANS: I will not debate this for long, but paragraph (c) provides that the board has the power to carry out 'any other function relating to responsible dog and cat ownership or the effective management of dogs and cats'. 'Any other function' could be the running of training programs. I put to you, that between the houses, you need to look at this aspect because I believe clause 12 is broad enough for the board to say, 'We didn't get our registration fee increase that we wanted' or 'We're not getting enough money to run the programs we want.' A way around that is to accredit our own training programs for dogs and/or owners or to accredit our own procedures for testing the behaviour of dogs. We can justify that through paragraph (c) which says that we can carry out any other function relating to responsible dog and cat ownership or the effective management of dogs and cats. It is that broad, I know it would be an unusual step for the board to take, but it is not beyond the realms of possibility that a board that is cash-strapped may take up that option. You may want to look at that.

The Hon. J.D. HILL: While you were speaking the chairman pointed out that he understands that the training authorities cannot also be accrediting authorities. It may well be that it is captured in that area. I am not sure about that, but we will have a look at it. The other thing is that the minister can direct the board to do or not do certain things. I will have a look at it because I take the point you are making that there could be a conflict of interest, and it would be unreasonable if that were to occur.

Clause passed.

Clause 13.

Mrs HALL: I wonder whether the minister could provide some information about section 21A(5) which provides:

> The board must maintain a register of dogs accredited under this section by the board (which may be kept in the form of a computer record) that is to be readily available for public inspection without fee.

Will the minister confirm that subsections (2) to (5) ((5) in particular) relate only to dogs that are specified in subsection (1)(a), (b) and (c) or is it to dogs generally? I have a specific question.

The Hon. J.D. HILL: I can confirm that it refers only to dogs in paragraphs (a), (b) and (c) and that the power in paragraph (5) is, for example, if somebody has a dog on a leash in a shopping centre and they say that this is a guide dog or a hearing dog, and there is some doubt in the management's mind that that is the case, they can contact the board to check out to see whether that dog is registered. Otherwise anyone can put a dog on a leash and walk around the place and say that it is a hearing dog or a disability dog of some sort and take them into places where they would otherwise not be able to go.

Mrs HALL: Perhaps I can explain to the minister why I have concerns about that question. Reading section 5, I wondered about any possibility of some vindictive person who knows of council areas where there are provisions for dogs to be unleashed and wandering around and, if neighbour X does not like neighbour Y, they could have a look at the register and perhaps take a nasty course of action. We

need to be absolutely sure it applies to a disability dog, a guide dog or a hearing dog.

The Hon. J.D. HILL: Absolutely, because the language is 'accredited under this section'. I point out to the member that councils currently maintain these registers, whereas this is a board register. Obviously there are sensible reasons for doing that because persons from one council area may want to inquire about somebody in another council area.

The Hon. I.F. EVANS: Picking up on a similar theme to the member for Morialta, I am wondering whether there are issues with security. For instance, if a person of criminal mind knows that there is a dog registered as a guide dog at a certain address, how is that protected? How do we actually put in place some protection for those people who will have their addresses registered because, as the minister has clarified for the member for Morialta, the clause relates to disability dogs, guide dogs and hearing dogs. Under clause 5 the addresses of those people will be available, because it provides:

> The Board must maintain a register. . . that is to be readily available for public inspection without fee.

A devious mind could go to that register and say, 'Well, we know that there is someone blind or with poor sight or poor hearing or a disability at this address'. I am wondering whether that should be a concern for us. Why does the accreditation remain:

> . . . in force, on initial grant or renewal, for a period (which may not be less than 2 years). . .

You are accrediting a dog. Why is there a clause that says accreditation remains in force on the initial grant or renewal for a period which may not be less than two years? What the board will do is accredit every disability, guide or hearing dog for two years and just collect revenue from the disabled. Surely, once a guide dog is accredited as a guide dog, it is a guide dog for life. Why would you not simply accredit it for the term of the dog's natural life?

The Hon. J.D. HILL: Perhaps I could answer that second part first. As I understand it, dogs do not always remain guide, hearing or disability dogs. Dogs have accidents; they go blind—Labradors go blind relatively easily; the owner of the dog may die and the dog becomes a family pet, I guess, in some circumstances. There could be a whole range of reasons why a dog ceases to be eligible for this accreditation. It is up to the board, of course, for how long it does it.

I do not think that, with the way that we have constructed this board, it will be trying to turn every disability dog into a revenue collecting mechanism. I would hope that it would exercise its powers in a bona fide way, in good faith, so that it works in the best interests of those who are being protected. In relation to the question about security, I understand that the arrangements in place now will be replicated by this legislation, except it would be done at a board level rather than a council level. The advice I have in relation to the register is that it does not necessarily have to contain the full address of the person whose animal is being registered, but I will get a more detailed answer on that because I agree that it raises an interesting point.

The Hon. I.F. EVANS: I suggest to the minister that, under the accreditation that remains in force for a period which may not be less than two years, it could easily be that they are accredited for the period in which the dog is used for the purpose for which it is accredited. I can absolutely guarantee the minister that the board will set the accreditation period for two years because that is the minimum and the person will be charged a fee. It is a minor aspect of the bill—the people that it benefits are the disabled and we should make it as easy and as cheap as possible for that group.

The Hon. J.D. HILL: I will certainly have another look at it and have a look at what the arrangements are now.

Clause passed.

Clauses 14 and 15 passed.

Clause 16.

The Hon. I.F. EVANS: I move:

Page 7, line 30—
Delete 'Board' and substitute 'Minister'.

This is a very simple amendment. Currently the registration fee is effectively set by the minister of the day through a recommendation from the board. Under the minister's proposal, the dog registration fees will be set by the board. The problem with that is that the board benefits through registration fees because it gets a percentage of the registration fee, so there is an incentive for the board to achieve a budget outcome through agreeing to various registration fees. I do not think it is an appropriate mechanism that the board that is funded through a percentage of the registration fee actually sets the registration fee.

Unless the minister can come up with a better model, we believe that the power to set the registration fee should be separate from the board that is going to benefit from the registration fee, and therefore the power should rest with the minister. The board will have a 'wink wink, nudge nudge' discussion from time to time about needing money and the councils will wear the flak for the higher registration fee, not the board itself, so it will allow a higher registration fee than the minister might.

I know that the previous government came under criticism from some quarters of local government because we dared to keep dog registrations cheap and affordable. How outrageous! We did that because there was a political eye over the process. There is no political eye over this process. As the minister said in a previous answer, it independently hands the decision making away from the politician to the board, through the bureaucracy, and it will sanitise the political point that is brought to the mind of the minister through people called voters who are concerned about higher dog registration fees. The opposition believes that the appropriate authority to set the dog registration fee is not the board, which will benefit from higher registration fees, but the minister of the day. That is what the amendment is about. It simply swaps the mechanism from the board to the minister.

The Hon. J.D. HILL: This is a key issue in this legislation and it is one of the few issues that divides the opposition and the government. The member for Davenport said that the board sets the fees. That is just not true. The board does not set the fees. The council sets the fees. What I am attempting to do through this amendment is transfer responsibility for dog registration fees from one level of government to another level of government, that is, from the state government to local councils. I want to do that because it is individual local councils that get to spend that money, and they have argued to me every year that I have been minister that I ought to increase the fee.

The Hon. I.F. Evans: And you haven't.

The Hon. J.D. HILL: I haven't, that is true.

The Hon. I.F. Evans: Because of political oversight.

The Hon. J.D. HILL: No, not at all. I said that I was planning to pass that responsibility to them.

The Hon. I.F. Evans: Handball!

The Hon. J.D. HILL: Indeed. It is an appropriate handball because they are the bodies that spend the money. If members take a list of the councils in South Australia and look at how much they collect and how much they spend, they will see that some councils spend more than they collect because they take a stronger line and are more responsible. Other councils spend less than they collect. The balance would be with councils that spend more than they collect and the LGA has been arguing strongly that the fees are inadequate and have not been changed for almost 10 years. There is an argument for increasing the fees.

It seems to me unreasonable to increase the fees across the board and produce a windfall for councils that are not putting very much effort into it, and it is unreasonable for councils that are putting more effort into it not to get that increase. It is not that there will not be any political supervision or any government responsible for these increases. There will be, and it will be the local councils. If the member for Davenport looked at it from a broader point of view, he would find that it is more sensible to have local councils determine fees for their communities and, if they get it wrong, their communities will tell them so.

We are putting some sort of measure of control over this so that councils do not charge any fee they like and just go over the top. The board will establish some parameters so that they cannot charge too much. The council will have to satisfy the board that the fee that is chosen is appropriate, and I guess part of that will be demonstrating that the fee that is being collected will be used for dog management purposes.

It seems to me to be eminently sensible that the authority which is responsible for managing dogs on a day-to-day basis, which employs the staff and which develops the budget should be able to work out what it collects from its ratepayers in order to do this, otherwise other ratepayers have to subsidise this process. The two sides of the house are divided on this issue. We will not be accepting the opposition's amendment.

Progress reported; committee to sit again.

The Hon. J.D. HILL (Minister for Environment and Conservation): I move:

That the time for moving the adjournment of the house be extended beyond 10 p.m.

Motion carried.

The CHAIRMAN: We are still dealing with the member for Davenport's first amendment.

The Hon. I.F. EVANS: If the amendment is lost, we can come back and ask questions on the original clause, can we not?

The CHAIRMAN: Yes. The member has two amendments relating to this clause, so we will deal with the first one. I will put that amendment.

Amendment negatived.

The Hon. I.F. EVANS: I move:

Page 7, after line 35—
Insert:
(7) Without limiting the matters that may be taken into account when setting fees to be approved by the board, councils must provide for a percentage rebate of the fee that would otherwise be charged for the registration of a dog in the following cases:
(a) if the dog is de-sexed;
(b) if—
(i) the dog has been implanted with a microchip for the purposes of identification; and
(ii) the information contained in the microchip is up to date;
(c) if the dog has passed a specified training program accredited by the board,
(and, if more than one rebate applies in respect of a particular dog, the rebates are to be aggregated and deducted from the registration fee that would otherwise be charged).

I thank the minister's officers for tidying up some of the wording of this amendment. I understand that the minister and I have reached a landing on this amendment. This amendment provides that, when the registration fee is set, if the dog is either de-sexed or has been implanted with a microchip for the purpose of identification and that microchip is up to date or the dog has passed a specified training program that is accredited by the board, the owner has to receive a discount off the registration fee for undertaking what we would see as responsible dog ownership measures.

The opposition was very keen to make this bill more about responsible dog ownership. That was clearly the message we received from members of the community who are involved in dog ownership. So, we are pleased to be able to move an amendment that guarantees there has to be some discount. The rate of that discount is left to the discretion of the board: we will not set the rate. But we will at least guarantee some rebate to those people. We understand that the government is supporting the amendment, and we are pleased that it is. I think it really is good to incorporate a responsible dog management measure into the bill, and I recommend it to the house.

The Hon. J.D. HILL: I indicate that the government supports this measure. It is a sensible measure that promotes good practices. So, from that point of view, we support it. I have checked with local government and they are okay about this provision as well. I must say that the Local Government Association strongly supports being able to set their own fees, just for the record.

Mrs Geraghty: That's scary!

The Hon. J.D. HILL: It shows great—

Mrs Geraghty: Bipartisanship.

The Hon. J.D. HILL: —courage on their part. There would be other reasons why councils would want a discount, too—pensioners, for example, and working dogs and so on. So, this does not limit the reasons for which a rebate might be provided.

Amendment carried.

Mrs HALL: I seek clarification from the minister on the issue of registration fees under this new system. I would like him to clearly spell out what I think I heard because, within my own electorate of Morialta, the City of Campbelltown takes a very responsible attitude in its management of dogs. It has regulations prohibiting the free movement of dogs in specified areas, and I am sure the minister would be very interested to know that dogs have to be on a leash along the River Torrens Linear Park and the Denis Morrissey Park and are not allowed at all in Thorndon Park at any time. So, I consider that—probably along with many councils throughout the state—it takes a very responsible attitude to dog management and probably cat management as well, but dogs in particular. However, did I understand the minister to say that under the new system the board will set or approve the scale after requests from councils, and therefore is it possible for there to be significant or slight differences between the councils? If that is the case, what responsibility is on the board to ensure that the revenue from registration fees—the 20 per cent that we are talking about—is used responsibly?

I use Campbelltown as a specific example, because I think they take it very seriously, and I wonder what obligations there are on other councils to do similar things and not get more revenue for nothing.

The Hon. J.D. HILL: That is exactly the point. If we did an across-the-board fee increase, then you might get some councils saying, 'You beauty; we can put it in our back pocket.' There are 69 councils, and over the next three years each council will have to develop a management plan. Those management plans will have to say what they are going to do about a range of things in relation to dog management. They will need to work out what the budget will be to implement that management plan, and their source of revenue could come from two sources—one, from registration fees and, two, from general revenue. I think most councils would want to make sure it was funded out of dog management fees, because it is appropriate that people who own dogs pay for the services to look after dogs in a particular region. So, they will work out that sort of balance.

That package—both the fee structure and the management plan—have to be approved by the Dog and Cat Management Board. So there is some scrutiny. I guess in a way it is similar, if you like, to what we are doing in natural resource management where we have local bodies making determinations about management plans for water resources in an area, they set a levy that is scrutinised by a parliamentary committee and a natural resources council, and there is a whole lot of checks and balances and eventually the decision is made at a local level. And that system seems to work. It gives responsibility to local people to make decisions about how they manage particular things in their own community. I think it is totally consistent with the way governments are going. I think there are enough checks and balances in there to ensure that there is no rorting of the system by councils, because it would be picked up through a range of processes.

The Hon. I.F. EVANS: I am not going to oppose the clause, but I will make this observation and we will see what happens over the next couple of years. It seems to me that this bill is setting up a structure where the Dog and Cat Management Board will have to approve a plan for councils about dog and cat management, and that would include off-leash areas, such as dog parks. Some dog parks are extraordinarily expensive and some are dirt cheap, depending how elaborate you want to make them. It seems to me that the councils are within their rights to come back to the Dog and Cat Management Board and say, 'Well, here is our dog and cat management plan which you have approved. This is the amount of money we are going to spend on providing this dog park,' or whatever, 'and therefore our registration fees do need to increase to X, Y and Z to help cover that cost.'

It seems to me that the approving body of the expenditure, that is, the Dog and Cat Management Board, will approve the plan put up by the council and will also set the registration fee, which will help fund the expense of the council—

The Hon. J.D. Hill interjecting:

The Hon. I.F. EVANS: Yes, that's right; but they can also reject it, can they not? Can't the Dog and Cat Management Board reject it? By implication, if they can approve it, they can not approve it.

The Hon. J.D. HILL: They can. I am just clarifying who has the various powers. Certainly, the board can reject it, and that is part of the deal. It would then have to go back to the council for consideration. Councils would also have to go out for community consultation so that there is a sense of what is required in that community. The ultimate power—and, I guess, this is what the honourable member was trying to get at with his amendment—lies with the minister. I can direct the board. So, if the board is being unreasonable in relation to, say, Burnside council about what it wants to do, ultimately the minister of the day can direct the board to find in a particular way.

I think there are plenty of checks and balances. I do not think you want a cabinet deciding what dog fees should be across the whole state, because the state government is not responsible for the delivery of those services. Naturally, state government will say (as they have in every budget year since 1995), 'No, we will not put them up. Why should we wear the criticism of putting up dog fees for everyone in the state who has a dog when we are not responsible for delivery of the services?' It creates tension between those who are trying to fix up the problem and those responsible for funding.

It is much more sensible to give that responsibility to those who must deliver the services. We have this mediating or moderating process in place, which is the board but, if it does not work and there is a conflict between the two players and they cannot sort it out, ultimately, the minister has the power to intervene and direct what happens.

Mrs HALL: I just want to come back to the answer the minister gave about the possibility of decisions the board may make. I would like the minister to provide information to the committee about the monitoring process, and I come back to council X. Council X submits its management plan and its budget, puts in the fee request, decides that it will use the Campbelltown council example of terribly responsible management and gets its requests approved. What is the monitoring process to make sure that it does what it has said it is going to do within a prescribed period? Can the minister take us through that formula, please.

The Hon. J.D. HILL: As I understand it, government officers are working through with the LGA the kinds of protocols we would need to put in place with the board so that it can monitor in the way in which the honourable member described. I guess regular reporting would be required of the councils about how they are implementing their plans and expending their budgets. We know already how much is being spent by councils on dog services, if one wants to use that expression. We know how many people they employ. It is reasonably easy to work it out.

In addition, of course, all electors within a particular council area have access to the budget papers of that council. I think there is a great deal of interest in the community about these issues, and I am sure that dog owners—and people who do not own dogs, too—will monitor quite closely what councils do when implementing these schemes.

Mrs HALL: Following on from that, I come back to the question I asked in clause 13, when I was concerned about the possible vindictive use of the public record. I know that we have been dealing with fees, but I come back to subclause (1), and the proposed amendment to section 26(1)(a), as follows:

> containing the information required by the board (which may be kept in the form of a computer record) that is to be readily available for public inspection

Will the minister advise whether there is any provision for supervision or oversight—or any form of protocol—to give protection to people who might be the victim of or subject to vindictive activities by someone who does not like person A, B or C because they think they have a particularly nasty dog and they want to do something about it?

The Hon. J.D. HILL: There is a range of issues there. This amendment is primarily about allowing the board to

provide information in electronic form rather than written form. I understand that this information is contained in a summary form, and that not all the information is provided. In addition, of course, the criminal and civil law still applies if the information is misused. All those normal safeguards are in place. In relation to a similar question asked by the member for Davenport, I undertook to have a closer look at it, as I will in relation to this issue.

Mrs HALL: When the minister has a closer look at it, will he consider whether it is possible not to include the actual address? As the minister knows, sometimes the telephone book or the electoral roll does not include the street number along with the street name. Is there some form of protection, because the privacy issues in this day and age are fairly extensive in a whole range of activities? I think this is something that the minister could possibly look at.

The Hon. J.D. HILL: The advice I have is that there is no requirement to include the street address, unlike the electoral roll, of course, where that is included.

The CHAIRMAN: The emphasis is on biting and so on by dogs, but one of the issues which I am aware of and actually exists in my street (fortunately, not my direct neighbour) is of dogs that bark all day every day. The council's response is that a log book has to be kept. The adjoining council says that it does not come out on weekends for dog matters and that people have to keep a log book. Having looked through the bill, I cannot see where that sort of issue will be picked up or where a council will be required to check out a barking dog, other than doing what some councils do now, and that is to tell people to keep a log book.

The Hon. J.D. HILL: This legislation will substantially increase the penalty that applies for barking dogs. In the past, I understand that councils have not been terribly keen to pursue this matter because of the relatively low penalty and a failure to be successful in the court system. So, the bill includes measures to try to address that issue.

The other point I make is that, if councils are in control of their own budget, they will be able to put more resources into areas of greater concern. In some areas, people are more sensitive to these issues, or there are more people living closer together and dog and nuisance issues are greater, and those councils will be able to resource this issue properly. At the moment, councils cannot do that because they are restricted in their budget to what they collect out of the fee that was established almost 10 years ago. I guess that limits the resources they can put into it.

Clause as amended passed.

Clause 17.

The Hon. J.D. HILL: I move:

Page 8, after line 5—
Insert:
(1a) A plan of management must include provisions for parks where dogs may be exercised off-leash and for parks where dogs must be under effective control by means of physical restraint, and may include provisions for parks where dogs are prohibited.

This provision is consistent with the amendment I moved to clause 7 on page 4, and allows us to recognise that some parks are currently off-leash and others are not, and so on, which I described earlier on.

Amendment carried.

The Hon. I.F. EVANS: I will not stay long on this clause because we are generally supportive. A lot of the metropolitan suburbs are essentially dormant in relation to development. They are essentially 99 per cent built out. Their population mix will not change a lot. There will be a drift from old to young when they move out, but, essentially, there will not be a huge change in the make-up of the population. After the first plan is established why do we need a new plan every five years? Once there is a plan to establish that a particular reserve is an off-leash area and another reserve is an off-leash area, etc., I do not see how it will change greatly in that period. I am wondering whether we are building in a cost to councils that will not achieve a great benefit, and whether it is not better to say that the plan should be for a 10-year period and give the councils the option to bring forward a plan at an earlier time, if they so wish; so if something dramatically changes, such as in Mount Barker, which is growing quickly, they might want to bring it forward. I do not see how the demographics in most metropolitan areas will change drastically so that we will need a new dog management plan every five years once we have done the first one. I think we are building in a cost structure that we do not need. Again, while the bill is between houses, the minister might see what local government thinks, but I cannot see how it will change drastically.

The Hon. J.D. HILL: We have negotiated quite closely with local government over the provisions in this bill and local government has not raised that as a particular concern. We do need to have some system in place so we can review the plans. The plans do not just relate to the areas where dogs can be exercised but, rather, to a whole range of things in relation to dogs such as training programs or cat bylaws, and so on. There could be a range of things which would need to be reviewed every five years. If the council were satisfied that the arrangements were working satisfactorily, all it would need to do is change the date on the plan and resubmit it. We are always happy to keep looking at these things, but I think this is a reasonable measure that is proposed.

Clause as amended passed.

Clause 18 passed.

Clause 19.

The Hon. J.D. HILL: I move:

Page 8, line 36—
After 'must' insert:
, on request.

During discussion with dog management officers, they pointed out that police officers do not always necessarily want the information that they have to give them, and they have asked us to include the words 'on request' so they are only burdened with this responsibility if the police actually want the information. That seems quite sensible and we are happy to respond to their request in that way.

The Hon. I.F. EVANS: The opposition supports this amendment for the reasons outlined. How does that then relate to the mandatory reporting provisions the minister was previously looking at? Does the dog and cat management officer, under the proposal the minister has written to the other minister, have to report it to some other authorities, such as health authorities, or do they not have to do that? What is your plan in that regard?

The Hon. J.D. HILL: There are at least two issues here. Dog management officers are required to report prescribed injuries to the police, so they could do that. They could say, 'Look, this person was bitten.' The police can require them to provide information. The police may say, 'Oh, that is okay,' and not require the information. The mandated reporting for which I am seeking support from my ministerial colleague would be done through the Human Services chain and it would make some information available. We are still

negotiating that aspect, so I cannot give a precise answer to that question.

Mr SCALZI: Minister, just a general question. If they must produce evidence to the officer, is there a penalty for not doing so?

The Hon. J.D. HILL: That is a good question, because the penalty, it would appear, applies to the first offence which is the reporting; whether it applies to the second matter is a good question. I think you may have scored a small point there, but we will check this.

The Hon. I.F. Evans: Withdraw the bill.

The Hon. J.D. HILL: I do not think we will go that far. I have got better advice. I should rely on expert advice rather than my own. It would be an offence against the Summary Offences Act.

The Hon. I.F. EVANS: And the penalty is?

The Hon. J.D. HILL: The penalty is what is prescribed under the Summary Offences Act. From time to time.

Mr SCALZI: Minister, we have been specific before. So it would not be clear what the penalty would be in this case.

Amendment carried; clause as amended passed.

Clauses 20 to 22 passed.

Clause 23.

The Hon. I.F. EVANS: I move:

Page 10, lines 10 and 11—
Delete these lines

The opposition has an excellent amendment on which we seek the agreement of the house. Essentially, the government's bill seeks to register businesses that involve dogs, in particular pet shops because they sell dogs. This is essentially a new tax on the business. It seems a nonsense to us that a pet shop which has a shopfront and trained staff and which makes its income every day out of selling dogs—and, of course, other pets and pet products—is going to be licensed. You can go to any *Advertiser* or Messenger and look at the backyard breeder. They can sell any mixed breed of any dog they want, bred from any combination of dogs, and there is no licence provision.

It seems to the opposition a nonsense that the business community, running a legitimate business, is being penalised under this provision, but the backyard breeder escapes without a fee. I am just wondering why the minister seeks to penalise business with a new licence fee but does not attack the backyard breeder by asking for registration and licensing, or a licensing system for backyard breeders. Why is it that legitimate pet shops are forced to be licensed or registered and pay a fee, but not backyard breeders?

The Hon. J.D. HILL: As I understand it, the legitimate pet shop industry wants to improve standards and, on my advice, has no objections to this particular measure. The provision actually provides some protection to pet shops. I am not sure whether the honourable member received much correspondence when he was the minister responsible for this area, but a campaign is being run at the moment to ban the sale of dogs in pet shops, and I think those who are promoting that cause in some other jurisdictions have been successful. I would suggest that to have a regulated industry with some standards which they can adhere to will help their long-term survival. We believe this is a sensible way to go. The member also raised the question of backyard breeders. We did spend some time trying to work out how to regulate that area properly and could not really work out a sensible way of doing it without setting up a very complex set of mechanisms. I agree with the member that that is an area which does need to be regulated, and I am keen to turn my mind to how we do that, but I have not done it in the course of this bill. However, I do not believe it is an issue that should be taken off the agenda; I agree with the member in that regard.

The Hon. I.F. EVANS: First, I suggest the minister personally rings the Pet Shops Association and ask them whether they support this clause in the bill, because certainly in a conversation with me a representative of that organisation indicated their opposition to that clause. I personally spoke to the representative, and the advice given to me was that we not proceed with that clause. I suggest that the minister might want to double-check that advice, and I mean no disrespect to the officer. Secondly, if we can set up a second-hand vehicles backyard dealers licensing regime where there is a limit on the number of second-hand vehicles you can sell from your backyard, I suggest the minister might want to look at that as a model. Essentially, that is the principle; that is, you are selling something from your backyard and you limit the number they can sell. There is also the anti-competitive measure; that is, you are licensing one section of the industry and not the other.

The Hon. J.D. HILL: I will certainly check with the pet shop owners in relation to the position that was put by the member for Davenport. I will think again about whether or not we can go down that track. I agree with the member that the backyard sellers of used cars was the model that seemed to me logical to look at: if you sell more than a certain number, you get pinged. Of course, when you are dealing with cars, you are dealing with tradeable registration certificates which go through a central database and so on, and there are mechanisms where you can pick up on this.

The Hon. I.F. Evans: Dogs are registered.

The Hon. J.D. HILL: Not when you buy them, though. For instance: 'Where did you get that dog?' 'I don't know—

The Hon. I.F. Evans interjecting:

The Hon. J.D. HILL: What I am saying is that, when you think it through, it becomes a very complex system. You could—

Mr Hanna interjecting:

The Hon. J.D. HILL: I was going to say to the member that you could check through the classified ads. What I am saying is the amount of effort that would be required to go through this would seem quite large, but I am happy to have another look at it.

Mr SCALZI: Does the minister have an indication of what percentage of dogs is purchased through backyard breeders compared with registered pet shops?

The Hon. J.D. HILL: I am not sure whether that information is available, but I will certainly try to obtain it for the member. It would be an interesting statistic to have and we could certainly try to obtain it for him.

Mr SCALZI: If we are not sure about those statistics, how can we come up with legislation to regulate something when we do not even know what percentage of dogs is being sold through that system?

The Hon. J.D. HILL: I am not quite sure where the member is coming from. This legislation is trying to deal in a practical way with issues that have been raised through a community consultation process. There is a concern that when people buy from a pet shop they possibly do so on their way home after an evening doing things that perhaps loosen their normal controls. They make an impulse buy, and they suddenly have a dog in their hands that they deliver to their children at a time of celebration, saying, 'I've got you a dog.'

Dr McFetridge interjecting:

The Hon. J.D. HILL: Well, I am sure that the member for Morphett will have seen plenty of dogs in his time that were purchased without a lot of thought.

Another source of dogs is registered breeders. Very few people who buy from a registered breeder would do so in that spontaneous way. The second source is pounds, such as the RSPCA and the Animal Welfare League. If you were to buy a dog there, you would have to consciously go out of your way to buy one. The third source, of course, is the backyard breeder. In that case, generally you would have to look them up in a newspaper and go out to look at the dog. So, the pet shop group that we are talking about is the most likely area where dogs are purchased without a lot of forethought, and that is one reason—

The Hon. I.F. Evans: Table the research to prove that.

The Hon. J.D. HILL: Well, I am given advice on this. That is one of the issues that we are trying to deal with. Most people know that after Christmas a lot of dogs end up being sent to pounds because they are no longer wanted.

Mr SCALZI: This dog and cat legislation has been introduced because of the danger of dog attack experienced by certain sections of the community. The minister has just outlined that we can obtain dogs from various areas, including the pound. Are there figures on how people get dogs from those various sources? Unless we have those, how can we introduce legislation that provides that if dogs are obtained from certain sources you have to have a licence; if they are obtained from another source, you do not? How can we be certain that dogs are sourced from a certain area—whether it be a pet shop, a pound or the backyard? There must be some way to work out how dogs become pets.

The Hon. J.D. HILL: The member asked me that question a few minutes ago and I said that I would try to find the information for him. I can only repeat my answer: I will try to find that information for him. I am not sure that it exists but, if it does and it can be obtained, we will ensure that he has it.

Amendment carried; clause as amended passed.

Clauses 24 to 27 passed.

Clause 28.

The Hon. I.F. EVANS: I move:

(New section 44(3)(b)), page 12, lines 27 and 28—Delete paragraph (b).

In relation to aggravated offences, new clause 44(3)(b) provides for an aggravated offence if at the time of the offence the victim was under the age of six years. If that is the case, then on conviction the person is liable to a monetary penalty not exceeding double the monetary penalty or imprisonment for a term not exceeding double the term that would otherwise apply under this section for that offence. It seems to the opposition that a dog attack on a child five years and 11 months is as serious as a dog attack on a child six years and one month. There is no science to selecting six years of age—they could have picked eight or 12 years.

If you take the Attorney's argument tonight in respect of aggravated offence in another bill, it was stated that someone over 65 years should be treated differently under the law. A dog attack on a 65-year old is just as serious because the skin is not as strong—it tears and the injuries are often far greater on a mature aged person as those who have not yet reached that stage in life. There is no science that backs up this fact. The opposition opposes it on the basis that it is not backed up by science, that there is no evidence that six is somehow the magic number. The reality is that the dog will not make one ounce of judgment about whether the person is six or seven years but will attack and the person is liable for that, which is fair enough, but should they be liable for a more serious offence because the child happens to be five years and 11 months and not six years and one month?

We argue that you either lift the whole penalty and make it uniform at a higher level to offer the incentive to the owner to provide more responsible ownership, or leave the penalty as it is. We do not support the concept as put forward in the bill and our amendment is to delete the provision that relates to the victim defence of being under six years of age at the time of the offence. We leave the aggravated offence if it relates to a dog that is dangerous because, if someone has a dog deemed dangerous under the act, it should bring with it higher levels of responsibility, which is a theme throughout the act. We have no problem with that, but have a problem with the casual selection of six years.

The minister will say that the advice is from the health authorities that many of the attacks are on children under the age of six. That is true on the advice given to the minister, but it is not scientifically collected data—it is randomly collected. It is not tested and there is no uniformity to the way it is collected. It is randomly collected by the agencies and put forward. While we understand where the minister is coming from, we oppose that provision in the bill and I move to delete it for those reasons.

The Hon. J.D. HILL: I understand the argument put by the member for Davenport. I do not support his proposition and we will vigorously defend our proposition. I thought long and hard about whether or not there should be a particular age. The overwhelming evidence is that the majority of dog attacks occur on children under the age of six years. That is where kids get into trouble with dogs. I do not have the list with me. The evidence may not be as good as it ought to be or the statistics kept in the best possible way, but the statistics show that a greater number of people are attacked under the age of six than between six and 12 or any other combination of years you care to look at. So, it sticks out from the statistics available. Arguably we could have made it seven, eight or 12 years, but we wanted to send a very clear message to people who are in control of dogs that they have to be particularly careful when they are dealing with young children.

I accept the argument that six may not be a magic figure, and 6 years and one month is not really different from five years and 11 months, but the law makes these kinds of distinctions all the time. Someone is able to do something at 17 that they are not able to do at 16 and 11 months; you can vote at the age of 18 but you cannot do it a day before. There are all these arbitrary decisions about when people can and cannot do certain things. In this case, what we are saying is that all the evidence we have shows that six year olds are more likely to be the victims of dog attacks than those over the age of six. And it helps develop the argument and send a clear message to the community that children under the age of six and dogs do not mix.

The Hon. I.F. EVANS: If the evidence shows that dog attacks on under six-year-olds are severe, etc., why not introduce a penalty for dog attacks on the over 80-year-olds? Why not introduce an aggravated offence for dog attacks on pregnant women? Why not introduce an aggravated offence for dog attacks on the disabled? Where is the science that backs this up? And the other point is: what public education campaign is now going to be run to educate the public about this, and who is going to fund it? This provision will affect

every family with children that also owns a dog; all you are doing is making them more liable.

My view is that it is unreasonable. Take my own home as an example. I have three-quarters of an acre: a tennis court; half an acre of garden; and a deck with a barbecue. So, I am cooking at the barbecue on the deck and the dog attacks my six-year-old down near the tennis court because the dog happens to be playing; I am going to get done for an aggravated offence because I was not right there at the time supervising the dog when a six-year-old was present. I just do not see how that is a good law. There are a number of points. This is one of the more important clauses in the bill, one that will have the greatest level of ramifications for ordinary families. Ordinary families will be hurt by this clause.

The Hon. J.D. HILL: Obviously, no-one wants to hurt ordinary families but, equally, no-one wants to see small children being bitten by dogs. And the sad facts are that the overwhelming majority of dog attack victims are children under the age of six and the overwhelming majority of those attacks occur in either the family home or in friends' or neighbours' homes. If we are going to seriously address the issue of dog attacks on children, we have to send a very clear message that people have to be especially careful when young children are involved. If we were to take this element out of the legislation, I think it would be a much less effective piece of law-making. We are serious about this. We want to send a message to parents: if you have young kids, you have to keep your eye on them. You cannot allow them to play in the back paddock with a dog, because the reality is that any dog, under the right level of provocation, can turn nasty. A small child, who is at the same head level as a dog, is not able to properly defend itself.

I guess that all the other cases that the member referred to—people over the age of 80, disabled persons, pregnant women and so on—are more vulnerable than the average fit adult in our society, but the statistics do not demonstrate that they are at a particular risk as a class. There is not an overabundance of dog attack victims amongst those classes of people. I would hope that, through the new Dog and Cat Management Board that we have established and with the various amounts of reporting that we have put in place, we will get a better understanding over time about who are dog attack victims. And we may need to come back as a parliament to address some of these issues. If elderly people are particularly vulnerable—they are vulnerable because of the fact that they are aged—and if they are over-represented in the attack statistics, then we may wish to broaden this category. It is not something you would do without having some evidence. The member raised a point about the science of this: I believe that there is evidence to show that young children are much more likely to be victims. This measure is very much supported by the Children's Hospital and other groups who have made representations to us about this legislation. Another obvious point is that elderly people are generally cautious, whereas young children are the opposite; they go where others fear to tread.

The CHAIRMAN: In relation to this point or any other in the bill, is there a set review period? I cannot see that there is any nominated review time for this provision, including the one referred to by the member for Davenport.

Amendment negatived.

Mrs HALL: I have a question about this clause. Can the minister provide information about where the responsibility lies if an unleashed dog leaves a controlled area and attacks somebody outside. I will give two examples. Say a participating dog is off leash and involved in an obedience class or a dog show and confined to the area where they are participating but then moves outside the area and attacks someone. Does the responsibility lie with the dog owner or the event organiser?

The Hon. J.D. HILL: Liability would remain with the owner. The owner who participates in that event still has responsibility for the dog. Somebody is responsible for the dog at any given time. If that responsibility is passed over to another person, that person is the one in control of the dog. But if whoever is theoretically in control of the dog loses control of it, they would be responsible. There would be an offence of not being in effective control of the dog and, if it attacks, for attacking.

Mrs HALL: The reason I specifically used those two examples is that in both cases, with all the good will in the world, and with every good intent in the world, in obedience class or a dog show, something could happen to make it very difficult for the owner, who might have thought they had the dog under control, and the dog might slip out of obedience class, even though the owner might think that they were very proficient and well-trained thus far. That is why I am curious about where this responsibility lies.

The Hon. J.D. HILL: Like anything else in life, if you decide to have a particular hobby, pastime or recreation, there are risks that go along with that. One of the risks that goes along with having a dog is that you may lose control of and it may do something disastrous. You have to foresee those risks before you embark upon that particular challenge. If you are worried about that, do not get a vicious, large dog which is likely to run away and bite people. People must make decisions. This is about making dog owners responsible for the actions of those dogs. That is the basis of the way our society works. If you own a car you are responsible for what happens when that car is driven at high speed; or when the driver does not operate it in an appropriate way, the driver is responsible; it is the same with dogs.

The Hon. I.F. EVANS: I cannot wait to see the cat legislation if that is the case. New subsection 44(2) provides:

> A person who owns or is responsible for the control of a dog guilty of an offence if the dog attacks, harasses or chases or otherwise endangers the health of a person or an animal. . .

I think that that provision is broad enough to mean that, if your dog is in an off-leash area with a number of other dogs in a fenced dog park set up by the council, there are three or four dogs in the dog park and my dog attacks another dog (as dogs sometimes do), I will become responsible for a penalty, even though it is in a dog park.

The Hon. J.D. HILL: Absolutely. That is absolutely correct. The dog has to be under effective control even though it is off-leash. If you are not confident that your dog is under effective control, you do not take it into that park. You should exercise it on a leash.

The Hon. I.F. EVANS: I am intrigued by this answer, because the new subsection provides 'if the dog. . . harasses or chases'. So, you are saying that, if my dog is in a designated off-leash area and it simply chases another dog—

The Hon. J.D. Hill interjecting:

The Hon. I.F. EVANS: Well, that might be in the act now; I just want to clarify what parliament has done to dog owners. What the minister is about to do under his council management plans is introduce a whole series of dog parks throughout the state—and that is what the board will do. There will be off-leash areas that will be fenced.

The Hon. J.D. Hill interjecting:

The Hon. I.F. EVANS: You watch. That is what the dog board will do. I notice the adviser is nodding. So, what that will mean is that you will get a concentration of dogs into a certain area. Some of them will do it by time; there will be off-leash areas such as on the beach from 6 a.m. to 8 a.m. or whatever. What you will have is a series of dogs in an off-leash area. Under this provision, which might already exist in the act—you may only be changing the penalty—the person who owns or is responsible for the control of the dog is guilty if the dog chases another dog. I think the minister is going to have to look at that in respect of what he is doing with other sections of the act. It is simply a nonsense that, if my dog chases another dog, even if they would never catch each other, or my two King Charles Cavaliers chase each other all around the back yard, I would theoretically be responsible under this for a $2 500 fine. The minister needs to look at that, because I think that that is not what the parliament intended.

The Hon. J.D. HILL: I guess there are a number of responses to this. Chasing is not the same as playing and, if dogs are playing with each other, then it would not be an offence.

Members interjecting:

The Hon. J.D. HILL: Well, I do not know who introduced this provision into the legislation—I assume it was back in 1995 when the bill was last amended—but this is a measure that has been here for 10 years and I gather that there has been no prosecution under this measure.

The Hon. I.F. Evans: Then why are we increasing the penalty?

The Hon. J.D. HILL: Not for the chasing element. So, this is a measure that has been in statute for some time. The circumstance that the member is describing is legitimate. If we set up a series of parks where dogs are allowed to be exercised off-leash, are we concentrating dogs and therefore exacerbating the situation? I think that that is a reasonable question. That is obviously something that councils will have to address in the way that they work out what is going to happen. In the Onkaparinga council where I live, there are sections of the beach where dogs can be exercised off-leash and on-leash and where dogs are prohibited. I wander along the beach and see this happening and it seems to happen perfectly easily without the kinds of problems that the member is suggesting.

Mr SCALZI: Would the minister envisage that within these areas where dogs are allowed to go off-leash a person is still responsible if their dog chases or attacks another dog, as the member for Davenport has said? Will it be a requirement that that will be the case, because, unless there is a proper education campaign, people might believe that, if dogs are off lead, they do not have that responsibility.

The Hon. J.D. HILL: We are getting to the point of asking ridiculous questions. We are dealing with a measure that has been in law for at least 10 years. We are trying to establish a system that I thought the member for Hartley strongly advocated, where we are providing better protection for members of the public so they are not victims of dog attack when they go into public places. If the member for Hartley recalls, it was one of his constituents who first raised this. It was the member for Hartley who raised this matter in the house. It was the member for Hartley who presented petitions to this place. His questioning is fundamentally about undermining the level of protection that we are trying to introduce, and I find that very strange.

Mr SCALZI: The minister has misunderstood me. I am not trying to undermine the legislation. In fact, the minister is correct: I believe it is important that we have areas where dogs can be off lead and where the community knows exactly what they can and cannot do in those areas. My point is that, even in the areas where dogs can be off lead, dog owners still have a responsibility, because we are talking here about the dangers to other dogs from dog attacks. The minister has misrepresented me. I fully support these dog exercise areas. I am just asking whether it will be clear so that people do not have some misunderstanding that, in these areas, their responsibility is diminished when in fact the penalties still apply.

The Hon. J.D. HILL: I apologise to the honourable member if I misunderstood what he was asking me. It is clear that the responsibilities will still apply to dog owners wherever their dogs happen to be. Just because you go into a dog exercise area, it does not mean that you can do as you like. It is not a state of anarchy: it is a state of controlled exercise. Associated with these changes in the legislation there will need to be an education program.

I doubt that we would proclaim all sections of this legislation the moment it has been through parliament. I guess that we would set up the dog board first so it is able to address these issues and manage them in a sensible way. We would put out publicity. The Dog and Cat Management Board would provide information to councils, which would then provide information to dog owners when they register their dogs, and there will be signs up saying what can and cannot be done. I am quite confident that as a community we are able to pass these messages onto people, and there is a duty on people who own dogs to be aware of the rules that apply, just as there is at the moment.

Many councils have introduced some of these provisions; some councils have introduced more. Tea Tree Gully has introduced more than others. We have some practical examples of how these things are working and, as I understand it, they are working well. The incidence of dog attacks where these things have been introduced is down. I guess it is reasonable to ask all these questions but the fundamental issue is about trying to set up a system that will reduce the number of dog attacks in the community.

The Hon. I.F. EVANS: I move:

New section 45, page 12, lines 37 to 42 and page 13, lines 1 to 8—

Delete new section 45.

This relates to the transporting of unrestrained dogs in vehicles. The minister has made a commitment that this clause will not be enacted or proclaimed until there is more public consultation, and then he will bring in regulations that match the results of that public consultation. We say that the parliament should not pass a measure based on the minister's promise that he will listen to public consultation and make the regulations to suit that. We argue that he should delete the proposed new section and bring back a stand-alone amendment in the future that reflects whatever he wishes to put into the legislation.

We do not think it is a wise process to put in a clause and say to the minister, 'Look, we trust you. Put the clause through both houses of parliament. We know you will not enact it, because you are still going to consult on it.' This document has been out for 18 months or so. There has been an enormous public consultation process. What really happened, of course, is that the minister brought it in and got it through caucus. He put it to his cabinet, it got through

cabinet and went into the parliament. Questions erupted on talk-back radio and the minister has retreated at a thousand miles and hour, and the fall-back position is, 'We will simply put it through the parliament, not proclaim it and listen to the public consultation process.'

We disagree that this clause should be in the bill. We think it should be deleted. The minister can then undertake his public consultation and come back to the parliament. We can debate it as a stand-alone amendment and go through the normal process. We also make the point that we know that ministers can introduce a regulation and have it disallowed, introduce a regulation and have it disallowed and introduce a regulation and have it disallowed. So, by default, the minister could introduce the effect of this amendment once it passed through the two houses, if the minister so chose. The committee may not be aware of this, but I understand that the bill will not come under this minister's portfolio once it passes through both houses. I understand that moves are afoot to transfer the bill to the Minister for Local Government, because—

The Hon. J.D. Hill: It's one of the options I'm pursuing.

The Hon. I.F. EVANS: It is one of the options that the minister is actively pursuing. Therefore, the minister's commitment that he will not proclaim this bill and will do it by regulation may not hold in the future with respect to the Minister for Local Government, because that minister, of course, being a fiercely independent minister, may have a different view of the matter. We move to delete new section 45 so that it can be brought back under a proper process for parliamentary debate.

The Hon. J.D. HILL: I do not support the proposition moved by the member for Davenport, and I will explain why. However, first I wish to clarify the situation about whether or not this legislation will be transferred to another minister. I have jokingly suggested to a number of my colleagues that they should take responsibility for it. They have all rejected the offer. But I have, in fact, talked to the Minister for Local Government about whether or not the operations of the board, which is primarily about servicing local government, ought to be on a day-to-day basis, managed through his office of local government, or some such organisation. No decision has been made in relation to that matter. But I intend to have the policy making role stay with me—or stay with the minister for the environment. In relation to this provision, I take the point that the member made. But he made the claim that I retreated, after a bit of talk-back radio, at a million miles an hour from—

The Hon. I.F. EVANS: Well, it wasn't a million; it was more like a thousand.

The Hon. J.D. HILL: A thousand, a million; whatever. He said that I retreated on this provision. If that is the case, why would I go to the extent of introducing regulation after regulation, which would alienate even more effectively that section of the community which rang up talk-back radio? I put to the member that that is political nonsense.

The trouble with the member's suggestion about coming back is that we have a consensus about the tethering of dogs on trays on the back of vehicles. If the member were successful in having this new section removed, we would no longer be able to regulate to have dogs tethered. Everyone, I think, is of the view that that ought to happen. It would not apply to working dogs in working situations; there are provisions to exclude them. But I think everyone agrees that dogs travelling on the back of vehicles should be restricted. I have seen cars with dogs untethered where the dogs have fallen off and been injured in traffic, and I think very few people would argue that that is an infringement of anyone's right.

The Hon. I.F. EVANS: I will not unduly delay the committee, but that was nonsense. Frankly, if the opposition wins this amendment, an appropriate amendment can be drafted for the other place that allows dogs to be tethered on the back of utes, or whatever provision you want, which achieves both the outcomes: it is as simple as that. Why should the parliament approve a process that allows you to regulate this clause when there is ample opportunity to bring it back over the next two years and have a proper debate through the process?

The Hon. J.D. HILL: The chairman has asked whether or not we could define this as an open vehicle, and I guess we could, but we wanted to maintain the power to regulate the transportation of dogs within vehicles as well. There is an argument—and I think a fairly powerful argument—that has been put that dogs ought to be properly tethered when they are within vehicles, from the point of view both of the safety of the dog and the safety of the driver and other passengers in the car—and, indeed, other traffic on the road. Because, if a dog does something which interferes with the driver of the car, it puts a range of people at risk. We wanted to maintain the capacity to do that. I have given an undertaking to not pursue that particular issue until we have gone through a broad process of consultation. And, of course, any regulation that would—

An honourable member interjecting:

The Hon. J.D. HILL: Not on this particular issue. We went through a process of consultation and this issue came out of that last round of consultation, it was then incorporated in the recommendations and I removed it based on what I thought were quite sensible objections made by people who said we had not thought it through properly. And I agreed with them that we had not, so I said we would think it through properly and undertake further consultation. This is not a do or die effort but it seems to me to be a reasonable thing to maintain that power and at a future date exercise it after going through appropriate consultation.

Dr McFETRIDGE: This clause allows a dog management officer to access the details kept by the Registrar of Motor Vehicles to get the registered name of the owner of a vehicle. There are many cases where general inspectors and dog catchers would love to be able to access the details of motor vehicles. In Holdfast Bay drivers do burnouts all the time, and I have asked the Minister for Transport to allow the general inspectors to access the details of the owners of motor vehicles through the Registrar of Motor Vehicles and, so far, he has not done anything about that. Will this clause set a precedent to allow general inspectors to access details on a more general basis? For instance, if the dog inspector or the dog management officer sees a dog defecate, the owner of the dog whizzes the dog into the car and off they go, and he takes the details of the motor vehicle, can he use that information to prosecute the owner of the dog for not picking up the dog faeces, because it is littering? Why can that information not be used to prosecute people who do burnouts in motor vehicles?

The Hon. J.D. HILL: I am not the Minister for Transport so I cannot answer any of those questions. All I can say is that this provision allows an officer to act in circumstances where, for example, a car with an open tray comes by and the dog is sitting on the back without being tethered. The officer picks up the registration number, contacts the department, finds out the name of the registered owner, goes and sees

them and probably in the first instance says, 'Your dog was not tethered. What are you going to do about it?' I imagine that is what would happen in most circumstances. If it was a serious offence—perhaps where the dog fell out and the officer ended up with the dog—there might be greater consequences. I saw three German Shepherds on the back of a car once and I think at least two of them fell off as the car turned the corner down by the beach. One was a beautiful young dog. I think they are the circumstances. Defecation is not covered in this particular section, and the offence is not related to the vehicle. This really covers those particular issues.

Dr McFetridge interjecting:

The Hon. J.D. HILL: The honourable member is arguing a point, but it is not really the point under consideration.

The CHAIRMAN: I wonder whether the minister will give an assurance that, between this house and the next, he will look at this clause to refine it?

The Hon. J.D. HILL: I will happily undertake to do that for the honourable member. I do want to maintain the power to have vehicles that have trays, trailers and so on subject to these provisions. I will look at whether or not we can soften it in a way which picks up the issues put by the member for Davenport and the Chairman.

Amendment negatived.

Mrs HALL: I am sure that the minister will not have any difficulty in answering this question, and I refer to the increased fine. When the education and information programs commence on the very significant changes and responsibilities contained in this bill, will the minister give an undertaking that the material provided will be in multilingual form? A number of examples of government agencies—and I use the South Australian Ambulance as a perfect example—have used contact numbers and interpretive services in something like nine languages. Given the very significant increases in responsibility, fines and that sort of thing, would the minister give an undertaking to persuade the board, or do whatever is necessary, to make that provision?

The Hon. J.D. HILL: I am happy to take up that point. I will make recommendations to the board that it does that. I would hope that it would have done that without having it recommended to it, but I take the honourable member's point.

Clause passed.

Clauses 29 to 34 passed.

New clause 34A.

The Hon. J.D. HILL: I move:

Page 19, after line 35—
Insert:

34A—Amendment of section 51—Grounds on which orders may be made

(1) Section 51(2)—delete 'or a Control (Nuisance Dog) Order' and substitute:
, a Control (Menacing Dog) Order for a Control (Nuisance Dog) Order

(2) Section 51(2)(a)—delete 'or a nuisance' and substitute:
, a menacing or a nuisance

This amendment allows councils to make specific orders, depending on the problem that occurs, whether it is a nuisance dog, menacing dog, and so on.

New clause inserted.

Clauses 35 to 39 passed.

Clause 40.

The Hon. I.F. EVANS: I move:

Page 23, lines 7 to 14—
This clause is opposed.

This amendment seeks to delete clause 40, which is the insertion of new section 84A which relates to the introduction of a concept of minimum penalty into the act and which provides:

A court, in imposing a monetary penalty for an offence against this act, must impose a penalty of not less than one-quarter of the maximum penalty prescribed for that offence unless, in the opinion of the court, there are special circumstances justifying a lesser penalty.

That sets a minimum sentencing criterion. The parliament has been reluctant to introduce minimum sentencing in all forms of legislation, and the opposition opposes the concept of minimum penalties being inserted into this bill. If we are going to do it with this bill, why not for a whole range of other bills in relation to other crimes against society? The opposition opposes this clause and has moved this amendment to delete it.

The Hon. J.D. HILL: I accept the philosophical points made by the member, but this is about trying to get a practical outcome. At the moment, I gather that councils find it very frustrating when they take a matter to court in relation to this issue. The courts often impose very trivial penalties, because they have not taken these matters as seriously as the parliament possibly intended or, certainly, as local government would want them to take it. As a result, local councils have been reluctant to take to court those who have committed offences. They say, 'There's no point doing it, because the courts won't do anything about it.' So, this is really to say, 'We do take it seriously and, if you have to impose a penalty, there is a minimum which should be imposed.'

The committee divided on the amendment:

AYES (16)

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

NOES (18)

Atkinson, M. J.	Bedford, F. E.
Breuer, L. R.	Caica, P.
Ciccarello, V.	Conlon, P. F.
Geraghty, R. K.	Hill, J. D. (teller)
Key, S. W.	Koutsantonis, T.
Lomax-Smith, J. D.	McEwen, R. J.
O'Brien, M. F.	Rankine, J. M.
Rau, J. R.	Snelling, J. J.
Stevens, L.	Weatherill, J. W.

PAIR(S)

Brokenshire, R. L.	Foley, K. O.
Gunn, G. M.	Thompson, M. G.
Kerin, R. G.	Rann, M. D.
Kotz, D. C.	White, P. L.
Penfold, E. M.	Wright, M. J.

Majority of 2 for the noes.

Amendment thus negatived; clause passed.

Clause 41 passed.

Clause 42.

The Hon. J.D. HILL: I move:

Page 25, line 12—After 'areas' insert 'where dogs are prohibited or'

This amendment allows councils to prohibit dogs from particular areas. This power was not specifically spelt out, so this makes explicit what was intended. I also speak to the next amendment, which is a similar amendment and which allows the government by regulation to do the same thing. This is the case where areas cut across council boundaries.

Amendment carried; clause as amended passed.

Clause 43.

The Hon. J.D. HILL: I move:

Page 25, line 16—After 'areas' insert 'where dogs are prohibited or'

Amendment carried; clause as amended passed.

Clause 44 passed.

Schedule and long title passed.

Bill reported with amendments.

The Hon. J.D. HILL (Minister for Environment and Conservation): I move:

That this bill be now read a third time.

In moving the third reading, sir, I thank you for chairing this session, and I thank all members who contributed to the debate. The bill has come out of committee with one amendment which the government supported. There are a number of measures which I said I would follow up between here and the other place and I undertake to do that. I thank members for their contribution to the debate, and at this final stage I thank Dr Deb Kelly from my department for her advice and assistance through two years of production of this legislation, and Ms Shirley Hall, parliamentary counsel, for her excellent work as well.

Mr HANNA (Mitchell): I would like to make a preliminary point before addressing a number of issues which are relevant to the passage of the bill through the parliament tonight. I refer to the dog and cat management amendments. The first point I would like to make is that, although this bill was listed for discussion earlier this week, it certainly was not listed for discussion today. After the dinner break today, I was told by a minister that this bill would not be dealt with and I might as well go home. Nobody has contacted me to say that it would be dealt with this evening. So, that sort of approach is not conducive to cooperative debate but, after a long night last night, members are tired and there was a lot of cooperation as it turned out.

I was considering a number of amendments. In the end a lot of the issues were raised by the minister, either as a result of the consultation process or in the house tonight, and there were also issues of concern to me which were raised by the member for Davenport on behalf of the opposition. In the end, I did not feel compelled to move amendments. The fate of the amendments moved by the member for Davenport indicates that it probably would have been a fruitless exercise anyway, but I do wish to place on the record a number of matters of concern which have arisen from the community feedback to me in relation to this vexed issue which has been around for so long.

As a result of the initial discussion paper which was put out in relation to changes to the dog laws, there were a number of points which were raised in my community, and I mean particularly dog owners in my electorate of Mitchell. There was certainly broad agreement that truly menacing dogs should be subject to tighter controls. However, the concerns raised at that time, back in 2002, were in relation to how a dog might be assessed as menacing. There were concerns then and those concerns have not been assuaged by the bill in its shape now. There is no clear guidance to the animal control officers at local council level as to how to make those determinations. Perhaps it is impossible, and I confess I have not come up with an alternative definition. I think the concerns are primarily how those determinations will be enforced in practice.

One of the points that has been made strongly to me through community consultation is the concern about statistics relating to dogs. This is relevant when it comes to consideration of certain breeds, which are specifically referred to in the legislation, and the statistics about dog attacks. The point that has been made to me is that purebreds alone should be incorporated into statistics relating to breed. The concern is that a lot of mongrels are responsible for many of the bites, and those in the dog community tell me that there are unpredictable qualities to mongrels which are not found in purebreds, apart from those particular breeds which have been outlawed under the legislation. Of course, one of the main issues which has been dealt with in the amendments is in relation to effective control of dogs. This was probably the single most concerning issue to my local community. In the end, we have a form of compromise so that the ability of owners who can effectively control their dogs by command is taken into account.

I will not go through the overall effect of the amendments and the clauses passed through this place tonight because we have yet to see the final form of the legislation after it passes through the Legislative Council, and a reassessment will be required at that time. However, one of the mainstays of community concern in relation to this bill is that there would not be sufficient off-leash areas allowed for responsible dog owners. Indeed, even with the compulsory dog management plans, which have now come into the legislation, there is little guarantee to my local community that those dog management plans will adequately provide areas for people with dogs to responsibly exercise them. Alternative suggestions have been put to me, for example, that perhaps rather than fencing in areas for the exercise of dogs, another possibility is fencing areas within which children could exercise and play without any dogs at all. In other words, instead of fencing the dogs, fencing the children. It is not quite as harsh as it sounds, but it means that in areas where children were likely to play ball or use playground equipment, those areas could be specifically fenced.

I understand the minister's philosophical point that these matters are left up to local councils, but again I reiterate the concern that there is no guarantee that there will be adequate areas set aside for local people. I suppose, ultimately, the reassurance is that there is a political imperative for councils to provide facilities such as that for the large number of responsible dog owners in an area such as the City of Marion or the City of Onkaparinga. Generally in respect of the penalties that we have seen upgraded, or certainly increased in the legislation, there was a fair degree of community support because, after all, the people who were coming to community meetings in my electorate were generally responsible dog owners and they were quite happy to see higher penalties, provided that there is fair enforcement, and that was a concern that was repeated often.

On the other hand, I have also listened carefully to the animal control officers, and their point is rather on the opposite side of the same coin—namely, that they have adequate powers to enforce the legislation. I note that the minister has taken this into account to some extent—for

example, by allowing animal control officers to apply to the Registrar of Motor Vehicles if they see a dog unrestrained in accordance with the regulations. Of course, we are yet to see those regulations.

I am glad to see that the references to penalty in relation to the weight of dogs is no longer in the bill. That caused a lot of concern and did not make sense to people in my community. One of the ongoing concerns that is not particularly addressed in the bill, although it is covered in new section 45, is in relation to people coming onto the property of a dog owner. This is probably not a dramatic change from the existing law, in the sense that under the common law there is implied consent for the postie or the police officer to come to the front door. However, nonetheless, there is continuing concern, for example, about a child coming over the back fence where a dog is securely fenced in, that child being bitten and the dog owner being responsible. I think that it is fair to say that the bill does not really affect that situation particularly.

Many of the responsible dog owners in my electorate were concerned about the use of attack, patrol and guard dogs and the lack of training often accorded to those dogs. I note the regime in the bill that deals with those categories of dogs particularly, and that is to be welcomed. If there are dogs that are fiercer than the run-of-the-mill dog by their nature or their training, it is only proper that more onerous controls should be applied to them.

One of the concerns that was raised time and again in my community consultation was about the suppliers of dogs, and debate has taken place about that issue tonight. In the interests of brevity and not unduly prolonging the debate, I did not make a contribution at the time, but I state now that responsible dog owners and breeders have considerable concerns about backyard breeders. I was interested to hear the minister's response to the member for Davenport when it was suggested that it would not be too difficult to have an appropriate licensing or registration system for dog breeders. This would be of comfort to those breeders who do the right thing and are very careful not only about breeding their dogs but also about imparting appropriate information to those who purchase from them. So, there is that element of responsibility that we all want to see.

The same comments about pet shops to which the minister referred in debate have also been conveyed to me. There is a lot of concern about dogs being bought from pet shops, partly because they may be the result of puppy farming, where young dogs are bred, kept irresponsibly without any training and without any familiarisation with human beings and then put into a pet shop at the cheapest possible price, ending up as a pet for a child. Those dogs may well be more dangerous than a dog purchased from a responsible owner.

I have also had submissions that pet shops should be stopped from selling dogs, or at least that certain conditions should be attached if that is to happen. A considerable number of submissions were put to me not only about the education of dog owners but also about the education of children. I was advised that a very sound education program is run for primary school children by the South Australian Canine Association.

The extent of delivery of that program is limited by funding. I make the point generally that, although we have spent a little bit of time tonight discussing education of dog owners and children about dogs, that is not something we can address clearly in the legislation. We could go to the extent of making it mandatory for dog owners to undergo an education program before they can have a dog in their home, but there were so many complexities and controversies surrounding that issue that I chose not to move amendments in this place. Nonetheless, education is extremely important and I accept the minister's assurance about education and no doubt the opposition, myself and my local community will examine how things develop over the next year or two in terms of proper education.

When I make the point about children I refer to the fact that children who are not fearful of dogs but who are able to respond responsibly and carefully with dogs are less likely to be bitten. There is a suggestion from the responsible dog owners in my community that it is a two-way street. Certainly, you want more responsible dog ownership, but you also want children, whether five or 15 years old, relating more responsibly to the dogs they come across. Where those training programs come from—whether they can be rolled out through the Canine Association, pet shops or as some sort of adjunct to the registration process—is too much for an individual member of parliament to sort out entirely, but I hope the minister will take these issues on board as the legislation is implemented.

In relation to education, the only other point I make is that there is a strong view in the community that the animal control or management officers need to play an educative role as much as an enforcement role—something like the role that used to be identified with the local police officer, who may give appropriate warnings and advice: a kind of education, as well as fining a person if need be. It should not be as black and white as fining a person, but there needs to be an educative role as well.

With those remarks I commend the minister for initiating this lengthy reform process. I know that it would have been difficult for him and his officers and advisers, because it is an emotive topic. Companion pets are important to the community—and every member of this place would be aware of that—whether for companionship, for exercise or as a playful companion for the children of the house. Dogs are valuable assets in our community, and the purpose of the bill no doubt is to strike an appropriate balance between the liberty to own and enjoy dogs as against restraining dogs and their owners from inflicting harm on innocent members of the public. There is a concern that a lot of the reforms have arisen from a handful of well published cases where children have been bitten, scarred and so on. Those cases are horrifying and I can understand that they would lead to this reform process. At the end of the day we have come up with a balancing act. I know there are some suggestions from my community that I could have taken up and brought into this debate. For several months I have been considering whether or not to move those amendments.

I have been consulting with responsible dog owners in my community. At the end of the day I found there were so many divergent opinions that it became difficult to come into this place and say that my community wants this or my community wants that, but I have, at least, with this oppor-tunity alluded to the general principles which have been really important to the responsible dog owners in my community, and I am glad that a lot of them have been taken into account in the bill.

The Hon. I.F. EVANS (Davenport): I will not hold the house for long because it is the end of the third reading and we have had a reasonable debate. I want to thank Dr Deb Kelly for her contribution not only under this government but

also under the previous government when this whole issue was first raised and also Shirley Hall of parliamentary counsel for her patience and work. I would also like to thank my former staff member—now working for Senator Ferris—Rebekah Rosser, who spent 12 months of her life going through all the various issues and researching papers worldwide to look at all the different trends. She probably knows the legislation—or the issues at least—better than most.

I would like to make this observation to the parliament—it is something that the minister might want to contemplate at his next ministerial council—and I raise it most sincerely. The reason that we are here tonight is that I was the minister at the time when the May children were attacked by, I think, Trevor the Rottweiler, if I recall the details correctly. Certainly, it was a dog that had come down from Darwin with its owner. It had been deemed dangerous under the Northern Territory legislation but not under our legislation. After all the talk and discussion under the previous government—and there were discussion papers put out by that government—this government redid the discussion paper and came up with its own legislation—and I do not criticise it for that—but there is still no provision in the bill as it stands tonight that requires a dog that is deemed dangerous in another state automatically to be deemed dangerous in this state.

I am not sure of the legislative mechanism that we can use to achieve that. If the minister cannot think of one between now and when the bill goes to another place, I sincerely believe it should be raised at a ministerial council so that there is some agreement that there be some national register of dogs that are deemed dangerous. It seems to me a nonsense that a dog that can cause incredible harm in another state, and is known to the authorities to have caused harm in another state, is not notified to the next state to which the owner takes the dog. We wait for it to attack someone, and then we deem it dangerous. I think we have good enough communication skills now to fix that. It is of some disappointment at this stage, at least, that the very incident that sparked the debate that we are having and have had is actually not covered either by the government's or the opposition's amendments. I am as critical of myself as I am of the minister in that respect, but I will throw it to the officers and see what they can come up with. It may well be that it is a ministerial council issue, and I am sure the minister will take it on board.

Bill read a third time and passed.

ADJOURNMENT

At 11.49 p.m. the house adjourned until Thursday 26 February at 10.30 a.m.