HOUSE OF ASSEMBLY

Wednesday 10 November 2004

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

ASSENT TO BILLS

Her Excellency the Governor, by message, assented to the following bills:

Criminal Law Consolidation (Intoxication) Amendment,

Stamp Duties (Miscellaneous) Amendment,

Tobacco Products Regulation (Further Restrictions) Amendment.

CRIMINAL ASSETS CONFISCATION 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.

POLICE, TEA TREE GULLY

A petition signed by 3 943 residents and business people from the City of Tea Tree Gully, requesting the house to urge the Government to ensure the operation of a police facility/patrol base within the City of Tea Tree Gully before the expiry of the term of this parliament, was presented by the Hon. L. Stevens.

Petition received.

PAPERS TABLED

The following papers were laid on the table:

By the Speaker—

Alexandrina Council—Report 2003-04

By the Minister for Transport (Hon. P.L. White)—

Department of Transport and Urban Planning—Report 2003-04.

LEGISLATIVE REVIEW COMMITTEE

Mr HANNA (Mitchell): I bring up the ninth report of the committee.

Report received.

QUESTION TIME

SOS CHILDREN'S VILLAGE

Mrs REDMOND (Heysen): Did the Minister for Families and Communities, or any of his staff, instruct FAYS to pin a memo on the front door of the home of a former mother of the SOS village whose name was mentioned in parliament yesterday by the opposition? The memo referred to in my question instructed the woman, who is not a government employee, not to speak to the media.

The Hon. J.W. WEATHERILL (Minister for Families and Communities): I say in preface to my remarks one thing all members should bear in mind: that is, that there remains in this village something in the order of 24 young people who are all perhaps just wondering whether in this debate any thought will be given to their welfare. The answer is no.

Mrs REDMOND: As a supplementary question, can the minister assure the house that no-one who is a carer or who has spoken out in the interests of the children of the SOS village will be penalised or harassed by the department?

Members interjecting:

The SPEAKER: The member for Bright and the member for Kavel will come to order!

The Hon. J.W. WEATHERILL: As I said, before this descends into a ridiculous farce, let the house bear steadily in mind that 24 children remain in sibling groups under the—

Dr McFetridge interjecting:

The SPEAKER: The member for Morphett will come to order!

The Hon. J.W. WEATHERILL: —guardianship of my care and my responsibility—our collective responsibility—and I do not think in any of this debate (and it is not a debate we have initiated) has the welfare of the children been given one moment's thought.

SCHOOL RETENTION RATES, WHYALLA

Ms BREUER (Giles): My question is directed to the Minister for Education and Children's Services. What impact is the government's focus on school retention having on the retention rates at Whyalla's three high schools?

Members interjecting:

The SPEAKER: Order!

The Hon. J.D. LOMAX-SMITH (Minister for Education and Children's Services): I thank the member for Giles, because I know of her keen interest and support for public education in Whyalla and the commitment that she has given to working with the high schools in their endeavours. The honourable member has been passionate about education. She recognises the importance of school retention, an issue that has languished on the backburner during the period of the last government's management of our education system. It is only just being taken as a key to people's future and our own state's economy.

Indeed, we have made it a priority in committing $28.4 million to our school retention program because we know that if children are not in school, at work or in training they are at risk of experiencing many problems in their future lives. The work being done in Whyalla has been funded through this strategy and it is beginning to pay dividends. One of the strategies has been our Innovative Community Action Network (ICAN); and I have spoken previously about the innovative Pathways program which takes young people who have become disengaged from the education system and gives them the opportunity to upskill to take on apprenticeships.

Of particular note are the efforts of the Edward John Eyre High School, being one of 10 schools involved in trialing innovative models of partnerships and engagement for young people, particularly in allowing them to have some input into their own pathways and engagement in management of their own schools and careers. We also have a good program that works with young mothers, young women, who would otherwise be disengaged from schooling and who are being encouraged and supported in their ongoing studies.

The three schools have worked with the state government using the additional funding and one-on-one or small group mentoring of students at risk to keep them engaged and in schooling. The department of education figures show that full-time equivalent student retention across the three high schools—at the Stuart, Whyalla and Edward John Eyre high

schools—has increased from 49.8 per cent in the year 2001 (a year before we came into government) to reach 69.8 per cent in 2003. By anyone's standards this is a really significant turnaround, and it is showing dividends for all the efforts, funds and commitment that this government has given to school retention statistics.

As well, it is giving these young people an opportunity to extend their careers and future employment. I find it particularly disappointing that those members opposite who spend so much time undermining and denigrating our public education system—having made no attempt to address school retention, having not even commented about it—

The SPEAKER: Order! The minister is now not just throwing herself into debate but weighing into debate. That was not the subject of the question at all. The member for Heysen.

The Hon. J.D. LOMAX-SMITH: I apologise, Mr Speaker.

The SPEAKER: Yes. The member for Heysen has the call.

SOS CHILDREN'S VILLAGE

Mrs REDMOND (Heysen): My question is directed to the Minister for Families and Communities. How does the minister reconcile his claim in parliament yesterday that SOS village management said that it was closing because of financial reasons, when SOS management advises that it had $500 000 in the bank in March and was forced to close because of bureaucratic and not financial reasons?

The Hon. J.W. WEATHERILL (Minister for Families and Communities): It is because the honourable member has been misled by those who are advising her, I suppose; that is the simple truth. Can I assist the house with this matter. I have an enormous amount of time for the member for Heysen, but it will not assist her to attach her credibility to Mr Ellis Wayland; it will not assist her. I can give the honourable member some free advice about that. There has been a long—

Members interjecting:

The Hon. J.W. WEATHERILL: Can I take the house through this—

The Hon. W.A. Matthew interjecting:

The SPEAKER: Order! The member for Bright will come to order. The minister has the call.

The Hon. J.W. WEATHERILL: Government agencies have been attempting to support the SOS village for a number of years now. In fact, this village has been running for many years in the Seaford area. They have provided a range of supports to that agency. It became apparent when support was being provided into the agency—

Mr Brokenshire interjecting:

The Hon. J.W. WEATHERILL: It became aware that, since—

Mr Brokenshire interjecting:

The Hon. J.W. WEATHERILL: That is right, 1996. I think that is about when it started.

Mr Brokenshire interjecting:

The SPEAKER: Order! The member for Mawson will put that gatling gun away.

Mr Brokenshire: Yes, sir.

The Hon. J.W. WEATHERILL: It has been working with SOS village assisting it in a whole range of ways: providing one-off grants, providing a carer's allowance to the foster carers and inviting it on two separate occasions to participate in an alternative care tender. The thing that we offer all non-government agencies, we offered to SOS village to participate in those tender arrangements so that it could access additional government resources. SOS village resisted that. They did not want that. They said, 'We have a particular model and we do not want it sullied by having a particular relationship with the government department.' That was fine; we still supported them. Then what happened—

An honourable member: It is a global model.

The Hon. J.W. WEATHERILL: That is right, and one might ask: why does it not work here?

An honourable member: You are the minister.

The Hon. J.W. WEATHERILL: That is one answer. There is another possible answer. I will leave members opposite time to ponder. Can I suggest that what occurred during that period of time is that officers of our agency became aware that there were tensions amongst the so-called mothers, as they then were, and the SOS management. Indeed, they were having troubles recruiting mothers because of the way in which they engaged them. Some of the so-called mothers went to see a trade union and sought to agitate their grievances to them. They also went to see the member for Kaurna and agitated their grievances to him. So there was discontent. That is not something we made up. It was something that was occurring. It is an empirical fact. There was discontent with their terms of arrangement.

Why were they concerned? Amongst other things, they did not get any respite; they were there on a full-time basis. They did not get any professional support, or not sufficient support. On occasions they had to pay out of their own wages for food for some of the children. They had to meet their own transport costs. Not unnaturally, they became disgruntled and raised those issues.

I now refer to the first formal involvement of this government in relation to the so-called closure, but I must preface that by saying that from time to time Mr Ellis Wayland would threaten the staff with closure if they kept on their course of raising concerns about what they saw with the way in which the village was run. The first formal communication with the government was around February of this year, when we were told that the village was going to close in a week's time. We were told the ostensible reason: if you check the public record, you will see that the public statements of the relevant officers of SOS village at the time were: 'It is because our parent body had withdrawn funding.'

We also know from proceedings in the Industrial Commission, because the union took a case to the commission on behalf of a number of these disgruntled women. The Industrial Commission was told (and it was noted by the commissioner) that this international organisation had required its South Australian operation to be internally viable—that is, in their own account—by 2006. The international organisation had also looked at the current situation and believed that it could not maintain the current level of subsidy to its South Australian operation.

So, we were informed that this village was going to close in a week's time. Our initial, sole, ongoing and abiding concern has been the interests of the children who were in those villages. We were very concerned because we thought we were going to have to house 24 children, in groups of seven sibling groups, and we knew that our foster care system was not going to be able to sustain that. We were very alarmed by that.

We took steps to try to negotiate a longer period of time before SOS village left town. But it was threatening us that

it would close the operation. It insisted on our paying market value for purchasing this village. When we took this very expensive proposition to cabinet, cabinet said, 'Can you go back and see what you can do to try to put this thing back on the tracks?'

I met with Mr Wayland. He had a very clear set of views about not wanting to negotiate with me and certainly not wanting to negotiate with the union. What we have here is over a period of time a person who has been running this operation in South Australia in a way which has not been capable of being sustained. He has not been able to maintain effective relationships with the department, with a number of the people who work for him or with the union that represents them. He has been the author of his own misfortune in relation to these events that have occurred in the SOS village.

We were confronted with a number of children who were going to be disrupted out of their community, out of their homes and out of their sibling groups. We negotiated to make sure that they could stay there. I think we did a good job in that respect, and I am proud of the work our agency did. I think it takes gall for those opposite to be backing these spurious claims by someone who has no credibility.

RECREATION AND SPORT, PARTICIPATION

Ms CICCARELLO (Norwood): My question is to the Minister for Recreation, Sport and Racing. What innovative approaches is the government fostering to assist community involvement in active recreation and sport, and what has been the reaction from those involved?

The Hon. M.J. WRIGHT (Minister for Recreation, Sport and Racing): I thank the member for Norwood for her question and also for her long-time interest in this area. I am pleased to report that the response from the community regarding the government's drive to increase the level of physical activity has been very positive and encouraging. The government has made a commitment to increase the level of physical activity across the community and has supported this important aim by providing funds for community groups. The response from stakeholders has been very encouraging, as I said. The government has provided needed opportunities for grassroots organisations to deliver targeted and specific programs to members of the community, particularly those in need.

Delivering recreational outcomes for marginalised youth, Aboriginal communities and groups with a low socioeconomic status who have difficulty accessing sport and recreational opportunities are among many of the beneficiaries of a new funding program. I thought I would take the opportunity to share with the house a few of the specific examples of groups that have been funded in this program. Obviously, I will not delay the house, and I will not have time to go through all of them, but I will give an illustration of some examples that the house would be interested in, as follows:

- Bicycle SA has received $25 000 for a cycling program, which will provide children under the guardianship of the minister with opportunities to increase physical activity, to learn skills, to socialise and to have fun.
- The Elizabeth Community and Recreation Association has received $12 000 for an active recreation program for marginalised youth, and education on the benefits of being active.
- The Henley and Grange swimming clubs have received $12 000 for learn to swim programs aimed at culturally and linguistically diverse women, aquatic activities for seniors and aquatics for the disabled.
- Leigh Creek Amateur Swimming Club has received $5 000 to encourage mature aged community members to participate in low impact physical activity.
- The Ernabella community has received $50 000 for employment of indigenous youth and recreation officers to work with youth.
- Reclink SA has received $50 000 to conduct recreation and sporting programs for homeless and vulnerable adults, providing transportation and fees to ensure access to participation.
- The Salisbury United Soccer club has received just under $12 000 to establish soccer clinics to encourage indigenous and non-English speaking communities to participate.

The Hon. M.D. Rann interjecting:

The Hon. M.J. WRIGHT: I have just been informed that the Premier is the lifetime patron of that club.

- SASRAPID has received $18 790 for a fitness program for young disabled people under the guardianship of the minister.

They are just a few examples of some of the programs that have been funded. I can inform the house that I have approved grants under the banner of the new program called MOVE IT! *Making Communities Active* to 39 recreation and sporting organisations, distributing over $750 000 in this funding round to worthy projects, which I am confident will deliver tangible outcomes for each of the targeted community groups.

SOS CHILDREN'S VILLAGE

Mrs REDMOND (Heysen): My question is again to the Minister for Families and Communities. What specific subsidies has this government given to the SOS Children's Village since coming into office beyond normal foster care and special needs allowances? Yesterday, the minister said that SOS had 'been sustained by government subsidies for a number of years'. He went on to say, 'The department had over the years made small one-off grants to keep them going.' However, SOS management has told the opposition that the government made no contribution to the village other than foster care and special needs allowances that are paid to all foster carers in the state.

The Hon. J.W. WEATHERILL (Minister for Families and Communities): As I explained earlier, sir, the government has been doing those three things mentioned by the honourable member. The fosters carer's allowance paid to—

The Hon. W.A. Matthew interjecting:

The Hon. J.W. WEATHERILL: Well, they were not otherwise entitled to it.

The Hon. W.A. Matthew interjecting:

The SPEAKER: Order! I warn the member for Bright.

The Hon. J.W. WEATHERILL: It was an additional subsidy that would have otherwise not been payable to them. Secondly, we made the one-off grants. Thirdly, substantial resources were placed by the local Noarlunga FAYS office, I think, or at least the local district office. Social worker resources and other resources were placed to provide professional development and support for the mothers in those homes. There was a substantial number of hours—not standard at all.

Indeed, when we sought to increase the amount of assistance to this home, we were told that they did not wish to participate in the alternative care tender. On two separate

occasions we offered to up the work that we did with them and they refused to participate in those arrangements. That is the simple truth about it. Substantial government resources went into sustaining this model because it was not sustainable on its own.

HOSPITALS, FLINDERS MEDICAL CENTRE BREAST CANCER CLINIC

Ms THOMPSON (Reynell): My question is to the Minister for Health. How will an expansion of the Breast Cancer Clinic at the Flinders Medical Centre improve breast cancer prevention, treatment and care in our community?

The Hon. L. STEVENS (Minister for Health): I thank the honourable member for this question about the newly expanded clinic for breast cancer patients at the Flinders Medical Centre. The Flinders Breast Cancer Clinic was established in 1993 and was one of the first multi-disciplinary breast cancer assessment clinics in Australia, providing a service for public and private patients. Now the internationally recognised Flinders Lymphoedema Assessment Clinic has been moved to the same area as the Breast Cancer Clinic, and the extended clinic will offer vastly improved patient consulting areas and a wide range of services.

Lymphoedema, which causes limbs to swell dramatically, can be a devastating side effect of breast cancer surgery if not diagnosed quickly and managed appropriately. The high quality care at the clinic is demonstrated by the fact that all biopsies and pathology work is done on site and the results are usually delivered on the same day or within 24 hours. While the expansion of the service does not reflect a dramatic increase in the demand for breast cancer services, it shows an understanding that a range of treatment options are needed to improve outcomes for all patients. The $270 000 funding for the expanded clinic has been a collaborative effort, with state government funds being combined with moneys raised by the annual Flinders Medical Centre Foundation's Pink Ribbon Ball, the Volunteer Service for Flinders Medical Centre, the Country Women's Association and the Lymphoedema Support Group of South Australia (City and Yorke Peninsula). I congratulate and thank all those people who have been involved in this very important initiative.

SOS CHILDREN'S VILLAGE

Mrs REDMOND (Heysen): My question is to the Minister for Families and Communities. Given that the minister told the house yesterday he did not attend the SOS Children's Village to investigate claims that workers were happy with working conditions, can the minister indicate how he investigated these claims and to whom he spoke?

The Hon. J.W. WEATHERILL (Minister for Families and Communities): It may come as some surprise to those opposite, but we have hundreds of people working for us in government departments and, ordinarily—

Members interjecting:

The Hon. J.W. WEATHERILL: Apparently none of our public servants work.

Mr Brindal interjecting:

The Hon. J.W. WEATHERILL: Member for Unley—

The SPEAKER: The member for Unley! I wondered for a while where the noise was coming from.

Members interjecting:

The SPEAKER: The honourable the Attorney-General! The member for Mawson is warned.

Members interjecting:

The SPEAKER: The Hon. Attorney-General, for the second time!

The Hon. J.W. WEATHERILL: Sir, it would be nice to get one question in all this about the welfare of the children sitting here—just one question about the people in this village. Ten months after we have taken it over are you saying we are doing a bad job? No. We have managed to sustain this village when we were given a week to actually sort it out. There has not been one question about the welfare of the children—you ought to be ashamed of yourself.

The SPEAKER: Order! The chair has no reason to be ashamed. The honourable minister may not reflect on the chair in that manner.

The Hon. J.W. WEATHERILL: Sir, it was unintentionally sent in your direction.

The SPEAKER: It is inadvisable to reflect on any honourable member in that manner.

DEFAMATION LAWS

Mr O'BRIEN (Napier): My question is to the—

An honourable member: Is it a big question?

Mr O'BRIEN: I am not going to get in trouble again! My question is to the Attorney-General. What developments have occurred to deliver uniform defamation laws across Australia?

The Hon. M.J. ATKINSON (Attorney-General): I am pleased to inform the house that at last week's meeting of state and territory attorneys-general we agreed to a model bill to deliver uniform defamation law across Australia. The agreement is the result of states and territories working cooperatively to develop a bill that strikes an appropriate balance between the right to free speech and the legitimate need to protect reputation. The model bill builds on the responses received on the discussion paper proposed for uniform defamation laws released by the states and territories on 30 July 2004.

The Hon. W.A. Matthew interjecting:

The Hon. M.J. ATKINSON: Although the member for Bright makes a very good interjection—which, alas, I cannot share with the house—the truth is that I put this on the agenda. Submissions were received from the combined—

Mr Brokenshire interjecting:

The Hon. M.J. ATKINSON: The member for Mawson says that the standing committee of attorneys-general is a hopeless ministerial council. We deliberate carefully and come up with durable solutions.

Submissions were received from the combined media group representing 21 mass media organisations, the Australian Press Council, the Country Press Association of South Australia, academics, judiciary, law and bar associations, legal firms and Business SA. The proposals received a great deal of positive feedback from respondents. The bill preserves the common law test of defamatory matter and does not attempt to codify it. The clear majority of submissions favour the retention of key elements of the common law, including certain common law definitions and defences.

So, the bill modifies and supplements rather than completely displaces the common law. This will allow a little room for the development of the remaining common law as society changes. And one way in which South Australian society is changing is that the taxpayers of South Australia no longer have to pay out hundreds of thousands of dollars for the ill-considered remarks of members like the member

for Bright and the Hon. R.I. Lucas, who have cost taxpayers in this state dearly with their reckless remarks.

The model bill provides for the states and territories to reform the law by:

- inserting an objects clause that specifically recognises the need to protect both personal reputation and freedom of expression;
- ensuring that truth is a stand alone defence;
- ruling out defamation of dead people, which is what the federal Attorney-General wants—namely, that the dead or their representatives be able to sue for defamation;
- removing the right of corporations to sue individuals;
- shortening time limits for the initiation of litigation to 12 months;
- capping damages so that they are not more than the awards for personal injury;

I seem to recall that on account of the member for Bright flapping his gums we had to pay out $180 000 in taxpayer's money in damages and costs to the member for Mitchell.

- streamlining offers of amends, withdrawal of allegation and apologies, and encouraging speedy settlement.

Reforming defamation law has been on the agenda for 25 years but progress has been hampered by opposed vested interests and a reluctance of state governments to change their legislation. I commend the states and territories for the prevailing cooperative attitude, and I am prepared to admit that if it was not for the federal Attorney-General, the honourable Phillip Ruddock, threatening to bring in commonwealth defamation laws, then the states would not be getting their act together on this, and I give some credit to Phillip Ruddock for his threat to bring in commonwealth legislation. I have to say that I do not think commonwealth legislation would be a good idea; it would merely add complexity—a ninth defamation jurisdiction—but without that threat I do not believe that state and territory attorneys-general would have moved so swiftly. So I give credit to Phillip Ruddock for his threat, I suppose you would call it—

An honourable member: Assistance.

The Hon. M.J. ATKINSON: Assistance.

Mr Brokenshire interjecting:

The Hon. M.J. ATKINSON: The member for Mawson says that SCAG is a joke, and I will convey that to the honourable Phillip Ruddock next time we speak, because I think he is a good Attorney-General. States and territories will now take the model bill to their cabinets with a view to commencing the legislation in all jurisdictions no later than 1 July 2006, but I am sorry to say that the $180 000 that the member for Bright has cost the taxpayers of South Australia—

The Hon. W.A. MATTHEW: I rise on a point of order, Mr Speaker: the Attorney-General keeps making incorrect statements in this house, and they are accusatory.

The SPEAKER: What is the standing order?

The Hon. W.A. MATTHEW: I object to what he is saying, and I ask him to withdraw those statements forthwith as he knows them to be untrue. He knows full well that I was asked by him to accept an offer and not appeal. He knows that.

The SPEAKER: There is no standing order that covers such an eventuality. The honourable member for Bright's remedy is to, in due course, give notice of a substantive motion which deals with the inaccurate remarks that he alleges the Attorney-General is making. There is no point of order.

The Hon. M.J. ATKINSON: No inaccuracy, sir, spot-on; that is how much it cost taxpayers of South Australia, even when the Crown Solicitor ruled that the remarks were not made in the course of his ministerial duties.

The Hon. DEAN BROWN: Point of order, Mr Speaker: this is debating an issue; it has nothing to do with the actual question that was asked of the minister.

HOSPITALS, FLINDERS MEDICAL CENTRE

The Hon. DEAN BROWN (Deputy Leader of the Opposition): My question is to the Minister for Health. Will the minister ensure that the Flinders Medical Centre provides a guaranteed number of reserved intensive care beds for cardiac patients to avert continued delays of urgent cardiac surgery? Families of cardiac patients at Flinders Medical Centre have described to the opposition what they say is a crisis in cardiac surgery at the hospital. They say in-patients can occupy hospital beds for up to 10 days while waiting for urgent surgery. Another patient has waited for more than three months for an urgent quadruple bypass, and is still waiting. Surgeons have told the opposition that the delays in and cancellations of cardiac surgery at the Flinders Medical Centre are caused by a shortage of intensive care beds.

The Hon. L. STEVENS (Minister for Health): I am pleased to answer the question. I will start by reminding the house that—not in this year's budget but in the one before—the government increased funding to intensive care beds in this state by some multimillions of dollars. That is the first point: more money than ever before has gone into intensive care beds in South Australia. We have put more beds than ever before into intensive care—that is point No. 1. In relation to cardiac surgery, I presume that the deputy leader read in the media the comments of Mr David Swan, the Regional General Manager of the Southern Adelaide Health Service, who, after the irresponsible claims by the deputy leader, explained that there had been a spike in activity in terms of intensive care at the Flinders Medical Centre. Of course, as in all public hospitals—

Members interjecting:

The Hon. L. STEVENS: Sir, I seek your protection so that I can answer the question.

Members interjecting:

The Hon. L. STEVENS: If everybody is finished, I will continue the answer. There has been a spike in emergency activity at the Flinders Medical Centre which has led to the intensive care unit at that hospital being full. However—and this is a very important question that David Swan answered—all emergency cardiac surgery at that hospital is still happening; no emergency cardiac surgery has been put off.

To sum up: first, this government has put more money than ever before into intensive care beds; there has been an unusual spike in activity in relation to emergency work that has caused the intensive care unit at the Flinders Medical Centre to be full; no emergency cardiac surgery has been postponed; and we expect that the cardiac surgery that has been postponed will be done as soon as is practicable.

I might say one other thing to the house—and the deputy leader knows this full well, or at least he should know as a former health minister—in public hospitals, clinical work is done on the basis of urgency. Therefore, intensive care unit beds, which have been increased in recent years (particularly at the Flinders Medical Centre) are used on the basis of clinical need coming through both the emergency department of that hospital and via elective surgery. Finally, I reiterate:

Mr David Swan, the Regional General Manager, has said quite explicitly that no emergency cardiac surgery has been postponed.

RECYCLING WEEK

Mr RAU (Enfield): My question is to the Minister—

Members interjecting:

Mr RAU: Sorry? My question without notice is to the Minister for Environment—

Members interjecting:

Mr RAU: I've spent a bit of time on this question.

The SPEAKER: Order! The member for Mawson has been warned.

Mr RAU: My question is to the Minister for Environment and Conservation. Will the minister advise the house of South Australia's recycling activities given the importance of Recycling Week, which is being held this week?

The Hon. J.D. HILL (Minister for Environment and Conservation): I thank the member for Enfield for this very thoughtful question; he has obviously spent a lot of time on it—no wonder he was one of the top three backbenchers in South Australia. This week has been described as—

Members interjecting:

The Hon. J.D. HILL: None on the other side, sadly. Planet Ark has described this week as 'recycling week', and it highlights Australia's record on recycling. The latest report from Planet Ark shows that recycling rates in Australia put us in the middle of the field, ahead of the USA, Spain, Portugal and the UK, alongside Italy and just behind France. However, given our large land mass and our small population, we have done remarkably well and, indeed, South Australia has done particularly well compared with other jurisdictions. South Australia's diversion rate is comparable to the best in the world, and we sit alongside such countries as Switzerland and Germany.

As members would know, the government has established Zero Waste SA, with the goal of minimising waste to landfill by encouraging reuse and recycling in South Australia; and Zero Waste has found that in 2003, over 2.1 million tonnes of material, from asphalt to textiles, were recycled in South Australia. Importantly, this is much more than the 1.1 million tonnes of material that were sent to landfill. That is a total diversion rate of 64.4 per cent—64.4 per cent of our waste is being diverted, recycled and not going into landfill. That is an extraordinary—

The Hon. M.D. Rann: No species lost.

The Hon. J.D. HILL: No species lost as well, Premier. That is an extraordinary result for our state, and that exceeds the diversion rate for Victoria, which is the only other state that measures total recycling activity. In this state, we have one of the biggest and most advanced processing sites in Australia for construction and demolition materials, and in the last financial year (2003-04) we recovered 875 000 tonne of concrete. We also recovered 327 000 tonne of bricks, rubble and soil; and similarly impressively, we recycled 4 000 tonnes of textiles; 192 000 tonnes of organic material; 335 000 tonnes of scrap steel and other metals; and 136 000 tonnes of paper and cardboard. That is outstanding activity in this state.

We are also doing very well, as people would know, in the plastic bag area, container recycling through CDL and a whole range of other matters. However, there is one area where we do need to do better and that is in the area of car tyres. About 1.4 million tyres are shredded and disposed of to landfill in South Australia each year, and that is something we really do need to address. Unfortunately, we do not yet have a solution to that, but we are working with our colleagues through the ministerial councils to find a better solution to that particular problem. Another area is disposable nappies, which we do not have a proper solution to—

Mr Brokenshire interjecting:

The Hon. J.D. HILL: They are disposable; they are not recyclable, and that is part of the problem. We have a few issues that we have to resolve but we are doing remarkably well in recycling. South Australians should be proud of their efforts.

HOSPITALS, FLINDERS MEDICAL CENTRE

The Hon. DEAN BROWN (Deputy Leader of the Opposition): My question again is to the Minister for Health. Will the minister order an immediate independent investigation into why it took four visits to the Flinders Medical Centre over an eight-day period by a patient with a serious infection and swelling of the lower abdomen before the infection was diagnosed; why it then took eight hours after the antibiotics were prescribed for them to be administered; and whether there was a serious breakdown in communication between medical and nursing staff over an eight-day period that resulted in surgery and an extended stay of 10 days by the patient at the Flinders Medical Centre? I will give the minister the name, address and telephone number of the patient involved.

The Hon. L. STEVENS (Minister for Health): I am very concerned to hear these allegations. Of course, I will investigate them. I am very pleased that I will be getting the name, address and telephone number; and I hope that the deputy leader means immediately, so that we do not have a repeat of what happened in the past.

MARNI WODLI

Mr SNELLING (Playford): My question is to the Minister for Housing. How is the government supporting young indigenous people in the northern suburbs who require accommodation?

The Hon. J.W. WEATHERILL (Minister for Families and Communities): We are doing that in a range of ways, but including establishing a new youth accommodation service called Marni Wodli. It means 'good house' and it is for young people in the northern suburbs. It is a first for South Australia. It provides Aboriginal teenagers between 15 and 18 years who are not able to live at home with culturally appropriate accommodation options and support services, as well as assisting them to find longer-term housing. The government has allocated $1.8 million over two years for CYFS to operate Marni Wodli. It has been established in Parafield Gardens with the support of the Aboriginal Housing Authority, the South Australian Housing Trust and Aboriginal community organisations.

What is so special about Marni Wodli is that it is a pioneering concept which provides Aboriginal teenagers with a range of services, including intensive case management skills training and housing and living support to enable them to live independently in the community. This will usually start with the provision of intensive in-home residential support leading to flexible support on an outreach basis. At Marni Wodli there is involvement from families and communities in the lives of the young people in a range of ways,

from preparing meals, shopping, budgeting and taking part in recreational and sporting activities through to providing emotional support and links with family and extended family.

Marni Wodli is based on the key principle that partnership is a service collaboration between a range of agencies, whether they be housing agencies or CYFS. The service and young people are also supported by an advisory group of Aboriginal elders to ensure the cultural accountability of the service and to assist young people to understand family and clan connections and heritage, and they are keen to play an ongoing role as the service develops. A graduated and developmental approach to responding to the needs of Aboriginal young people will be used through the provision of well-tested case management approaches.

Currently, four young people are in the residences, with one already being placed and supported in their own accommodation. The service will be able to cater for up to 12 young people at a time when it is fully operational. I am excited by this new accommodation service. It provides a new model for doing things and, importantly, by connecting up these young people with their community in a way which sustains them outside of troubled home environments, we are more likely to turn around their lives and prevent them from becoming part of our juvenile justice system and, in that way, improve the wellbeing of the community and these young people.

HOSPITALS, MOUNT GAMBIER

The Hon. DEAN BROWN (Deputy Leader of the Opposition): Will the Minister for Health assure the people of Mount Gambier that surgery levels at the Mount Gambier Hospital will be returned to the same level as occurred under the former Liberal government? The latest annual report of the Mount Gambier Hospital (I do not think that the minister has tabled it in the house but I received a copy two days ago) shows that theatre operations have fallen by 26 per cent compared to theatre operations under the former Liberal government.

The Hon. L. STEVENS (Minister for Health): Of course, this matter was raised in a question in the house previously and I have answered it in the house previously. I therefore refer the deputy leader to the previous answer. But, let me say this: surgery levels in a particular hospital or a health service depend on many matters, including referral patterns of doctors in terms of where GPs, etc., refer patients—whether it is to a local or an Adelaide hospital. All those things can impact. I can assure the house that at last in Mount Gambier we are getting on top of some longstanding endemic problems, and we are looking forward to a much brighter future in the South-East.

I suggest to the deputy leader that he note a letter written by the Chair of the Mount Gambier Hospital board, Mr Peter Whitehead, which appeared in *The Border Watch* last week and in which, essentially, Mr Whitehead told the deputy leader to butt out and stop wrecking the local hospital, and I would say that that is very good advice.

SCHOOLS, AFTER HOURS CARE

Ms RANKINE (Wright): My question is directed to the Minister for Education and Children's Services. What action is the government taking to ensure that providers of out of school hours care services afford all children the best possible care and protection?

The Hon. J.D. LOMAX-SMITH (Minister for Education and Children's Services): I thank the member for Wright for her question. She has a strong commitment to the provision of quality education and good care for both preschool and school children. Earlier this year the state government announced that it would pursue amendments to the Children's Services Act 1985 to ensure that there was a minimum compulsory level of requirements for those operating out of school hours care (OSHC) in South Australia.

I am pleased to inform the house that a discussion paper has been released today to seek the views of individuals and organisations about the proposed requirements. An advisory committee—with representatives from all school sectors, including the Out of School Hours Care Association (SA), the South Australian Primary Principals Association and the Gowrie training centre, together with private providers—has developed the proposed standards in the discussion paper. The paper recommends that proper uniform regulation of services is required to better protect the health, safety and wellbeing of children in school age care programs.

The new proposed licensing structure will also provide for a system in which external complaints and breaches of standards can be acted on in a fair and effective manner. The proposed legislation will clearly define the four requirements for licensing of OSHC services in South Australia, including approval of premises and essential areas of service delivery. These areas will cover issues such as ratios of staff, qualifications, children's spaces and facilities, health and safety, the program of activities offered, as well as administrative and management functions. As both a quality assurance and child protection measure, it will also include the introduction of police checks for all staff and volunteers working with children in out of school care.

The requirements of the proposed legislation will emphasise the responsibility of all parties in the provision of school aged child care services, consistent with nationally agreed standards and requirements in other parts of the child care sector. Application of a consistent level of minimum compulsory licensing requirements for all providers will give the public enhanced confidence in our services.

Submissions and comments are invited from all interested parties, including parents, children and students, staff, service providers, government agencies, training bodies, unions and the wider community. I encourage members to comment on the proposals and to assist in ensuring a measure of protection for all children attending out of school hours services in South Australia. I would remind the member for Waite that we are about protecting children and enhancing services. That is the paramount issue for us.

INFANT HOMICIDE

Mrs REDMOND (Heysen): My question is to the Minister for Families and Communities. Will the minister advise the house of progress in regard to police investigations into the death of a baby at Victor Harbour? On Tuesday, 21 September the minister, in response to questions from me, advised the house that police investigations were continuing and charges may be laid. He said:

> I will make a further inquiry about the status of those investigations and bring an answer back to the house.

The Hon. J.W. WEATHERILL (Minister for Families and Communities): And I shall, sir.

Mr Brokenshire: When?

The SPEAKER: May I let the member for Mawson know that the minister was asked the question, not the member for Mawson, and the minister needs to be given reasonable time. Had I not been distracted for the moment, I would have ruled the question out of order because there has not been anything like sufficient time for the minister to obtain the answer and come back to the house. Reasonable time is something in the order of two or three weeks, depending on the nature of the inquiry. It might only be a matter of a day.

Mrs REDMOND: Mr Speaker, I do not know whether you heard the terms of my question, but the minister specifically told this house on 21 September, in response to a question from me, that he would make an inquiry and bring an answer back to the house.

The SPEAKER: I do apologise to the member for Mawson. The minister knows that a reasonable time is two or three weeks. If he did not know before, he does today. I believe there is some problem with the amplification in the chamber. I am apologising to the member for Heysen for my misunderstanding her question. I confess that I am trying to get final arrangements in place for the delegation from the Henan Provincial Council that is coming here later this afternoon and tomorrow (and all honourable members from this chamber have been invited to the dinner tomorrow night, if they wish to come). Because of that distraction, I did not hear the date that the honourable member mentioned, and I thought she was referring to a question she had asked the week before last.

The minister needs to know that two or three weeks is a reasonable time and that to leave the question unanswered for longer leaves the house paralysed in any action it may choose to take once it receives the information sought. My view of it arises in consequence of my belief that question time is about obtaining information to enable honourable members to participate in meaningful debate, whereas the conventional view of many members who have not understood that role is that question time is a chance for debate. I think we are coming to the conclusion that it is better not to debate things in question time but to get past question time and into debate, which can be on the topics that are relevant. The minister, I trust, will quickly—within a day or so—now address the inquiry made by the member for Heysen and we will move on.

SHOP TRADING HOURS

Mrs HALL (Morialta): Will the Minister for Tourism inform the house whether she has consulted with members of the tourism industry with respect to closing down the retail sector in the city centre and other shopping precincts for six out of 10 days over the Christmas/new year holiday period and, if so, will she inform the house of the content of those discussions?

Members interjecting:

The Hon. J.D. LOMAX-SMITH (Minister for Tourism): I thank the member—

The Hon. M.J. Atkinson interjecting:

The SPEAKER: The Attorney-General does not have tourism in the portfolios within his bailiwick.

Members interjecting:

The SPEAKER: Order! I have never known a minister to want to be demoted in seniority. The Minister for Tourism has the call.

The Hon. J.D. LOMAX-SMITH: I thank the member for Morialta for her question: I understand the intent and I know that she, like I, enjoys retail activities. But I hardly think that the Minister for Tourism is responsible for closing down shops.

POLICE, NORTH-EASTERN SUBURBS

The Hon. D.C. KOTZ (Newland): My question is to the Minister for Police. Will the minister advise the house whether he has any intention of building a police station at Golden Grove or at any suitable location in the north-eastern suburbs and when this is likely to occur?

The Hon. K.O. FOLEY (Minister for Police): I have received extensive lobbying from my parliamentary colleagues the member for Florey, the member for Wright, the member for Elizabeth and, of course, the member for Newland. As I have said, one of our priorities is to build police stations. Some of my colleagues would say that we have been building lots of police stations, or are intending to build lots of police stations (all, of course, in Liberal electorates, I might add). When it comes to deciding where police stations should be built, my view is that we should rely on the advice of the police commissioner.

The Hon. J.D. Hill: That's radical.

The Hon. K.O. FOLEY: It is a radical thought, I know, but I think it is a sensible policy approach. In regard to the policing needs of the north-eastern suburbs, as I said, the members for Florey, Wright, Elizabeth and Newland, and others, have certainly had views on that. I asked for a report from the police commissioner on the policing needs of the north-eastern suburbs (and the member for Playford also has had strong views—and anyone else I might have forgotten who has had strong views), and I have received a report from the police commissioner.

The Hon. D.C. Kotz interjecting:

The Hon. K.O. FOLEY: I have. I have said so publicly. I am considering that report, and the government will—

The Hon. D.C. Kotz interjecting:

The Hon. K.O. FOLEY: We have only had it for a short period of time.

The Hon. D.C. Kotz interjecting:

The Hon. K.O. FOLEY: A few weeks, but we have due process in government and we are not about to make quick decisions. The cabinet needs to be presented with all the information on the policing needs of our state in a normal, orderly process.

The Hon. D.C. Kotz: There are not enough pictures in the report!

The Hon. K.O. FOLEY: Are there not enough pictures in the report? What a demeaning comment to make about my colleagues, because the member would not be meaning myself.

The Hon. D.C. Kotz interjecting:

The Hon. K.O. FOLEY: You are right, putting a few pictures in a cabinet submission always helps, in my opinion. It garners a bit of interest from my colleagues. Actually, it is pretty hard to put pictures in a report when you are Treasurer.

The SPEAKER: Order!

The Hon. K.O. FOLEY: Sorry, Mr Speaker, I am just rambling on.

The SPEAKER: That is true.

Members interjecting:

The Hon. K.O. FOLEY: Well, well, well, I am rambling on. I got that joke, if no-one else did. We have a report and we will make a decision in due course. I expect a decision to

be made by cabinet in an orderly, considered and proper manner and, when we have done that, I will let people know.

HOTEL AND MOTEL OCCUPANCY RATES

Mrs HALL (Morialta): My question is to the Minister for Tourism. Will the minister inform the house what rescue plans she will employ to rectify a succession of decreases in hotel-motel occupancy rates in the current financial year? Latest industry figures report occupancy rates in South Australia have decreased in comparison with the previous year for the months of July, August and September by percentage points of 6, 3 and 2.

The Hon. J.D. LOMAX-SMITH (Minister for Tourism): I thank the member for Morialta for her question. I think she knows well that there is a relationship between the supply of rooms in the market and the occupancy rate. Over the last five years there have been 20 per cent, 30 per cent and 40 per cent increases in availability across different types of hotel accommodation. There has been a surge in the service department market, and there has been a gross over-supply in the CBD, partly because of the Adelaide City Council's inability to distinguish between genuine residential accommodation and serviced apartment accommodation. That surge of development has destabilised the market significantly and is something of which we are well aware.

Clearly, it is not the government's fault if the market forces and the economic drive (an area which I am sure those opposite would support) have resulted in an over-supply of accommodation. In many regards it is bad planning and lacks insight into market opportunities, and it will take several years to realign availability with demand. In fact, one of the risks for such investment is that it undermines the opportunity for more strategic tourism developments in the future because the yield is obviously reduced, and in a very competitive market some of the new entrants have been undercutting the established suppliers and producing considerable instability. But, for those opposite to criticise us for market pressures I think is a bit rich.

ATTORNEY-GENERAL'S REMARKS

The Hon. W.A. MATTHEW (Bright): I seek leave to make a personal explanation.

Leave granted.

The Hon. W.A. MATTHEW: In response to a question today, the Attorney-General claimed that, as a consequence of 'the member for Bright flapping his gums', the cost to the South Australian taxpayer was $180 000 in legal costs resulting from a defamation action by the member for Mitchell. The assertion by the Attorney-General is incorrect and the facts are these.

The transcript of the case Hanna v Matthew shows that the comments to which the member for Mitchell objected were in a media release issued in my name and printed in the Messenger press. Court records also show that the media release concerned carried the fax imprint, 'Hon. John Olsen MP, Premier', and was not a version authorised by me.

In relation to the cost of the action, the decision was one that I had directed my counsel to appeal. However, the Labor government advised me that if I proceeded with the appeal and lost my cost would not be covered. On the other hand, if I did not proceed with the appeal action, the Labor government would cover all costs. Faced with this choice, I subsequently instructed my counsel that the appeal action should cease.

GRIEVANCE DEBATE

GLENELG, ANTISOCIAL BEHAVIOUR

Dr McFETRIDGE (Morphett): As Glenelg is a major part of my electorate of Morphett, I am very proud to stand in this place and say that it is one of the tourist icons of South Australia. We have 106 restaurants and cafes down there, 86 of them licensed, and most of them within walking distance of my office. I am still trying them all, and you are all welcome down there any time.

We have 3 million visitors a year coming to Glenelg, and 45 000 visitors any weekend. We have the tram coming down there, and indeed we will have the new trams coming down there at the end of next year, which will further increase the numbers of tourists.

The problem is that with all the good people come a few bad people. Let me be very clear: Glenelg is a very safe place to visit. It is a great place to come and dine, and it is a great place to come and lay about on the beach and swim in the beautiful waters there. It is a fantastic place and it should hold that status of being an icon tourist destination of South Australia. But, as I said, along with the good people come a few bad people—a few bad apples—and, unfortunately, antisocial behaviour down at the Bay has been increasing.

I speak to the police often—and I speak to Inspector Paul Schramm and Dave Lusty down at Sturt LSA regularly—and I would like to put on the record that the police officers and senior officers in South Australia are doing an absolutely fantastic job under very trying circumstances. The government needs to give 100 per cent support to our police in South Australia, as I know members on this side do.

Unfortunately, antisocial behaviour such as hoon driving is increasing down at Glenelg, in particular, because of the tram lines. The hoons come down in their hotted up cars, speed up quickly on the tram lines and invariably skid off them—it is an accident waiting to happen. In fact, about two weeks ago a car did skid on the tram lines and it took out some of the safety railing around Moseley Square, as well as four tables at the Jetty Road Hotel. Fortunately, it was in the early hours of the morning and no-one was sitting at those tables, but had people been sitting there someone could have been killed or injured. We did have an accident at the intersection of Partridge Street and Jetty Road recently, where a motorist went through the lights and seven people were injured—although, fortunately, none seriously. I do not believe that was because of hoon driving, but because of the congestion in Glenelg the potential risks need to be looked at by this government.

Hoon driving has been addressed by a bill that went through this place not long ago, and I look forward to seeing the confiscation of the cars of these hoon drivers down at Glenelg, although in some cases it will be difficult to actually confiscate their cars because it is gridlock down there sometimes—you just cannot move. In fact, I went into Glenelg Police Station a few weekends ago to ask them to get extra traffic police there to help unblock the gridlock.

Talking about the Glenelg Police Station, I was very concerned to read, in the Letters to the Editor section of *The Advertiser*, a letter from a constituent saying that the Glenelg Police Station was actually shut at 4 p.m. on a Sunday afternoon. I know the police officers in that station and they work exceptionally hard. They may have been out on the beat—which I hope they were—and that is certainly something I am encouraging down there. I have spoken to senior police about getting police back out on the beat, getting the bike patrols back out down there, getting the mounted police back down there, and also getting undercover police down there.

The Star Force was down there a few Christmases ago, and they said it was like shooting fish in a barrel; they were catching all this anti-social behaviour. We need to make sure that Glenelg is not seen as a place where the crims and the hoons can go. We are getting a lot of graffiti down there now but we know that the government is not supporting the councils in their anti-graffiti programs. The drunkenness is not a major problem but we need to make sure that it does not become a major problem over the summer, and we need to make sure the dry-zones are being enforced.

I am asking the government to make sure that they give the police down in Sturt LSA, down at Glenelg, as much support as possible, because if we do not we are going to see an increase in anti-social behaviour. I do not want it, my constituents do not want it, the visitors do not want it and, certainly, the people of South Australia do not deserve to be neglected by this government and the police need to be given the support that they deserve as well because, let me finish by saying, the police in South Australia are one of the finest police services in the world, and we need to make sure that they are not put under undue stress and we have officers leaving. We do not want to have to keep going overseas to recruit more officers.

SCHOOL RETENTION RATES, WHYALLA

Ms BREUER (Giles): I was appalled by the comments recently made by the Hon. Terry Stephens in the other place who said that Whyalla year 12 retention rates in our state school were down to 27 per cent compared to the state average of 66 per cent, and this was reported in *The Whyalla News* and upset many in my community, particularly in our school community. Once again we have information that is reported in our local newspaper *The Whyalla News* which has not been checked and verified. Incidentally, I also noticed that yesterday the honourable member asked a question regarding charter operators in Whyalla and, again, there were some glaring inaccuracies in the information that he offered on that. This is disgraceful, this information about school retention rates in Whyalla and, as a former Whyalla student, he should be ashamed of the slur that he has cast on our city and on our young people.

The Department of Education and Children's Services figures show that year 8 to 12 full-time equivalent student retention rates across the three high schools, that is, Stuart High School, Whyalla High School and Edward John Eyre High School (which is a senior campus), has increased from 49.8 per cent in 2001 to 69.8 per cent in 2003. The Hon. Terry Stephens has undermined these schools' efforts to keep young people engaged in schools by quoting those wrong school retention figures. Our schools deserve praise and support for their outstanding efforts and yet we have this former resident using incorrect information to mount an argument that has no basis. These figures represent a substantial number of students returning to school to undertake year 12 after they had been unemployed for some time, as well as students who choose to undertake year 12 over more than one year.

This government has made it a priority to keep young people engaged in school or work or training, and Whyalla has a number of programs with this specific focus that are being funded. This includes the Upper Spencer Gulf Innovative Community Action Network, which brings together local people to find solutions to issues that prevent young people from continuing education. Edward John Eyre High School is one of the 10 schools involved in trialing some innovative models of student voice and student partnerships, and they have extended opportunities for young people to be involved in decision-making in their schools. That school also has a program to support young mothers and pregnant young women in the Whyalla area to stay engaged with school, work or training, and this has been an excellent program; we have had some excellent results from this. We have a reasonably high rate of pregnant young women in Whyalla and we have been able to resolve many of the problems through that excellent program.

We have had other incredible programs such as the aquaculture program which is operating at Stuart High School, which I am most impressed with. They are doing a wonderful job there and I believe that that has great potential in a city which is gearing up for aquaculture as a major industry. I was recently informed about an art exhibition of senior high school art work at the Middleback Theatre in Whyalla, which I believe is a great exhibition. Unfortunately I have not had the opportunity to see it as yet, but I will in the next few days. We also have a program happening in our schools where they are getting state government funding to provide one on one, or small group mentoring to students at risk of leaving school early, which I believe is an excellent program.

I am very proud to be an ex-student of Whyalla schools. I undertook all my education in Whyalla in the state schools, as did my children. We have many excellent teachers in Whyalla, and I must pay particular tribute to our three principals. I am very pleased that we have these people in Whyalla at the moment because they are doing great things in our schools. Nigel Gill, Ian Kent and Dean Low have done a wonderful job with their schools, and we are very happy to have them here; they are dedicated, innovative and passionate about their schools. I also pay tribute to David Craig, our district superintendent, who only recently came into the job. He has also provided much support to our local schools.

Over the years Whyalla has contributed greatly to our state, and many great South Australians have come through the schools in Whyalla. I always acknowledge my colleague the member for Napier, who attended high school with me. A lot of our young people often feel that they are second-class citizens because they come from country areas, and Whyalla students are no exception in this regard. I spend a lot of time talking to students and telling them that they can achieve and succeed in our schools in country areas, which provide a wonderfully supportive and caring base. They look after their students very well, but it is up to the students to believe in themselves. The schools do a great job of teaching them this and helping them. So, I commend the staff, students and school communities in Whyalla for their success in improving school retention rates, and I urge them to keep up the good work to ensure that even more of our young people

in Whyalla are engaged in studying at school, training and eventually employment.

SPEAKER, RECOGNITION

The SPEAKER: I have no wish to embarrass the member for Napier. However, the gallery is almost empty now, so I can say what I have to say without doing so and without any malice in the least. Like any other honourable member, if the member for Napier wants to talk to someone in the gallery he should acknowledge the chair from the bar of the chamber and then go into the gallery and sit with that person, rather than have a conversation with that person across the barrier. Otherwise, no-one will know where the lines are to be drawn.

During question time the honourable member may recall having such a conversation; likewise, other honourable members. When members cross the chamber or whenever they pass between the chair—that is this piece of furniture—and whoever happens to be sitting in it and the members speaking, they need to acknowledge the chair. In the House of Commons you may not do that, whoever you may be, whether you are the prime minister or anyone else. If we show that we respect each other, it will enhance the public's respect for us. That is the historical reason for doing it: it defers to the respect that we have for each other and our proceedings, and the fact that we are pursuing them seriously in the public interest.

PATAWALONGA CATCHMENT BOARD

Mr BRINDAL (Unley): I rise to alert this house to a perilous financial situation into which the executive government of this state may well be inadvertently placing us. I do so in the context of the PAR, which has interim effect for the Patawalonga Catchment Board area. That area currently affects the members for Morphett, West Torrens, Bragg, Waite, and myself, the member for Unley. That interim PAR puts at risk some hundreds of millions (estimated to be towards $1 billion) worth of real estate property. In fixing an interim PAR and orders, it is my opinion (and that of many of my electors and their learned counsel) that the government is exposing itself—in view of negligent decision-making in the past and contributory negligence in some of the statute law of South Australia—and putting the ownership of the property of many South Australians at severe risk.

As the member for Unley, I serve notice on this house and the executive government that either the minister fixes the PAR and addresses this problem in a way that acknowledges the rights of all citizens of South Australia, or my electors—with me leading them—will collect money and challenge this executive government and the people of South Australia in the court—if necessary in the High Court of Australia—to seek redress.

The matter is quite simple. Mr Speaker, you know this because I remember that you had a strawberry farm. It has long been not right to allow dwellings and principal places of residence on areas that are subject to periodic flooding; and Unley, West Torrens and, indeed, the City of Charles Sturt have been constructed on a natural flood plain. So has much of the city of Marion. When Hickinbotham wished to build on part of Andrews Farm, the Land Management Corporation, having sold them the land, said, 'Sorry, we have to take some of that land back.' When they asked why, the Land Management Corporation said, 'Because we have found that land is subject to occasional inundation and it would be unlawful for us to allow you to have that land, as anyone who builds on it has a case against the Crown.' Hickinbotham passed back that land and, indeed, because they did so, it was turned into a linear park and Andrews Farm has resulted—as did some very innovative water work.

However, what happened in Unley over many decades is that permission was given for people to build houses—

Ms Ciccarello: That is right; by the council.

Mr BRINDAL: Under the law of South Australia—

Ms Ciccarello interjecting:

Mr BRINDAL: The member for Norwood chortles in, 'By the council.' I remind her as an ex-mayor that the only authority of a council in this matter is the authority given it by this parliament and the minister for planning as agents of this parliament in upholding the planning law and the development plan of this state. This parliament is responsible for the planning law of this state, and the councils are our servants and agents. The councils are our servants and agents, and whereas they—

The Hon. J.D. Lomax-Smith: Tell them that.

Mr BRINDAL: Ask the Speaker; the Speaker knows something about this. The councils act on our behalf—no more; no less. However, redress will probably be sought not only from the Crown but from the council as well. Our urban consolidation plans, which have required planners to take into account such matters as the physical needs of the area, including stormwater run-off, have been ignored. Not only have houses been built in areas where the Crown should not have allowed them to be built over decades but also urban consolidation has resulted to the extent of flood plains increasing. Some of my electors now reside in areas that are prone to flooding because public policy has made them prone to flooding. That is negligence on the part of the state of South Australia and it needs to be addressed.

TIME ZONE

Mr O'BRIEN (Napier): Large sections of the South Australian economy are currently operating on what is effectively a 4½ day week. These are the most important sections of the state's economy; that is, those that trade our goods and services with the eastern seaboard. The productivity of this state is being stifled as a result. Why is this the case? Why are our most vital sectors effectively working a 4½ day week? This state's time zone means that, for many of our businesses in South Australia that have to deal with the eastern seaboard, one half hour is lost both in the morning and in the afternoon. Ultimately this means a loss of over half a day a week in productivity.

As it stands, our time zone is a disincentive for businesses to make a significant investment in South Australia. If you are involved in a national company or in a company with a large amount of interstate business, then our half hour time delay is a serious impediment to productivity and relevance. In a normal day, you lose half an hour in the morning and half an hour in the afternoon because of our time difference. Effectively, South Australia is on a 4½ day working week in a national sense.

If South Australia wants to be competitive it needs to be part of the national market, and that means being in step with the eastern seaboard. Whether or not we like it, that is where the overwhelming majority of business occurs. As a state, we need to look seriously at what our time zone is costing us in an economic, employment and business sense. The state's

economic plan talks about increasing the value of our exports threefold in the next 10 years. I believe that we can do that, but we need initiatives such as this to make our products and services accessible to the major markets of Australia.

In a sense, I speak from personal experience, having run my own business with some 85 per cent of my market on the eastern seaboard. I was also a national manager for Elders, running departments in all capital cities from the Currie Street head office. I know first-hand of the difficulties our time zone irregularities bring. As I mentioned previously, one whole half day a week is lost because we persist in being half an hour different to the centre of business in this country. This is well understood in the community.

In my electorate of Napier, *The Messenger* newspaper carried comments from several people on daylight savings. Unsolicited remarks were made that, on a permanent basis, our clocks should be moved half an hour forward. In her letter to the newspaper, Mrs Sue Pinkerton of Salisbury states:

> I would like a change to bring us into line with the Eastern States' time zones. If you're working with people interstate and try to contact them it is difficult calculating appropriate times to ring and coordinate hook-ups, for example.

In her letter, Sharon Scott states:

> What I would really like to see is our time advanced by half an hour permanently.

Every member of the community is affected in some way or other by this half hour irregularity, whether it is the football fan who has to watch the AFL on a half an hour delay, or the customer who cannot get customer service because the call centre in Melbourne has just closed for the day, or the people who miss out on jobs as a result of a lack of head offices in South Australia and the support investment that goes along with those offices. There is no doubt that some people within our community will be apprehensive about such a move, claiming disruption and displacement.

Now is the time to look at this change. It would be a simple matter to make the change. All that would be required is to turn our clocks back only half an hour at the conclusion of daylight saving rather than the full hour. That is it. The reality is that there are no major hurdles, and there is no insurmountable difficulty. It could easily be done and we would reap a rich reward in the national economy.

The reality is this: Australia's centre of business is in the Eastern States. If we want to be a part of that we need to align ourselves with that market and that culture, and being half an hour behind is a serious hurdle. I believe that we need seriously to examine this proposition. I urge the house to take an interest in this matter and get South Australia moving. This is an idea the time for which has now arrived.

WATER, MOUNT LOFTY CATCHMENT

Mr GOLDSWORTHY (Kavel): I want to spend a few minutes talking about a quite serious issue that has been raised in my electorate. It would also affect the constituents in the neighbouring electorates of Morialta and Heysen. I refer to the recent announcement made by the Department of Water, Land and Biodiversity Conservation (DWLBC) that it is proposing to prescribe the western Mount Lofty Ranges water catchment area. I can tell this house that this has raised a considerable level of concern with a significant proportion of constituents in my electorate.

The initial concerns, obviously, come from the primary production sector that the amount of water they currently use could well be reduced. Every landholder has received a letter, including me—I own land in the Adelaide Hills; I live in my electorate—which basically said there will be no restrictions and current usages will be maintained for the period of, I think, two years while a consultation process is undertaken, and then measures will be implemented as part of this prescription process.

This raises a broader issue that I feel, and many people in the Hills communities feel: that there is increasing pressure put on residents, primary producers and the like in the Adelaide Hills region to ensure the continuity of supply of fresh water to the Adelaide metropolitan area. We do not mind supplying fresh water to the Adelaide metropolitan area. In any given year, water that comes out of the Adelaide Hills constitutes 60 per cent of the water requirements of Adelaide and the other 40 per cent is pumped from the river.

What we do object to is an ever-increasing regime of restrictions put on us in the Adelaide Hills in what we can and cannot do with our water resources. It is the responsibility of this government to ensure that the water resources that actually occur on the Adelaide Plains are managed a lot better than what we see now. What we see now is a series of ever-increasing capacity of drains. The rain that falls on the Adelaide metropolitan area just flows down that series of drains, and the vast majority of it just flows out to sea.

We have seen some quite good initiatives in the Salisbury council area where the Michell wool company has put in a small wetlands and uses water that is processed through that wetlands in its factory. We have seen a recycled water system initiated in the Mawson Lakes development. But there has to be a considerable lot more work and money spent on this problem so that Adelaide becomes more self-reliant on its own water resources and so that there is not an ever-increasing regime of restrictions imposed on the Adelaide Hills region.

Water is one of the essentials of life and is obviously fundamental to primary production. If this state government and the general community want to preserve and enhance what the Adelaide Hills is all about, then we need to be able to at least maintain and increase the water resources that are available for primary production pursuits in the Hills; otherwise all that the land will be good for is continued residential development. We will just see the Adelaide Hills region become a satellite suburb of Adelaide.

PARLIAMENT INTERNSHIP SCHEME

Ms THOMPSON (Reynell): Today I wish to speak about the South Australian Parliamentary Internship Scheme: to commend all those who participated in it as well as those who organised it and to offer one suggestion for what I see as an improvement in the system. Like many members, I have taken advantage of the opportunity afforded to have an intern every year since I have been a member and, indeed, one year I had three interns. I found that they have produced reports for me on matters highly relevant to the electorate of Reynell. I have chosen to generally choose topics that relate specifically to my electorate, with one exception, and that was related to consumer affairs education. I have noted from the programs over the years that the topics researched by the interns are quite wide indeed.

I took the opportunity to attend the presentation by my intern this year of her report relating to the reporting of sexual

assaults. Unfortunately, I did not see other members present at that session, although they may well have been present at other sessions. This is one of the areas in which there needs to be some consideration of improvement, that is, just when is a good time for the conference where interns report on their work to be held. Some of that was done this year during question time and, as you know, sir, it is very difficult for members to be absent from the chamber—most inappropriate, indeed—during question time. There does seem to be the need for further consideration of how the interns can make their reports.

As I went through the topics that had been considered, I saw many that I found very interesting. While I know that, eventually, the reports make their way to the parliamentary library, it would also be useful to discuss with the member sponsoring that research what their views about it were, what value it was to them and how we might further act on any matters raised in the reports. At this stage, there is generally no indication of who has sponsored the research. The one exception was access to GPs in the electorate of Torrens, and I would anticipate that it was the member for Torrens who sponsored that research. A couple of times the topic that I have sponsored has related to the electorate of Reynell and, therefore, has made that quite clear. There may be reasons that have developed in the past for why there is not any indication of the sponsor of the research, but I would be very interested in hearing those reasons and in there being a reconsideration of the issue, because I think that would add value to the scheme.

Some of the topics considered this year were: Making it Work—the shortage of skilled workers in the manufacturing industry; an inquiry into the likely effects of proposed deregulation of the South Australian pharmacy industry; and supported accommodation for people suffering from a mental illness and all psychiatric disability. Just that brief sample allows the house to get some appreciation of the wide range of topics which were considered this year and which, indeed, have been considered in other years.

This is the first opportunity I have had to raise another matter, and that is the coverage of our late night sittings which appeared in *The Advertiser* of Friday 29 October. I do not wish in any way to question the right of *The Advertiser* to raise concerns about the hours that we keep on occasions and to question how well equipped we might be to make decisions at those hours. However, I wish to correct the caption that appeared on the front page, which stated:

> All quiet: MP Gay Thompson asleep on the bench while Chris Hanna addresses the chamber early yesterday morning.

I know that, if you do not take the opportunity to correct assertions made about you, it can sometimes go awry. I was not asleep. I was simply seeking to elevate my feet, which were suffering from being in this chamber for quite long hours. It did not work, so I ceased that effort within about 10 minutes.

The SPEAKER: The honourable member draws attention to a matter that can also be addressed under standing order 133, as I think the honourable member is aware. In making the remark and publishing the photograph, *The Advertiser* has offended the standing orders of the chamber. But it is not for the chair to do anything other than what the chamber directs it. I make the observation here on the record that, if the honourable members in this chamber do not seek to uphold the standards of reporting relevant to its proceedings in ways that ensure that the public gains an appropriate impression of what we are here to do and what we are trying to do in the process of being here, no-one else will. Tabloid journalism does not have a place in reporting the proceedings of parliament.

SHOP TRADING HOURS (TOURIST PRECINCTS) AMENDMENT BILL

Mrs HALL (Morialta) obtained leave and introduced a bill for an act to amend the Shop Trading Hours Act 1977. Read a first time.

Mrs HALL: I move:

That this bill be now read a second time.

This bill creates a new Central Tourist Precinct which will be situated within the boundaries of the City of Adelaide council. Within the Central Tourist Precinct, retailers will be permitted to open their shops between the hours of 11 a.m. and 5 p.m. on all public holidays except the exemptions covered in other legislation. These restrictions will remain in place on Christmas Day, Boxing Day, New Year's Day, Good Friday, Easter Sunday and before 1 p.m. on Anzac Day. However, on all other holidays they will be able to open.

Under these amendments the new Central Tourist Precinct will be joined by the Glenelg Tourist Precinct in receiving permission to open on public holidays other than those already prescribed. The Glenelg Tourist Precinct was established by amendments to the Shop Trading Hours Act four years ago, and that provided for extended trading hours that better reflected the tourism potential of the area.

Shop trading hours, as we know, have been constantly debated and discussed, in this chamber and outside, for decades, and now we have a situation that we are about to face this year where for six of the 10 days between the Christmas and New Year break the shops in metropolitan Adelaide and other parts of this state will be closed. The main argument supporting the establishment of the Glenelg precinct at the time was that it was a tourist precinct that was unique to the state and second only to the City of Adelaide in its importance as a tourist destination.

Another argument that was identified was that Adelaide and Glenelg had the highest profiles of tourist destinations in metropolitan South Australia and, therefore, very considerable accommodation was available for visitors to our state. The key point here is that it makes sense to have both the city and Glenelg areas open on public holidays if the shops choose to open. They have long been held out as the main tourist attractions, as I just mentioned, and they are the main players in our attempts to refine Adelaide's image.

We know that the member for Fisher has also introduced a bill which is intended to address some of the problems facing the state this year between Christmas and New Year. His bill takes a different approach, as we know, but it was interesting to hear the honourable member remark that neither the retail industry nor the SDA's Don Farrell had taken a particular liking to what he had come up with. I have absolutely no doubt that Don Farrell and his union will think little of my bill. However, that does not fuss me because his views and, by extension, this government's view is that all shop assistants need a break.

I would ask: what about those shop assistants who want to work? Are they not allowed to do so? What about those who want to earn some extra money on public holidays? But what about all those shop assistants in regional areas of our state such as Whyalla and Mount Barker, to name just two, who will be working in the retail outlets in those places on the public holidays during the Christmas break? What about the nurses, the emergency service workers, the firefighters, the cleaners, the various shift workers, the technicians, journalists (although we do not sometimes think a lot of them), and hospitality staff?

There are so many people who will be working over the Christmas and New Year period. Why are we saying that it is only the shop assistants working in the city who deserve a break? Surely we ought to have a bit of consistency here. I have to say that the views of the retail and tourism industries on this matter are very clear as, I understand it, are those of the Adelaide City Council, who are working feverishly to try to allow some sanity to prevail on this argument and get those shops open.

The results of my amendments would create two vibrant hubs of retail activity on public holidays and, in particular, the Christmas New Year break, allowing small businesses to benefit and giving South Australia a well-deserved reputation as a destination that welcomes visitors all year round—not just on the days that Don Farrell says we can shop. I am very concerned that unless we do something about these shopping hours and what is going to happen to us in the year 2004 (to be repeated, I might say, in the year 2010), it will give the other states an advantage and, yet again, an activity that so many of them enjoy—that is, dismissing and marginalising our state.

It was apparent months ago that this was going to happen, yet the government has been saying that it will not change its mind. Well, in the year 2004—and, as I said, it is going to happen again in the year 2010—the city of Adelaide and some of our prime tourism destinations will be like ghost towns. We will have empty streets and closed shop doors. Indeed, someone suggested to me earlier today that it might be pretty boring—and I have absolutely no doubt that that is correct because for six out of the 10 days between Christmas and the New Year Adelaide's retailers have got to shut down. It is a phenomenon that will occur primarily because Christmas Day and New Year's Day this year each fall on a Saturday.

It is utterly absurd to have our shops forcibly closed at a time when visitors to Adelaide are looking to spend not only their tourist dollars but also their Christmas present money and the vouchers that they have been given to spend at Christmas time. It is utterly ridiculous that at a time when so many people enjoy the festivities, enjoy the times to shop, and enjoy the great weather that we usually have at this time of the year the shops are going to be closed.

As we well know, the Christmas New Year period is by far the busiest time for retailers, particularly those with retail outlets in the city. This bill has its origins from my desire to have this absurd situation rectified. As the shadow minister for tourism, and as someone who has long had a deep respect for and commitment to the industry in our state, I am aghast that the eastern seaboard and their tourist activities are going to be able to make fun of Adelaide. They will create the image, yet again, that we have returned to the dark ages. And heaven only knows what international visitors to our state and our metropolitan area are going to think.

I have to say that those on this side of the house and many members of the public find it preposterous that a union official—albeit that he is a good friend of the Attorney-General and many members opposite—can influence outcomes in this place and determine the shopping habits of visitors to and residents of South Australia. He is an unelected individual (although we accept that he is very influential), and it is just absurd that he can tell us and our visitors when we can go shopping. It is quite bizarre, and it is something that I hope the amendments to the Shop Trading Hours Act will rectify.

As I said earlier, I have consulted with a number of tourism as well as retail industry operators, and they are overwhelmingly of the view that changes are needed to bring our public holiday trading arrangements into line with those of the other states. One prominent retailer, Mr Steve Truscott of Truscott Hi-Fi, told me personally of his disappointment with this government's treatment of business in South Australia, and he said that the Minister for Industrial Relations, in his view, is negligent in advising his government and downright angry that the Premier can go out of his way to say that retailers whinge a lot. The Premier might think that, but wait until he has to listen to all the tourists and visitors to our state when they try to spend their money at Christmas time. I think I speak for Mr Truscott, and indeed many retailers, when I say that the Premier, in particular, owes the industry a sincere apology for rubbishing hard-working South Australians in such a manner, but I think it goes to show that he is out of touch and how hungry he is for a sound bite.

Mr Truscott told me that he is at a loss to know why many ministers are silent on the issue and that shops being opened in the interests of tourism (in his view) is just common sense. He believes that the government should wake up, listen, and show some commonsense. If a major retailer at the coalface of the industry sees that it is commonsense, why on earth does not this government?

The current situation permits Adelaide to be seen as the sleepy little town of Australia, and I personally find that quite offensive. We spend millions of dollars in the tourism industry trying to get visitors to come to this state, not only from across our borders but also from international destinations, and you can imagine: we are not going to be out there promoting the fact that you cannot go shopping during that time. So what will these people do? They will probably go into some of our regions and that will be of benefit to our regions; I do not have a problem with that. But what about if Victoria and New South Wales, and their respective tourism ministers in particular, take advantage of their activities and their shopping hours that they will have over these 10 days.

The eastern seaboard loves giving us a shot in the arm occasionally, and a belt around the head, and you can just imagine what they are going to say about us, and how they will portray us. You can imagine that they will be inviting South Australians to go to those states and to shop until they drop because they cannot do it here.

We know that we have many magnificent events in this state. They are events not only in the metropolitan area but also in many of our regional centres. Again, they are terribly important to the tourism industry and to the image and, I guess, the identification of and our own pride in our state, and I cannot believe that people are not taking this issue more seriously. One should consider the dollars that have been invested in this state over decades not only by the state and federal governments but also by many individual tourism

operators and local regions to say, 'Come to our state. This is what we have to offer.' I am not sure that they going to be that impressed when they see us as a ghost town not only in the CBD but also down at Glenelg.

I could, as I am sure you, sir, know, talk about the wonderful attractions here in South Australia and why I think people should come here and enjoy what we have to offer. But we cannot take the risk of closing the city's doors for a substantial time during the peak tourism season and just hope that nobody notices. Of course they going to notice. More than 85 000 visitors are expected to reach Adelaide and this state between Christmas and New Year. I will not go through all of the numbers that will be coming in on bus, train and airlines, but that is the minimum figure, and you can imagine what they will say. Some of them will be staying with friends and relatives, and that is great. However, many of them are going to want to enjoy what we have to offer.

Some of the information that anyone can have a look at shows that there is no doubt that the majority of tourists enjoy shopping; we all know how many of us in this chamber enjoy it. Tourism Australia's *Inbound Tourism Trends* publication gives some extraordinary figures that state:

> Shopping for pleasure is the most popular leisure activity undertaken by international tourists in Australia.

And that is 84 per cent of those surveyed. It is way ahead of going to the beach, which sits at 62 per cent, and way ahead of visiting the markets, which sits at 54 per cent. It also says that the average trip expenditure in Australia per international visitor has grown at an average annual rate of over 4 per cent over the last few years. That expenditure currently sits at $2 562 per visitor.

I am quite sure that we do not need to think too hard about that figure multiplied over the number of visitors that we should be having in our cities, in the CBD and at Glenelg. We are going to lose that trade and lose our reputation interstate if Victoria and New South Wales take advantage of our closed doors and the appearance of a ghost town.

This is a particularly urgent issue which must be addressed, and I believe the amendments I will propose in the Shop Trading Hours (Tourist Precincts) Amendment Bill will provide for those changes to be made. I urge the support of the house.

Mrs GERAGHTY secured the adjournment of the debate.

Mrs GERAGHTY: Mr Speaker, I draw your attention to the state of the house.

A quorum having been formed:

PARLIAMENTARY COMMITTEE ON OCCUPATIONAL SAFETY, REHABILITATION AND COMPENSATION

Mr CAICA (Colton): I move:

> That the seventh report of the committee, entitled the Occupational Health, Safety and Welfare (Safework SA) Amendment Bill, be noted.

This report, which was tabled when parliament sat a couple of weeks ago, is the culmination of many months of work by a committee that has worked tirelessly to bring it to parliament for consideration. The committee met with numerous witnesses from many organisations who were able to put their views before us, and to a great extent we have incorporated those views in the report. This committee—

The SPEAKER: Order! Will the Minister for Administrative Services, the member for Unley and the Minister for the River Murray please take a seat. They are standing directly between the member for Colton and the chair, which does not assist either the chair or the house.

Mr CAICA: Thank you, Mr Speaker. As I was saying before I was so rudely interrupted by disorderly members, the members of this committee, like many committees of this parliament, worked very well together.

I have a strong affinity with the students in my electorate, and when I bring groups of students to this parliament they often see the banter and the vitriol that can sometimes occur during question time. I say to the students that that is not reflective of how this parliament works. The fact is that 95 per cent of legislation goes through with agreement—albeit in an amended form—but, generally, the parliament as a whole works well and collectively on most occasions. Indeed, our committee has worked in exactly that way since its inception. We are very proud of the work that has gone into this report, and we are very pleased with the efforts of the minister in respect of making himself and people from the department available to us as and when required. I think our committee can hold its head high in respect of this report, bearing in mind that it is a committee which does not have the same resources as those afforded to other committees, nor does it have—

The Hon. G.M. Gunn: Prestige.

Mr CAICA: It is not just the prestige. It is a non-paid committee, yet the truth should be known: this committee has met as much as any other committee since the commencement of the 50th parliament. Each member puts in an enormous amount of time for a very important cause and can hold their head high. I would like to recognise the members of the committee, in particular the work that has been undertaken by the Hon. Angus Redford from another place, whom I specifically recognise for the time and effort he put into assisting with the compilation of this report; the Hon. John Gazzola from the other place; the Hon. Ian Gilfillan from the other place; my friend, the member for Mitchell; and the member for Heysen.

The Hon. G.M. Gunn: You have a few lawyers there.

Mr CAICA: That is true, we do have a few lawyers, but we have a few people from working backgrounds as well, so that is a good balance. This bill is based on the recommendations contained in the Stanley report, which was commissioned by the government to examine the states' occupational health and safety and workers' compensation systems. By way of background, the Stanley report argued that a global and strategic approach to the administration of occupational health and safety compliance through prevention enforcement was required.

The Stanley report noted that South Australia is the only jurisdiction where the OHS inspectorate and advisory functions are not located together. The report suggested that the split administration added to a lack of public profile. The Stanley report and Workplace Services argued that the transfer of all occupational health, safety and welfare regulation and administration to Workplace Services is the most efficient option and represented the majority of stakeholder submissions.

There is an underlying assumption that the change will result in increased efficiency and effectiveness in OHS administration and regulation from which improved outcomes will flow, but the committee did not receive evidence that the changes will result in improved outcomes. However, a

majority of the committee supports the creation of the SafeWork SA Authority and the transfer of OHS resources and responsibilities as proposed.

The committee received numerous written and verbal submissions from a range of stakeholders representing employer and employee groups. However, the committee did not receive a submission from WorkCover regarding the proposed 'demerger' of occupational health and safety resources and functions, or in relation to the creation of SafeWork SA. Whilst the committee found widespread support for the changes proposed by the bill, a number of issues were identified by stakeholders and the committee which I now propose to discuss briefly.

One of the key issues raised by stakeholders was the transfer of financial resources and the proposed ongoing levy transfer process, which they argued should be transparent. Stakeholders wish to ensure that SafeWork SA will have sufficient resources to undertake the whole gamut of prevention activities, but employers do not want their levy rates to be adversely affected, as members would understand. The committee noted that the changes proposed by the bill will result in a substantial dislocation of WorkCover and will affect more than 100 employees.

The budget reallocation is estimated to be between $12 million and $14 million. A due diligence report commissioned by the government estimated that there is likely to be an ongoing occupational health and safety levy transfer of about 3.8 per cent.

WorkCover also commissioned a due diligence report, which cautioned that the 'demerger' could increase risks for WorkCover and costs to industry if the synergies which are achieved through information sharing and which may have benefited claims management are destroyed. Whilst the bill requires WorkCover to provide certain information to the SafeWork SA Authority and the department, the committee suggests that the level of communication and cooperation between WorkCover, SafeWork SA and Workplace Services will need to be strong.

The committee is aware that Workplace Services currently has responsibility for the administration and regulation of employment legislation and a range of public safety programs. It is also responsible for shop trading hours legislation and a range of licences and permits. There is sometimes overlap between public safety programs and occupational health and safety, especially when accidents occur in workplaces that are also public places.

A majority of the committee recommends that Workplace Services can provide advice, information and support, at the same time being responsible for compliance and prosecution functions, as proposed. However, the committee also recommends that sufficient resources be maintained by WorkCover to ensure that their responsibilities to exempt employers can be adequately fulfilled.

A majority of the committee supports the proposal to strengthen and clarify the responsibility of employers and self-employed persons to others. It was also noted that there is now well established law that employers have a responsibility to their employees, contractors, labour hire personnel and all visitors who enter their premises. The committee also recommends that the employers' obligations can be further clarified by defining the term 'reasonably practical'.

A recent review of the Victorian OHS legislation (undertaken by Chris Maxwell QC) found that the expense of implementing safety measures too often constituted the biggest obstacle to improving workplace safety and that this should be resolved by clearly defining the term 'reasonably practical'.

A majority of the committee supports the clauses relating to training. This includes the maintenance of records, the training of OHS representatives, deputies and committee members, and the training of responsible officers. A majority of the committee also supports the process for resolving disputes that relate to training. Most employer stakeholders were opposed to the use of expiation notices. The Stanley report cautiously recommended their use. However, the committee noted recent research undertaken by the National Research Centre for OHS regulation, which found that even small fines can improve employer performance, especially when used in conjunction with media campaigns. This clause is therefore supported by the committee, as is the clause relating to an alternative penalty regime.

Many employer stakeholders argued that inspectors' powers are sufficient for them to undertake their responsibilities. However, a majority of the committee supports an extension of their powers, as it brings the OHS Act into line with other similar legislation such as the Dangerous Goods Act and the Fisheries Act.

The Stanley report made a number of recommendations relating to what is called 'inappropriate behaviour at work', and these recommendations have been reflected in the bill. It is proposed that complaints will be investigated and may be referred to the Industrial Commission for mediation. It is fair to say that this part of the bill is the most controversial. While all stakeholders agreed that workplace bullying is an increasing problem that needs to be addressed, they were divided about how this should occur. However, one stakeholder stated that the bill is flexible enough to enable a range of redress.

The committee agrees that bullying is a serious matter that warrants early intervention strategies to preserve workplace harmony and productivity. The committee supports the views of a number of stakeholders who argued that compliance with the occupational health and safety legislation through effective workplace management systems which focus on prevention and early intervention are the ideal. However, the committee understands that this problem is complex and will require a range of strategies to assist employers and employees.

The committee acknowledges that mediation will not be a suitable option for all workplace bullying complaints. The committee notes that mediation requires informality and cooperation of the parties and is most effective when there is a desire to preserve a relationship. Mediation is an option that some individuals or groups may wish to access. The committee was concerned that the bill did not define 'inappropriate behaviour'. The committee considers that the term 'inappropriate behaviour' is ambiguous, and that the terms 'workplace bullying' or 'workplace harassment' are preferred because either of these terms is more easily identifiable to a wide range of people.

The committee considers that a definition should clearly identify the relevant key factors and should prevent individuals from taking action in circumstances where management has acted reasonably and in good faith. A definition should not water down behaviours which are at the extreme end and which should more properly be dealt with in such other jurisdictions as, perhaps, the criminal jurisdiction. The committee recommends that the terms 'workplace bullying' or 'workplace harassment' be used and that it be defined to mean:

any behaviour that is repeated, systematic and directed towards an employee or group of employees that a reasonable person, having regard to all the circumstances, would expect to victimise, humiliate, undermine or threaten and which creates a risk to health and safety.

The committee supports the proposal to prosecute government departments and agencies for failure to comply with the act. The committee notes an agreement between the Office for the Commissioner for Public Employment (OCPE) and Workplace Services that allows OCPE to investigate workplace bullying complaints within government departments. To ensure transparency and accountability, the committee recommends that this agreement be reviewed in consultation with the PSA.

In regard to prosecutions generally, the bill proposes an extension of time for prosecutions, but some stakeholders argued that this should be allowed only in specific circumstances. The committee was persuaded by stakeholders that an extension of time should be permitted only where the prosecution could not be initiated due to a delay in onset or manifestation of injury, disease or condition.

Finally, the committee received submissions in relation to the membership of the Mining and Quarrying Occupational Health and Safety Committee. The committee recommends that an informal arrangement that has been in place between the SA Chamber of Mines and Energy and the Extractive Industries Association be reflected in legislation to enable one nominated representative from each organisation to be appointed to the committee.

The seventh report of the Occupational Health, Safety, Rehabilitation and Compensation Committee represents a conclusion of extensive inquiry, as I said earlier, into the Occupational Health, Safety and Welfare (Safework SA) Amendment Bill 2003. It includes 21 recommendations, which represent either the views of the whole committee or the majority of the members of the committee.

I would also like to take this opportunity to thank all those people who did contribute to the inquiry. I thank all those people who took the time and made the effort to prepare submissions for the committee and to speak to the committee. Again, I extend my sincere thanks and those of the committee members (whom I named earlier) to our exceptionally hard-working and competent staff, Mr Rick Crump and Ms Sue Sedivy. I recommend the report.

Mr HANNA (Mitchell): I thank the member for Colton for that contribution. It was so thorough and comprehensive that members may feel they do not now need to read the report. I would like to highlight the Greens' position, which is that there should be a separate, independent safe work authority. That is not the model proposed by the government.

Broadly, three approaches were taken in the committee process, represented on the one hand by the Labor members, the Liberal members on the other and me in another way, and the Democrat member took a variety of positions.

As it stands, the bill sets up something called a 'safe work' authority, which is merely a committee with the name of an authority, and I find that objectionable. I do believe that names should reflect accurately the subject matter to which they attach themselves. There will be a spirited debate in this place about that when we deal with the legislation, and it is not clear what the outcome will be. Those who wish to know my position in more detail will, no doubt, be able to glean that from the report.

Mrs REDMOND (Heysen): Mr Speaker, I am in your hands, but I seek to adjourn this debate. I was a member of the committee for some time, and I would like to speak to the report as well as the minority report which has been appended, I understand, to the report. I would like the opportunity to prepare for that; and, I confess, I was not prepared for this debate today. I therefore seek to adjourn the debate.

Debate adjourned.

CONSTITUTION (BASIC DEMOCRATIC PRINCIPLES) AMENDMENT BILL

The Hon. G.M. GUNN (Stuart) obtained leave and introduced a bill for an act to amend the Constitution Act 1934. Read a first time.

The Hon. G.M. GUNN: I move:

That this bill be now read a second time.

This is the second occasion that I have introduced this particular bill to the house. The basis of it is to bring democratic principles to the parliament.

Mr Hanna: Radical.

The Hon. G.M. GUNN: Radical, but people are elected—

The Hon. M.J. Atkinson: As you did during your term of Speaker.

The Hon. G.M. GUNN: I certainly did.

Mr Hanna: Selective democracy.

The Hon. G.M. GUNN: This is democracy because members of this house are elected as individuals. Therefore, in casting their vote, they should do it free from hindrance, being hassled or intimidated by anyone. It should be an offence to instruct any person how to vote in this particular chamber. I made a detailed speech on the previous occasion. The basis of this bill is taken from the German constitution which has a similar provision, having learnt from the mistakes of the past.

I commend the bill to the house. On this occasion, I sincerely hope the processes of the house will not be used to prevent this bill from going to a vote. Let me say to government members: I am happy to let it lie on the *Notice Paper* for a couple of sitting weeks but after that I will object most strongly if there is any attempt made to defer a vote. They will not be able to hide on this particular matter. Let the public of South Australia know where they stand on this important issue. I am sure that my friend the member for Enfield will be most interested in this enlightened bill which I have introduced to the house. Being a free thinker, I am sure the honourable member would appreciate—

The Hon. M.J. Atkinson: People can run from you, Gunny, but they can't hide.

The Hon. G.M. GUNN: Well, you've been running after me for a long time and running second every time. Can I say to the honourable member that it will take more than his mates in the Shop Distributive Union spending their money again, because they will still fail.

The Hon. M.J. Atkinson: Yes, but I've caused a couple of people to depart.

The Hon. G.M. GUNN: Not to say that that is to your credit. However, I commend the bill to the house and look forward to a robust and vigorous but successful debate in the near future.

Mrs GERAGHTY secured the adjournment of the debate.

PARENTAL RESPONSIBILITY BILL

The Hon. G.M. GUNN (Stuart) obtained leave and introduced a bill for an act to impose criminal liability on parents for offences committed by their children; to give the police power to remove children from public places; to make related amendments to the Young Offenders Act 1993; and for other purposes. Read a first time.

The Hon. G.M. GUNN: I move:

That this bill be now read a second time.

I draw the attention of members to speeches and comments that I made on previous occasions when introducing this important measure.

The Hon. M.J. Atkinson: What about the debate in 1990? How did you vote in that?

The Hon. G.M. GUNN: I suggest the honourable member do his own research.

The Hon. M.J. Atkinson: I might get the Parliamentary Library do it for me.

The Hon. G.M. GUNN: Like you did at the election time when you had incorrect and misleading information produced. Without being diverted, this important matter needs to be debated and passed by this parliament to protect young children, to give people the ability to live peacefully in their neighbourhoods, and to give the police adequate authority and powers to remove young children who are in danger.

The Hon. M.J. Atkinson: I agree; but why did you vote against it in 1990?

The Hon. G.M. GUNN: I am giving the Attorney-General, Her Majesty's first law officer, the chance to support a progressive measure which is in the public interest, which is long overdue and which the community supports. Therefore, I commend the bill to the house. My comments on previous occasions adequately explained the measure.

The Hon. M.J. Atkinson interjecting:

The Hon. G.M. GUNN: I do not need the help or assistance of the Attorney-General because on most of these occasions he is somewhat misguided. But on this occasion I will welcome his support and I seek his assistance to ensure that the measure passes through this house speedily and without delay. I commend the bill to the house.

Mrs GERAGHTY secured the adjournment of the debate.

ROAD TRAFFIC (HIGHWAY SPEED LIMIT) AMENDMENT BILL

The Hon. G.M. GUNN (Stuart) obtained leave and introduced a bill to amend the Road Traffic Act 1961. Read a first time.

The Hon. G.M. GUNN: I move:

That this bill be now read a second time.

This measure will allow people to travel at speeds of up to 130 km/h on selected roads in the more isolated parts of South Australia. The citizens who live in those parts of the state strongly support this measure, which will allow people to drive in a responsible manner, but will also allow them—

The Hon. M.J. Atkinson interjecting:

The Hon. G.M. GUNN: It is responsible, because it will be a maximum speed, not a minimum speed. This matter has been debated on numerous occasions, and many people have come to me in the corridors and said that they support me but have not yet had the opportunity to vote. I will make sure on this occasion that we have a vote, so it will separate the nervous nellies from those who genuinely believe that this is a responsible measure.

We are told, Mr Speaker, that these road traffic devices are safety issues—that they are not revenue matters. You, sir, and I have a different view about that, because these devices are placed in certain areas where they will collect the maximum revenue. This measure will reduce some of that revenue collection, because the roads are built for people to drive at 130 km/h; the motor cars are far safer than they were when I first came to this place; and, therefore, on these selected—

The Hon. M.J. Atkinson: That was before the flood!

The Hon. G.M. GUNN: If you behave yourself, you may serve some of the time that I have been a member of this place. But you have a long way to go.

The Hon. M.J. Atkinson: I started 19 years later.

The SPEAKER: Order! The Attorney will leave it to the member for Stuart, who I know has a clear understanding of this topic, to elucidate it further.

The Hon. G.M. GUNN: Thank you, Mr Speaker. This is an important measure for people in Outback and rural South Australia. Anyone who drives on the road between Hawker and Leigh Creek, Port Augusta and the Northern Territory border and Lincoln Gap and the Western Australian border would clearly recognise that it is absolute nonsense to have police out there booking them for doing 125 km/h. It cannot be justified, and it is not sensible. It is purely a revenue measure. In many cases, those police officers would be far better deployed to deal with the real villains in our society: those who are hindering elderly people and vandalising their property, or other antisocial activities—

Mr Hanna: Bashing their wives.

The Hon. G.M. GUNN: —yes, bashing their wives, certainly—domestic violence and all that sort of antisocial behaviour. We should have a police presence in those areas, not having them sitting behind a bush or having a speed camera set up where they will collect maximum revenue.

I am looking forward to this matter being fully and frankly debated and having a vote on it, because that will test the will of many members who privately tell me that they support it. I think that, when the bill is debated, some of them will be somewhat hesitant. However, it is time that this parliament made a productive decision. I commend this bill to the house, because it is commonsense in the interests of rural and Outback South Australia. It has nothing to do with irresponsibility. It will in no way affect road safety, because people can be apprehended for doing 80 km/h if they are driving in a manner dangerous to the public. This is a sensible proposition, and I look forward to the support of the house.

Mrs GERAGHTY secured the adjournment of the debate.

ENVIRONMENT PROTECTION (PLASTIC SHOPPING BAGS) AMENDMENT BILL

Mr HANNA (Mitchell) obtained leave and introduced a bill for an act to amend the Environment Protection Act 1993. Read a first time.

Mr HANNA: I move:

That this bill be now read a second time.

This is the third occasion on which I have brought to the house a measure to limit the amount of environmental damage caused by plastic shopping bags. On the first occasion I brought to the house a measure which was essentially a levy—or, at least, a minimum price—on shopping bags supplied to customers by retailers at the check-out. I am referring

to those plastic shopping bags usually used for groceries of various kinds. The measure specifically excluded those plastic bags or wraps which are used at the delicatessen section of supermarkets, for example, to wrap fresh meat or cheese.

The second time I brought a measure to the house concerning plastic shopping bags was in October last year, and that was a measure to ban the supply of plastic shopping bags at the check-out. That measure was diverted to the Environment, Resources and Development Committee by a motion of the house. I particularly refer members to *Hansard* of 25 February 2004, at which time I gave my objections to that diversion. I made the point that the minister, with respect, was stalling a resolution of the proposal, and I pointed out the lack of logic in the minister's submission. The minister had said that, in any case, he was bound to work with other environment ministers around the nation, and I pointed out that, therefore, there was no point delaying resolving the matter because, whatever the ERD Committee report says, the minister will have the same response—that is, he needs to wait to see what other environment ministers are doing.

So, it was unsatisfactory for that bill to be referred to a committee, but it has languished there since. I am given to understand, informally, that we may have a report covering the topic in a few months' time but, notwithstanding that, I bring this bill to the house again because there has been a further development, and that is the election promise of the federal Labor opposition to bring in a ban on plastic shopping bags by 2007. So, notwithstanding the public support for the government of John Howard (I am sure that was on other grounds), it was very pleasing to see a commitment on behalf of the federal parliamentary Labor Party to the banning of plastic shopping bags. As I expect that commitment to be echoed in the state parliamentary Labor Party, I bring this proposition to the house once again.

Mrs GERAGHTY secured the adjournment of the debate.

Mrs GERAGHTY: Mr Speaker, I draw your attention to the state of the house.

A quorum having been formed:

SITTINGS AND BUSINESS

Mr GOLDSWORTHY (Kavel): I move:

That consideration of Private Members' Business, Bills/Committees/Regulations, Notice of Motion No. 19 be deferred.

Mr HANNA: I rise on a point of order, sir. As a courtesy, I would like to move this motion on behalf of the member for MacKillop. Is that in order?

The SPEAKER: That is not possible. The member may simply refuse to allow the motion, if it is seconded, to pass.

Mr HANNA: Very well, sir.

The house divided on the motion:

AYES (18)

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

NOES (24)

Atkinson, M. J.	Bedford, F. E.
Breuer, L. R.	Caica, P.
Ciccarello, V.	Foley, K. O.
Geraghty, R. K.	Hanna, 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.
Rann, M. D.	Rau, J. R.
Snelling, J. J.	Stevens, L.
Such, R. B.	Thompson, M. G.
Weatherill, J. W.	Wright, M. J.

PAIR(S)

Brown, D.C.	White, P. L.
Venning, I.H.	Conlon, P.F.

Majority of 6 for the noes.

Motion thus negatived.

Members interjecting:

The SPEAKER: Order! Honourable members will take their seats.

LOWER SOUTH-EAST—COMMERCIAL FORESTRY REGULATIONS

Mr WILLIAMS (MacKillop): I move:

That the regulations made under the Water Resources Act 1997 entitled Lower South-East—Commercial Forestry, made on 3 June and laid on the table of this house on 29 June, be disallowed.

Let me start by saying that I have never seen this sort of behaviour in this house before. This parliament gives ministers the right to make regulations but reserves the right to disallow those regulations. They are made as a disallowable instrument and here the minister, who has been bullying people in my electorate for a number of years—

Members interjecting:

The SPEAKER: Order! The honourable member for Norwood is inappropriately barracking, as is the Deputy Premier and other members along the front bench; but I heard those two very easily and clearly because they are closest to me, I guess. But that is highly disorderly, especially in the case of the member for Norwood who is not in her seat.

The Hon. W.A. Matthew interjecting:

The SPEAKER: The house needs to recover its decorum and so do honourable members, and the member for Bright should zip it while the chair is addressing the chamber.

Mr HANNA: On a point of order, Mr Speaker: my point of order is about the derogatory and improper remarks made in relation to the Minister for the Environment and, clearly, that is outside the proper bounds of debate.

The SPEAKER: The honourable member for Mitchell complains of some words that the member for MacKillop was using. To the best of my knowledge, I believe I heard all the words he used and none of those words were unparliamentary, and I do not know what word it is that the honourable member for Mitchell complains of.

Mr HANNA: The word is 'bullying.'

The SPEAKER: That is not unparliamentary, not in the least.

Ms RANKINE: Point of order, sir: the member for MacKillop was asserting that the Minister for Environment had been bullying people for years in his electorate, and he knows damn well he was part of the select committee that operated down there, and the Minister for Environment acted totally properly throughout the whole process.

Members interjecting:

The SPEAKER: Order! There is no point of order. If a member is offended by remarks made about them then it is for that member, and for that member alone, to describe and define the offence. For goodness sake, bullying is something that is undesirable, but it is not improper for someone to use the word. 'Bully' is not an unparliamentary word, and if the honourable Minister for Environment takes offence it is up to him to do so. I see him on his feet.

The Hon. J.D. HILL (Minister for Environment and Conservation): Mr Speaker, I was beaten to my feet by a couple of my colleagues. I do take offence. It is a totally untrue statement made by the member for MacKillop and I ask him to withdraw and apologise.

The SPEAKER: The honourable member for MacKillop is asked by the Minister for Environment to withdraw the allegation that he was bullying members in his electorate, and I invite the member for MacKillop to withdraw that if it is his inclination to do so.

Mr WILLIAMS: If the government will give me the opportunity I will put the case supporting the remarks I made. If the minister is so delicate that he is offended, I withdraw, but I will put the case, and the minister has invited me to pull no punches. The comment I was making was that parliament gives ministers the right to make regulations but regulations are a disallowable instrument, and we know full well that we use a thing called a holding motion to move that we are going to move to disallow a particular regulation, and that generally allows the member time to build the evidence for the case. The minister came out this very morning and issued a press release to put undue pressure on myself and my colleagues over this particular issue. It had been my intention to move this motion today but because the minister pre-empted that in my electorate in the South-East of the state, I had taken the decision to put this off for a week or two so that I could go back and talk to some of these people and find out what the issues were that they were complaining about and put my position to them. But the minister wants me to go today, and today I will go. Therefore, I have moved:

That the regulations made under the Water Resources Act 1997 entitled Lower South-East—Commercial Forestry, made on 3 June and laid on the table of this house on 29 June, be disallowed.

The reason I have moved this is that these regulations are made at the behest of a department that misunderstands the South-East, at the behest of a department that is quite happy to destroy one of the biggest industries in this state. The latest figures available to me through the Economic Development Board in the South-East are that:

Less than 10 per cent of the area of the South-East is utilised by the forestry industry, yet in 2001 that industry had an economic benefit to the state of over $1.3 million. The rest of the South-East and all agricultural/horticultural industries, including the dairy and the wine grape industry, had an economic benefit to the state of less than $1 billion.

Why would a government be hell-bent on destroying the timber industry in the South-East and driving that industry and the employment that is associated with that industry into Victoria? We will come to that in a few minutes because there are some reasons why the government is doing this. But let me read from a letter. The minister has said that he has come to these regulations after a series of meetings with stakeholders across the region.

For a long time I have alleged that those stakeholders were hand-picked so that they would come to a result that the minister wanted to achieve. In a recent letter from the minister to Timbercorp, one of the hardwood companies operating in the South-East, he said that the stakeholders group was independently chaired by Mr Grant King, the Chief Executive Officer of the Limestone Coast Regional Development Board. When Grant King asked to be a part of the group, the minister's first response was: 'It has nothing to do with economic development; we don't want you.' He was barred from attending the first couple of meetings. He was then allowed to go to the meetings as an observer and, lo and behold, when the minister had him in his pocket he became the chairman.

The minister says that there was only one dissenting voice, that of Timbercorp, but in the letter to Timbercorp he said that other participants were: the softwood plantation industry—I will come to that in a minute; the hardwood plantation industry; and the CFMEU, the forestry union. I can tell the minister that the CFMEU does not agree with his regulations. The catchment water management board was another participant. When the minister wrote to the catchment water management board and suggested that they participate in his hand-picked group, he even nominated the members of the catchment board that he wanted there.

The South Australian Farmers Federation was also invited, but I can tell members that after it became known generally in the Farmers Federation branches around the South-East what was happening they successfully moved a motion of no confidence in their representative, one Kent Martin, the Chairman of the South-East Farmers Federation Natural Resources Committee. In February or March this year, the South-East branches successfully moved a motion of no-confidence in Mr Martin, yet the minister still wrote to people saying that he had broad support and that there was only one dissenting voice. One of the other stakeholders, Forestry SA—

The Hon. R.J. McEwen interjecting:

Mr WILLIAMS: The minister interjects across the chamber. He is the minister for Forestry SA. Let me say that the minister has always rejected what is happening in the South-East; he has always said that hardwood forestry should be stopped or curtailed. As he is the minister for Forestry SA, I am not surprised that Forestry SA came out in support of this minister. The Regional Plantation Committee was originally on this stakeholders committee, but its executive officer, Jon Drohan, was told by his board that he should no longer go to the meetings, that they were going to withdraw. I wonder why. It is because Forestry SA happens to provide half the funds to support the Regional Plantation Committee. So, I think the minister had his fingers in that one too.

Let me come to the person behind all of this, one Gary Spain. he is a dairy farmer south of Mount Gambier. Let me talk about Mr Spain, because he was the person who got Dale Baker to make these changes to water policy in the South-East eight years ago. He has been orchestrating this and he is in the pocket of the minister. Well, I am not sure in whose pocket he is, but I know that Gary Spain turns up at the minister's fundraising functions, so I know how close Gary Spain is to the minister.

An honourable member interjecting:

Mr WILLIAMS: And he won't either, because it's fact. The member for Mount Gambier should talk about his relationship with Gary Spain too. As I have been forced to do this today, I also remind the house that a couple of years ago the other place passed a bill designed to change the Electoral Act in South Australia. One of the clauses in that bill was to ensure that the independent members of this place and of the other place would come under the same disclosure rules as

everybody else and would be forced to disclose who donated to their campaign funds. It is common knowledge around this place that then premier John Olsen was told by the member for Mount Gambier that if that bill came into this house there would be an instant election. The member for Mount Gambier can go back and explain that to his electorate.

An honourable member interjecting:

Mr WILLIAMS: It's got a lot to do with the relationship between one Gary Spain and the member for Mount Gambier; that's what it's got to do with water. Let me say that Gary Spain has a water licence that is area based. He is very concerned about that being changed over to a volumetric based water licence, because my information is that he is using something like three times the amount of water that he would be using under—

Debate adjourned.

MATTER OF PRIVILEGE

Mr HAMILTON-SMITH (Waite): I rise on a matter of privilege, Mr Speaker, concerning the issue that I raised yesterday in the house. I have just had delivered into my hand a direction from the Secretary of the Economic and Finance Committee, which states:

> Economic and Finance Committee meeting tomorrow morning, 9 a.m. 11 November.
>
> The Presiding Member has directed me to call a meeting of the Economic and Finance Committee at 9 a.m. on Thursday 11 November 2004 to take evidence from the Auditor-General regarding the evidence provided at the hearing of 20 October 2004. The meeting will be in the Constitution Room.
>
> Regards,
>
> Paul Lobban, Secretary of the Committee.

The Auditor-General wishes to give evidence about matters raised under privilege yesterday in the house, which you, Mr Speaker, are presently considering. When you have had time to give those matters your consideration, you will of course come back to the house with your ruling. Should you rule prima facie, then the house will have an opportunity to consider whether or not a privileges committee should be established.

That committee is the right place for the Auditor-General to appear so that these matters can be resolved. In my view, this direction from the secretary that he has been ordered by the Presiding Member to call the Auditor-General pre-empts your consideration of the matter of privilege and, in itself, represents a contempt. Not only that, but it flies in the very face of the issues raised under privilege yesterday, which had to do with due notice being given of meetings and motions to call witnesses; and, notwithstanding, at this morning's meeting of the Economic and Finance Committee, after a telephone call from the Auditor-General, the committee resolved to allow him to give evidence at its next meeting on 24 November. So, a motion already exists and it has been agreed that he will attend.

I put to you, Mr Speaker, that a proper course of action is that you consider the matter put before you yesterday; that you rule accordingly; that on the basis of your ruling the house decides whether or not it should form a privileges committee; that that privileges committee (should it be formed by the house) look into this matter; that it is inappropriate and, indeed, a breach of privilege for the Economic and Finance Committee to call the Auditor-General in anticipation of your decision; that the presiding officer is out of order; and that the Economic and Finance Committee should not meet tomorrow and should await your determination, sir.

The SPEAKER: The member for Waite at the outset drew attention to a matter under deliberation of the Economic and Finance Committee on 20 October. What was that matter?

Mr HAMILTON-SMITH: The evidence given by the Auditor-General on 20 October had to do with the misuse of the Crown Solicitor's Trust Account and also contained evidence from the Auditor-General dealing with matters not related to that subject; and it is on that which the Auditor-General wishes to give evidence tomorrow. I should add, Mr Speaker, that I am aware, as are all members of the Economic and Finance Committee, that this morning, after the matter of privilege was raised, the Auditor-General rang the committee during our proceedings and sought to come to the committee forthwith to discuss matters raised under privilege.

It is my concern, Mr Speaker, that what is being planned here is for the Auditor-General to address matters in the Economic and Finance Committee that have to do with the privileges matter raised so as to pre-empt the privileges matter.

Members interjecting:

Mr HAMILTON-SMITH: Mr Speaker, I want—

Members interjecting:

The Hon. M.J. Atkinson: You smear under parliamentary privilege. Look at that bloke there, look at him—smears under parliamentary privilege.

Members interjecting:

The SPEAKER: Order!

The Hon. M.J. Atkinson: Coward's castle!

The SPEAKER: Order!

Members interjecting:

The SPEAKER: Order!

Members interjecting:

The SPEAKER: Order!

Members interjecting:

The SPEAKER: Order!

Members interjecting:

The SPEAKER: Order!

Members interjecting:

The SPEAKER: Order!

Members interjecting:

The SPEAKER: Order! The chair will be resumed at 7.30 p.m.

[Sitting suspended from 5.12 to 7.30 p.m.]

The DEPUTY SPEAKER: I indicate that the Speaker has been delayed at the airport—he is meeting a delegation from overseas. We were in the process of hearing from the member for Waite, and I intend to let him complete his remarks and then refer them to the Speaker.

Mr HAMILTON-SMITH: I propose to continue my matter of privilege when the Speaker has returned to the house, since the matters to which I refer concern the Speaker most intimately.

The Hon. J.D. Hill: It is a matter for the house, you gutless wonder.

The DEPUTY SPEAKER: Order!

The Hon. R.G. KERIN: I rise on a point of order. The Minister for Environment and Conservation has just called the member a gutless wonder, which carries on from the member's behaviour straight before the dinner break when he actually accused the member of being gutless over—

The DEPUTY SPEAKER: Order! The leader has made his point. It is quite out of order for the minister to make that remark and I ask him to apologise.

The Hon. J.D. HILL: Sir, I withdraw and I apologise for not being in my place at the time I made the interjection, and I apologise for, and withdraw, the remark, anyway.

Members interjecting:

The DEPUTY SPEAKER: I ask members to restrain themselves so that their agitated state does not get them into trouble.

Mr MEIER: I rise on a point of order. I notice that there are three advisers in the advisers' gallery. I do not see why any advisers need to here for the hearing of a privileges motion.

The DEPUTY SPEAKER: There has been a change in the program, I guess, on what people expected, so the advisers are here. It is good to see people keen and eager to do their job, but they can actually have a little break for a minute if they wish.

The member for Waite needs to complete his remarks. They will then be referred to the Speaker, who, he has indicated to me, will address the matter later this evening.

Mr HAMILTON-SMITH: Mr Deputy Speaker, I propose—

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

That the member for Waite be given leave to conclude his remarks later on.

The DEPUTY SPEAKER: No, he has the call to conclude his remarks now. Privilege takes precedence of other matters, and he should conclude that matter.

Members interjecting:

The DEPUTY SPEAKER: Order! The Speaker will consider the remarks, and he has indicated that he will be dealing with this matter later this evening.

Mr HAMILTON-SMITH: Mr Deputy Speaker, matters of privilege are most serious and take precedence of all other matters before the house. They are normally matters that are presented to the Speaker. As you have explained, the Speaker is momentarily delayed and will be here shortly. I seek leave to continue my remarks, in accordance with the leader's motion, on the arrival of the Speaker and to continue dealing with the matter of privilege at that time. In the meantime, I propose that the house continue with its normal dealings and that the matter be proceeded with upon the return of the Speaker.

The DEPUTY SPEAKER: Order! The Speaker has not indicated what time he will be here. He has said that he will consider this matter late this evening. The matter of privilege can be considered by the Speaker or someone acting for the Speaker, so the member for Waite needs to conclude his remarks.

Mr HAMILTON-SMITH: Very well, Mr Deputy Speaker. If you are directing me to continue, I will do so.

The DEPUTY SPEAKER: I am.

Mr HAMILTON-SMITH: But I seek your protection from members opposite.

Members interjecting:

The DEPUTY SPEAKER: Order! This is a very serious matter and the member for Waite should be heard in silence.

Mr HAMILTON-SMITH: It is indeed a serious matter. The point of privilege which I raised, and which I began to address this afternoon, was very simple. The Presiding Officer of the Economic and Finance Committee has issued what amounts to a directive to the committee to convene a meeting at 9 a.m. tomorrow. That meeting is for the purpose of hearing the Auditor-General. The Auditor-General clearly intends to address matters to do with the matter of privilege which was raised in the house yesterday and which is still under consideration by the Speaker.

I put to you, Mr Deputy Speaker, that it is a contempt of the house even to propose such a meeting while the Speaker is considering such a matter of privilege. The meeting tomorrow at 9 a.m. should not proceed. There should be a direction from the Speaker that there be no such meeting until such time as he has had adequate time to consider the matter and come back to the house and rule prima facie as to whether a matter of privilege has, in fact, occurred and whether a privileges committee should be formed.

The Hon. R.G. Kerin interjecting:

The DEPUTY SPEAKER: Order! The leader is out of order.

Mr HAMILTON-SMITH: I put to you, Mr Deputy Speaker, that at this morning's meeting of the Economic and Finance Committee the Auditor-General rang and sought, ad hoc, to appear before the committee, and that the committee ruled and decided to hear the Auditor-General on 24 November. There is a motion unanimously agreed to by the committee, with the support of government members, for the Auditor-General to be heard on 24 November. The Presiding Officer's direction today flies in the face of that agreement by the committee. It is an abuse of standing orders; it flies in the very face of the matters that I raised yesterday; and it is a contempt of the parliament for the Presiding Officer even to call the meeting.

Mr Deputy Speaker, I put to you not only that matter but also that, if either the Presiding Officer or others seek to have the Auditor-General give evidence tomorrow, the appropriate time and place to do that is within the context of a privileges committee duly agreed to by the house. If the government wishes to have the Auditor-General give evidence it should wait for the Speaker to consider the matter I raised yesterday and rule prima facie. The house will then have an opportunity to decide whether a privileges committee should be formed. If it is formed, I am sure the Auditor-General will be one of the first witnesses to be called, and all witnesses will have an opportunity to present. To call the Auditor-General to Economic and Finance tomorrow can be perceived as nothing more than a cover up, to restrict—

The DEPUTY SPEAKER: Order! The member for Waite is now canvassing issues which would be in the province of a privileges committee.

Mr HAMILTON-SMITH: I put to you, Mr Deputy Speaker, that it is indeed not only a breach of standing orders of the house, which apply to the Economic and Finance Committee, to call on a meeting of the Auditor-General tomorrow morning without notice having been given, without due process having been—

The DEPUTY SPEAKER: Order! Just before calling the Attorney-General, the member for Waite, I think, has made the point. He has to be careful not to canvass matters which could in any way influence a possible privileges committee. He should not canvass the substance of the matter.

Members interjecting:

The DEPUTY SPEAKER: Order!

Mr HAMILTON-SMITH: That is exactly what the Auditor-General will do tomorrow—canvass matters still under consideration.

The DEPUTY SPEAKER: Order! The member for Waite will resume his seat. You cannot presume what will happen tomorrow.

Members interjecting:

The DEPUTY SPEAKER: Order! The member for MacKillop will be out of here very quickly if he behaves like that. The member for Waite has called for a privileges committee, and raised the matter, he should not canvass matters which could be within the province of that investigation.

The Hon. M.J. ATKINSON: Point of order, sir: it is one thing to raise a point of privilege, it is another to speak at great length in support of the point. What I would ask you is, will this side of the house have the opportunity to put its contention that the member for Waite's point of privilege is wrong in law and fact on every point?

The Hon. R.G. Kerin interjecting:

The DEPUTY SPEAKER: Order! The leader is out of order.

The Hon. R.G. Kerin interjecting:

The DEPUTY SPEAKER: Order!

The Hon. R.G. Kerin interjecting:

The DEPUTY SPEAKER: Order! The leader will resume his seat.

The Hon. R.G. Kerin interjecting:

The DEPUTY SPEAKER: Order! The leader will resume his seat or he will be named on the spot. You will be named on the spot if you behave like that. You should set an example; you are called the leader.

Members interjecting:

The DEPUTY SPEAKER: Order! The Attorney was making a point of order which I was distracted from hearing in full. Could you repeat the last bit?

Members interjecting:

The DEPUTY SPEAKER: Order!

The Hon. M.J. ATKINSON: My point of order is that the member for Waite has an opportunity, as any member does, to raise a matter of privilege, but he is now going on at length to debate the point of privilege and I ask whether you will rule that he is debating the point or whether, in the alternative, the government will be allowed to develop its contention that the point of privilege is wrong in law and fact.

Members interjecting:

The SPEAKER: Order! I do rule that the member for Waite is becoming repetitious and debating the substance of what could be investigated—and he has made his point.

Mr HAMILTON-SMITH: Very well, I will conclude by asking this: that I believe that Mr Speaker should tonight come into the house and rule as to whether tomorrow morning's Economic and Finance Committee meeting is out of order, and whether it presumes and shows contempt to his consideration of the matter of privilege raised in the house yesterday. If that is so, the meeting should not proceed. I also seek direction from Mr Speaker that there should be no further debate on this matter until Mr Speaker has ruled prima facie.

The DEPUTY SPEAKER: Order! The Speaker—and I have already indicated this—will consider the matter. He will see the *Hansard*, and he will respond tonight in the manner that he deems appropriate.

Mr BRINDAL: I rise on a point of order: I draw your attention simply, as presiding member at this time, to Parliamentary Committees Act Division 3, section 32, subsection (1)(a), which defines the right of the presiding officer to avoid duplication between committees. I contend that that is relevant to the matter before the house. I therefore respectfully draw your attention to that provision of the Parliamentary Committees Act.

The DEPUTY SPEAKER: Order! The member for Unley is getting into the realm of the substance of what is likely to be considered. The matter before the house now—I call on government business.

Mr HANNA: I rise on a point of order, sir: I do not know how the government business could be called upon when the sessional orders provide for two hours of private members' business at the conclusion of grievances. We have not had that; there are 32 minutes to go.

SITTINGS AND BUSINESS

The Hon. K.O. FOLEY (Deputy Premier): Mr Deputy Speaker, the government is happy to continue private members' time if that is the will of the house.

The DEPUTY SPEAKER: I believe it would be appropriate if a motion was put to that effect, just to clarify, because in discussion with the Speaker the expectation was to go into consideration of the Auditor-General's reports.

The Hon. K.O. FOLEY: The Speaker and I have not had a discussion of late, not one involving government business at least. I move:

That the house continue with the remainder of time allocated for private members' time.

Motion carried.

The DEPUTY SPEAKER: The time allocated is 35 minutes.

LOWER SOUTH-EAST—COMMERCIAL FORESTRY REGULATIONS

Adjourned debate on motion of Mr Williams resumed.

(Continued from page 833.)

Mr WILLIAMS: Mr Deputy Speaker, I was in the middle of a sentence and I was talking about the involvement of one Mr Gary Spain and his wont to use a hell of a lot more water than what his licence allows him to do, and that is the interest that he has in the matter, and that interest flows through to his relationship and association with the member for Mount Gambier and, indeed, the minister. My time is very limited, which disappoints me greatly, but last week I had a meeting with the Chief Operations Officer of Auspine, one of the major timber processors in the South-East, and since that meeting he sent me a letter, and I wish to quote some of the things that he wrote. I will not read the whole letter into *Hansard* but he said some things, and he did not agree with everything that I said. I will read some of the things he said which I think will give members an understanding of what happened in the South-East and what the minister and his department have been doing, not only to dryland farmers and some irrigators but also to the pine industry, which is one of the biggest industries in this state. He says, in part:

The Timber Industry has presented a united front against the former SA Department of Water Resources for more than a decade. As you know, the economic rationalists within [the department] wish to impose water licences, firstly against Tree Farmers, and then potentially against other dryland farmers as they improve their productive capacity, and subsequently water use. The issue reached a head when your party implemented the pro rata roll-out of all unallocated water licences to land owners.

I have consistently argued that the department deliberately undermined that process, because they never agreed with it

and they wanted to corrupt the process to stop it from working. The letter continues:

> This immediately created today's artificial conflict between Tree Farmers, and owners of a Water Licence property right, even though most Water Licence owners don't actually use their water entitlement. The conflict was immediate because [the department], under the Liberal Party Government, did not make future allowances for the common law right of farmers to plant trees, whether for commercial or biodiversity reasons. Nor did [the department] allow for increases in water use by Dry Land Farmers as they strive for continuous improvement via productivity improvements. Incidentally, timber companies like Auspine were also denied natural justice when [the department] refused them the opportunity to participate in the pro rata roll-out, despite these companies owning substantial areas of cleared land.

The letter goes on to talk about the reality that, left unchecked, there is only limited suitable land for plantation forestry in the South-East, but the author believed they would never plant enough land to impact adversely on other irrigators. If time permits I may come back to that. The letter goes on to say:

> The water issue will be a perennial natural resource management issue in the South-East of South Australia. The issue is clouded by the apparent disregard by the department for future increases in rainfed crop water use. Speculation that irrigators are using substantially more than their volumetric entitlements—

as per Mr Spain—

> concerns surrounding the impact of climate change on the water licence volumes, clear evidence that many bluegum plantations are both intercepting rainfall and extracting water from the unconfined aquifer—

I do not necessarily agree with that, nor does the scientific evidence—

> and the inherent lack of precision and changing nature of the science that is used to calculate available water use—

the most important thing that he says. He continues:

> As an industry with considerable experience in natural resource management, the timber industry has many reservations regarding the department's management of water in South Australia. Consequently, the industry has sought an outcome that minimises the potential long-term collateral damage to it from a system fundamentally designed to manage irrigation licences and not the interception of rain by dryland crops.

Even Auspine, one of the big timber processors in the South-East, said in this letter to me that, at the end of the day, they were caught between a rock and a hard place by this minister and his department, so they took the line that caused least collateral damage. The minister continues to say that all stakeholders, barring Timbercorp, agreed with him. The reality is that not one of the stakeholders, apart from Mr Spain and a couple of his mates, agreed with the minister. That is why I think it ill-behoves this minister and his department to continue to go around the region of the South-East holding secretive, behind closed door meetings to come out with policy decisions which impact on every member of the South-East community through their business enterprises and on the economy of the South-East in general.

Time expired.

The Hon. J.D. HILL (Minister for Environment and Conservation): I am pleased to be able to contribute to this debate. I think it is disappointing that this is still a matter of contention in this house. This issue has been before the people of South Australia, the people of the South-East and the parliament for many years. Despite the best efforts of a majority of people to get it resolved, unfortunately it is still being brought to the parliament as a matter of contention by the Liberal Party for reasons which I do not fully understand. I think it is probably likely that the majority of members of the Liberal Party do not really understand the issue very well.

I would like to go through a bit of the history and explain the background to this particular issue. In 1999, the former Liberal government became aware of a potential forest expansion of 35 000 hectares in the South-East. This expanded forest area was included in calculations to ensure that subsequent water allocations in the region would remain sustainable. However, it was recognised that a management system was needed to ensure that the water resource impacts of any further forest expansion over and above those 35 000 hectares should be assessed and managed. In May 2000 the Hon. Mike Elliott MLC sought amendments to the Water Resources Act 1997 to do just that. These amendments were defeated. I supported the government at the time, as the member for Unley (the former minister) will know. Those amendments were defeated, but the then minister for water resources (the member for Unley) made a commitment to implement a suitable management system.

Subsequently, in a ministerial statement on 30 November 2000, the then minister for water resources (the member for Unley) stated his intention to effectively deal with the significant land use change where it impacts on the sustainability of the water resource. In doing so he noted two opposing views, as follows:

> [Traditionalists] believe that any loss of water resource caused by land use change, such as forestry, should be borne by irrigators. The contemporary view would require an amendment ensuring that plantations in sensitive areas of the South-East. . . would be accountable for their impact on the unconfined aquifer.

The then minister (once again the member for Unley) further informed the house:

> The impact of planting 35 000 hectares of new forestry in a fully allocated water management region is that 7 000 hectares of perennial pasture irrigation, or up to 24 000 hectares of irrigated vines, would have to be forfeited to maintain the sustainability of the resource.

The recent South-East CSIRO—

The Hon. R.G. Kerin interjecting:

The Hon. J.D. HILL: This was a quote from the member for Unley, who was then the minister for water resources. The recent South-East CSIRO study, 'Water use by tree plantations in South-East South Australia'—

Mr Williams interjecting:

The DEPUTY SPEAKER: Order! The member for MacKillop has already spoken.

The Hon. J.D. HILL: —reinforces the view that the plantation forest has a dramatic impact on the Lower South-East water resource.

Mr Williams interjecting:

The DEPUTY SPEAKER: The member for MacKillop will come to order!

The Hon. J.D. HILL: It has been suggested that the regulations could affect other dryland crops. Clearly, if another type of crop had the same effect on the ground water resource as forestry, we would need to consider managing that impact as well—and I have said that previously in the house. However, I am not aware of any other crops that have a similarly significant effect on the water resource, and I am not contemplating the expansion of the management systems to other crop types. Nonetheless, it is clear that, if forestry continues to expand without the regulations, we would need to periodically reassess the water available for extraction and readjust the existing water access entitlements accordingly.

This would have potentially significant impacts on other water users in the South-East.

Other industries in the region include major value-adding industries such as dairy, viticulture, wine and horticulture. It is not a matter of the government's seeking to favour one or more of these industries. I make that point very clear: it is not a matter of us choosing. It is simply a matter of ensuring that all significant impacts on the water resource are identified and managed. The system for doing that has been adopted after extensive consultation with South-East stakeholders, initiated by the former government and progressed by me. Those stakeholders have again strongly reinforced their support for the system since the opposition foreshadowed its attention to seek to disallow these regulations.

A representative of the Dairy Farmers Association describes the outcome 'as a landmark demonstration of cooperation between industries' and argues that 'it is based on commonsense and supported by the best available science'. He notes that the softwood timber industry in the South-East 'played a vital and totally responsible part in this outcome'. A major softwood company in the South-East, Auspine, has provided me with a copy of their recent letter to the member for McKillop—

Mr Williams interjecting:

The DEPUTY SPEAKER: The member for McKillop will come to order!

The Hon. J.D. HILL: This letter indicates that 'Auspine and other South-East timber companies have invested significant time and effort to achieve the current outcome.' The company notes its concern that the opposition is considering disallowing the regulation (that is, Auspine)—

The Hon. R.G. Kerin interjecting:

The DEPUTY SPEAKER: The leader is out of order!

The Hon. J.D. HILL: Most telling is Auspine's observation that the regulations are 'a blueprint of the Timbercorp model proposed by the consultants'. I make that plain. The regulations that we adopted are, according to Auspine, a blueprint of the regulations proposed by the Timbercorp company. That is the company which is now aggrieved by this regulation, yet it is their suggestion that we have adopted. Why then is Timbercorp and their clones—

Mr Williams interjecting:

The DEPUTY SPEAKER: Order! The member for McKillop will be warned in a minute.

The Hon. J.D. HILL: —now opposing the regulations? Sir, other industries—

The Hon. R.G. Kerin interjecting:

The DEPUTY SPEAKER: And so will the leader.

The Hon. J.D. HILL: —wine, dairy, potato and other irrigators—have indicated their concern about the possibility of the regulation being overturned, noting that doing so 'is likely to result in a more rapid decline in the region's economic and environmental sustainability'. I am quoting from industry in the South-East which is mightily concerned about this issue because it believes it will undermine their capacity to continue growing. We have two issues—economic and environmental—

The Hon. R.G. Kerin interjecting:

The DEPUTY SPEAKER: The leader is out of order!

The Hon. J.D. HILL: —and we are trying to address both of them. I understand several of these stakeholders—

Mr Williams interjecting:

The DEPUTY SPEAKER: I warn the member for McKillop. He will be missing the debate if he is not careful.

The Hon. J.D. HILL: Sir, I understand that several of these stakeholders, including two major wine industries, have written to the opposition expressing support for the regulations. Like them, I urge the Leader of the Opposition to show leadership in opposing this disallowance motion for the benefit of all water users in the South-East. The letter to which I referred was a letter to the member for McKillop. If the leader wants to table a letter, go ahead: it does not concern me in the slightest. The point is that the majority of stakeholders in the South-East have considered this issue over a very long time. They are sick of the politics; they want it to be resolved.

They came up with a solution themselves. It was not the government's solution; we had a different model. They came up with a solution. We said, 'Yes, we will go ahead with that because that makes sense to us.' The majority of the stakeholders support it. They want the parliament to get out of their hair. They want the Liberal Party to show some leadership on this issue and support the government's position, which effectively is the position of industry in the South-East.

The Hon. R.G. Kerin interjecting:

The Hon. J.D. HILL: Every word I say is the truth, Leader of the Opposition.

The DEPUTY SPEAKER: Order! I warn the leader.

The Hon. J.D. HILL: If you are suggesting that I am lying, get and up and make a substantive motion on that because I am saying what I believe to be the truth.

Mr BRINDAL (Unley): In his contribution to this debate, the minister quoted extensively from statements which I made to the house in another parliament. I am not responsible for anything I said to this house in another parliament, nor anything I did as minister because this is a new parliament. Nevertheless, I have a specific criticism of the government and a specific criticism of the member for Mount Gambier. I well remember at that time that not only did the Hon. Mr Elliott put pressure on the government but also the member for Mount Gambier was less than kind and demanded (I wish I had the speech) that the house return in February to sort out this matter instantly, and threatened to bring the government down if the then government did not resolve the matter instantly.

We could not get it resolved to the satisfaction of the member for Mount Gambier in the right time, and we left government with this matter unresolved. My bone with the member for Mount Gambier is that he does not seem to have been quite as assiduous in pursuing this lot as he was in pursuing our lot, because two years—

An honourable member interjecting:

Mr BRINDAL: Yes; and that is my criticism of you, minister. If we had remained in office, in my opinion, we would have done it within three months.

The Hon. K.O. Foley: Mitch is saying you wouldn't have, Mark.

The DEPUTY SPEAKER: Order! The member for Unley has the call.

Mr BRINDAL: And that is the great privilege of being in the Liberal Party. In the Prime Minister's words, it is a very broad church and it has differing opinions.

The Hon. R.G. Kerin: Mark, we would have told them the whole story.

Mr BRINDAL: Yes. The member for McKillop, the Hon. Angus Redford in another place and I have disagreed violently on this issue for a number of years.

The Hon. J.D. Hill: Violently?

Mr BRINDAL: Violently. We are at absolute odds in our opinions of what is good for the water resource in this area. That is no secret. It is vigorously debated in our party room, and our party room continues to evolve a policy.

The Hon. K.A. Maywald: Have you got one that you agree on yet?

The DEPUTY SPEAKER: Order! The member for Unley will ignore any interjections that are out of order.

Mr BRINDAL: The Liberal Party certainly has a policy. At present I do not agree with the Liberal Party's policy. I stand—

Mr Hanna: That is not the only one.

Mr BRINDAL: That is true, but the great privilege of being a Liberal is that you do not have to agree with all the party's policies. I simply stand in this place, as I have told my party, to say that I believe that, as the minister, I acted honourably. I acted according to law as the minister. I believe that my department acted honourably, and I believe that it continues to account honourably. I believe that this government and these regulations are not only commonsense but also in line with those of every government in Australia, and they are in line with the wishes of the Prime Minister and every Premier in Australia. Water is a tradeable property right. If water is a tradeable property right, the people of Australia—

Mr Williams interjecting:

Mr BRINDAL: I did not interject on the member for MacKillop. The member for MacKillop has interjected on me, and I cannot resist. He says that it is nothing to do with that. In my opinion it is everything to do with that. Once water is made a tradeable property right, anyone who owns property has a right to expect the people to protect the right of their property. That is why we have got a Torrens title system. It would be useless to own land if we could not define the boundaries and corners of our land. We all own land but we do not know where it is; that makes a lot of sense.

In my opinion that is what this comes down to. If you give people the right to own water you cannot tell God how much to make it rain. However, you can protect the human intervention in the water resource. I wish some people in this place could comprehend the simple issue, namely, that if every landowner is entitled to all the rain that falls on their property the Murray Darling River system would not flow into South Australia, because every Queenslander would take the Darling and dam it and every New South Wales and Victorian would take the Murray and dam it, simply on the ground that it falls on their property. That is quite simple.

An honourable member interjecting:

Mr BRINDAL: Incidentally, the Adelaide Hills would not supply the city of Adelaide with 60 per cent of its water because every farmer in the Adelaide Hills could claim their property. To say that God gives us all an absolute right to all the water that we own is, in my opinion, wrong. What this regulation ceases to do is to say, 'If we create a property right of water we create for ourselves the responsibility to guard the property right for those to whom it is given.' It is a little like saying, 'Well, banks can loan money but they have no certainty to get money coming in the door.' How can you loan that which you might not even own?

I believe that that is what these regulations come down to. It gives me no pleasure to disagree with my party. I have argued passionately in the party room that they are wrong, and I am about one voice in the party room. Not a lot of us are arguing this point. I could not, in all conscience, having been a minister and having tried my best with a decent department to get a reasonable solution for water in the South-East. As the minister says and I have said (and I say still): this is a reasonable solution for everyone in the South-East.

I would be less than honest if I did not stand in this parliament and say that, in my personal opinion, the government is right: the regulations should not be disallowed and that my party errs, and errs very badly, on this matter. In my mind there is no question that if the Liberal Party goes down this track of disallowing these regulations it will find itself in conflict with every government in Australia. It exposed the Murray-Darling Basin to risk by saying, 'Look at what you do with your water resources. Why should we not do it with ours?' And it exposed us to the absolute ire—

An honourable member interjecting:

Mr BRINDAL: No—of a person that I actually admire: the Prime Minister of Australia, John Winston Howard. Not beloved by many people opposite, but the person who was largely the author—

The Hon. K.O. Foley interjecting:

Mr BRINDAL: I will continue to argue that our party policy will change. In the meantime, we have a proposition before the house and I am addressing the proposition. I cannot address it other than by saying that on this matter my party errs. I support the government fully in this matter, having admonished the minister for being too slow and the member for Mount Gambier for being a little tardy and giving him a kick up the rear (like he gave me), but I intend to support the government.

The Hon. R.J. McEWEN (Minister for Agriculture, Food and Fisheries): I do not support this motion to disallow regulations moved by the member for MacKillop. The South Australian Farmers Federation does not support this disallowance motion, and Kent Martin has written to the Leader of the Opposition on the matter. The softwood plantation companies do not support this motion. Auspine, Forestry SA and Green Triangle products do not support the member for MacKillop. The hardwood plantations company, except one, do not support this disallowance motion by the member for MacKillop.

The Limestone Coast Regional Development Board does not support this disallowance motion by the member for MacKillop. The South-East Catchment Water Management Board (Jim Osborne and Hugo Hopton) does not support this disallowance motion by the member for MacKillop. The Mayor of Wattle Range, Don Ferguson, does not support this disallowance motion by the member for MacKillop. And, the grape growers from Coonawarra, Padthaway, Keppoch, Wrattonbully, Cape Jaffa, Mount Benson and Robe do not support this disallowance motion by the member for MacKillop.

The Premier's Wine Council does not support this disallowance motion from the member for MacKillop. The Wine and Brandy Corporation does not support this disallowance motion from the member for MacKillop. The dairy farmers do not support this disallowance motion from the member for MacKillop. The urban water users do not support this disallowance motion from the member for MacKillop. Industry in the South-East, particularly KCA and SAFrys, does not support this disallowance motion from the member for MacKillop. Horticulturalists in the South-East do not support this disallowance motion from the member for

MacKillop. Potato growers in the South-East do not support this disallowance motion from the member for MacKillop, and I could go on.

Indeed, very few people do support this bit of lunacy, and let me tell the house why we do not support it. We all appreciate that water is a finite commodity and must be managed in a sustainable way, and for every hundred we must have a water balance. We believe that, in allocating that water balance, we must respect existing rights. We believe that every decision must be based on science. We acknowledge that anything that inhibits recharge has an impact on the water balance; and we accept that plantation forestry has an impact on recharge, therefore on the water balance.

We support these regulations because they acknowledge this fundamental principle. But they further acknowledge that there is a need to allow expansion of forestry where water is not fully accounted for and, in so doing, reserve 60 000 hectares for expansion in forestry.

Beyond that, we also acknowledge that forestry does not need a water licence. It is nonsense for anyone to suggest that forestry must have a water licence. But we acknowledge that forestry must have an authorisation because they must be accounted for in the water balance. That is obvious; that is fundamental; and that is what all the stakeholders are now prepared to accept.

Let me tell the house the one thing we do ask above all others: we ask that we as a community be allowed to make this decision and not have this parliament take it out of our hands. We as a community have made this decision. We as a community have put together a satisfactory compromise. We as a community are proud about the way we went about achieving that compromise.

We came together from having diverse opinions on this matter; we came together in a state of heightened emotions on some occasions; and we put this behind us. The leadership our community has shown in being prepared to broker and now back a satisfactory compromise is captured in the very regulations that the member for MacKillop is now trying to disallow. This community does not stand for that. All of the people I have listed want this parliament to back our community and what we want—and what we want are in those regulations.

Mr HANNA (Mitchell): On behalf of the Greens, I oppose the attempt by the member for MacKillop to disallow the regulations made under the Water Resources Act concerning water in the Lower South-East. I simply say that the regulations represent a deal, a compromise, that has been achieved other a long period of time involving literally years of consultation and meetings.

Mr Williams interjecting:

The DEPUTY SPEAKER: Order! The member for MacKillop has already spoken.

Mr HANNA: There is almost universal approval for the deal. I would like to have seen a greater value placed on preservation of what is obviously a scarce resource. But accepting the reality that the right to draw and use water has become a tradeable commodity in that part of the country, then some sort of commercial reality needs to be fixed. That has been achieved in these regulations.

There is such a majority of stakeholders approving these regulations and the deal inherent in them that we have had the member for Mount Gambier from the Labor Party and the former minister from the Liberal Party all expressing their approval of this deal. It is really only the member for MacKillop and a very small minority of commercial interests who seek to sink this ship. The member for MacKillop knows that he will be unsuccessful in unravelling this compromise deal.

The Hon. R.G. KERIN (Leader of the Opposition): I rise to support the disallowance motion moved by the member for MacKillop. However, it might not be for the reasons the other side have been saying we are supporting this. The thing that I really do not like about this is that I have listened to the stakeholders over the last couple of months and I have seen their letters. All of their complaints to me about why we are putting forward this disallowance are very different from what the regulation actually says.

I feel the people in the South-East do not understand what this regulation is actually about, and that has been verbally and in letters. The major concern I have with this regulation is that it is totally misunderstood—and very deliberately has been put that way. Just before I get too far into that argument—

The Hon. J.D. HILL: Point of order, Mr Deputy Speaker: the Leader of the Liberal Party makes the point that the regulation is being deliberately put to people in the South-East in a misleading way. It is certainly not true. It is certainly not something I have done. I ask him to withdraw that comment.

The DEPUTY SPEAKER: Order! That is not a point of order.

The Hon. R.G. KERIN: And I refuse to withdraw the comment because I did not say it was a minister. I have read so many letters where they have said—I could quote dozens and I might when I get back to this next week. Everyone who has written to me or spoken to me has talked about the fact that, if we disallow this regulation, we allow them to plant trees where they can pump water out of the ground. I was briefed by the minister's own officers last week and I put that proposition to them, and they said, 'That is nothing to do with this regulation.'

So every letter I have had and every approach I have had has been from people who do not understand what the regulations are actually about. These are good people. I am not accusing them. But something has happened with this consultation process because it has gone horribly wrong.

Earlier the minister for the environment quoted from a letter. I have that same letter here. There are a couple of things that he very deliberately left out, and I will quote from them:

> As you know, the economic rationalists within the DWR wish to impose water licences—

this is the letter he says was so much in support of him—

> firstly against Tree Farmers, and then potentially against other dryland farmers as they improve their productive capacity, and subsequently water use.

That is very different from what the minister told this house when he said there was no consideration of anything other than plantations. Further on, the letter reads:

> As an industry—

and this is the forestry industry—

> with considerable experience in NRM, the Timber Industry has many reservations regarding the DWR management of water in South Australia. Consequently, the industry has sought an outcome that minimises the potential long term collateral damage to it from a system fundamentally designed to manage irrigation licences, and not the interception of rain by dryland crops.

There are two things that people in the South-East have not been told properly and do not understand: one is that this regulation has nothing to do with the use of ground water. This regulation is about the right of farmers, not with respect to damming, but to sow a crop that efficiently uses the rain that falls on their land. I questioned the officers at length last week, and they reiterated to me time and again that this has nothing to do with the use of ground water: it is to do with recharge. But that is not understood. The member for Mount Gambier understands it, the minister understands it and the department understands it, but the poor old stakeholders do not understand it.

I refer to the letters that have come to me about why we should not knock this regulation over. People have made the point that there is provision in this regulation to stop people using ground water. They talk about the CSIRO—

The Hon. J.D. Hill: Who?

The Hon. R.G. KERIN: Mainly the grape growers. The grape growers, who are damn good people and deserve better, all think this is about pumping water out of the ground. The ones to whom I have spoken say that, if a particular crop uses the water that falls out of the sky, they have no problem with that. What they have a problem with is the land-holder planting trees where water is pumped from the ground water. That is a separate issue. When I spoke to representatives of the department, they assured me that this regulation has absolutely nothing to do with that.

There is another thing that is misunderstood. Today I rang stakeholders (and the minister should listen to this), and they are all of the opinion that this is the line in the sand. What is being said in the South-East is that this is the line in the sand to give certainty for the future. The minister's own officers last week told me that this is just step one. This only concerns the right of a land-holder to use rainwater. What is not understood (and I could not find anyone today who knew about this) is that I have been told by the department that it is coming back, in the next step (which no-one knows about), to change it again and to bring in more regulations to make forestry accountable for what is pumped out of the ground. Everyone to whom I have spoken thinks that is what this regulation does. I reckon what the minister should do, in a more wholesome manner than before, is not appoint the stakeholders himself: he should allow the bodies to put forward their own stakeholders. Let us bring forward some people with fresh ideas.

Debate adjourned.

PROFESSIONAL STANDARDS BILL

The Legislative Council agreed to the bill without any amendment.

ACTS INTERPRETATION (MISCELLANEOUS) AMENDMENT BILL

The Hon. M.J. ATKINSON (Attorney-General) obtained leave and introduced a bill for an act to amend the Acts Interpretation Act 1915 and to make a related amendment to the Subordinate Legislation Act 1978. Read a first time.

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

That this bill be now read a second time.

This bill amends the Acts Interpretation Act to assist in the interpretation of South Australian legislation and statutory instruments. The bill deals with five matters. Firstly, the bill provides that definitions of digital media and the processes of capturing digital records are to be considered as within the meaning of their analog counterparts. These provisions are intended to save the purpose and effect of existing statutory provisions if their validity is subsequently challenged. The bill also requires that a person who is under a legal obligation to produce a computer record must make it available in a form in which it can be understood.

Secondly, the bill removes any doubt about the effect of various portions or components of acts, regulations, rules, by-laws or statutory instruments. It deals with the status of clauses in schedules, headings, margin notes, dictionaries, examples, exceptions, qualifications and headings to chapters, subsections and paragraphs. Thirdly, the bill clarifies the Governor's powers to fix not only a day but also a time for commencement of acts and statutory instruments and allows for the variation of commencement proclamations. Fourthly, the bill replaces section 39 of the act to clarify that the power to make regulations, rules or by-laws includes power to vary or revoke the regulations, rules or by-laws and that the power to vary or revoke is exercisable in the same way, and subject to the same conditions as the power to make the regulations, rules or by-laws. It also includes a power to provide for the expiry of regulations, etc.

Fifthly, the bill deals with several miscellaneous meanings and definitions. It extends the meaning of 'statutory instrument', provides a new section to assist in the interpretation of words and phrases that have meanings related to a defined word or phrase, clarifies the meaning of sitting days of parliament, updates references to registered post and certified mail, defines the manner in which an act may authorise or require a body corporate to sign or execute a document, and removes unnecessary phrases from section 44 of the act. I seek leave to have the rest of the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

1—Definitions of digital media

Dozens of South Australian statutes contain references to items such as videotapes, films, audiotapes, photographs, books, maps, plans, drawings and documents. Some of these words are also used within statutes as verbs giving, for example, authorised officers the authority to photograph, film or videotape items, events or persons, often for the purpose of obtaining evidence.

Many if not all of these words are arguably descriptive only of old technological methods that are rapidly being phased out for digital technology. It is not clear whether statutory references to analog methods of, or analog devices for, capturing, storing or reproducing words, pictures, designs, maps, sounds etc. will necessarily be interpreted by Courts as including the newer digital methods and devices.

It is possible that if invited to do so a Court may find that particular statutory provisions authorise the use of, or prohibit the use, only of 'video *tape*' and that the statute says nothing about *digital* video recording. The same may be said of other analog media and their digital counterparts. Therefore in some circumstances there may be a lack of statutory power to utilise or to prevent the use of digital technology.

References to analog media are found in South Australian statutes in many places. For example:

- there are requirements for police to use videotapes or audiotapes to record interviews and searches under the *Summary Offences Act 1953* and the *Criminal Law (Forensic Procedures) Act 1998*.
- intellectual property and other rights are protected by prohibitions against filming, photographing, copying or recording, for example in the *National Parks Regulations 2001*, *Adelaide Festival Centre Trust Regulations*, *History Trust of South Australia Regulations 1995*, and *Art Gallery Regulations 2002*.
- authorised officers fulfilling regulatory functions are granted statutory powers to take photographs, visual

recordings, films or video recordings. These powers are contained in many Acts, including *Offshore Minerals Act 2000, Development Act 1993, Environment Protection Act 1993,* and the *Food Act 2001*.

- statutes such as the *Evidence Act 1929, Workers Compensation and Rehabilitation Act 1986,* and *Summary Procedure Act 1921* regulate the use that may be made in certain proceedings of videotape and photographic material.
- words such as "books", "papers" and "documents" are sometimes defined in such a way or qualified in their context (as in the phrase "book, document or other record") in such a way that a computer record would be assumed to be equivalent. However this is not always so. A common phrase in many statutes is "books, papers or documents". Since many statutes do not adopt any definition of "books", "papers" or "documents" it is at least arguable that computer records might not be included.
- the same argument could apply to statutory provisions that mention "plans", "maps" and "drawings". It is not always clear from the context whether a computer record of a "plan", "map" or "drawing" is within the meaning of the statutory provision.

There is no suggestion that public authorities ought to be required to accept application forms or other records in digital media format if they believe that paper or analog versions are still required. In the most obvious example, at the Land Titles Office, "maps" and "drawings", along with all other instruments, must be in a "form approved by the Registrar General" under section 54 of the *Real Property Act 1886*. Development applications under the *Development Regulations 1993* can now be accepted electronically, but only if the Council or other relevant authority consents to this method, as provided for in section 8 of the *Electronic Transactions Act 2000*. All that is being proposed in this Bill is a legislative definition which states, in effect, that records stored digitally and the processes of capturing them are within the statutory meaning of their original analog counterparts. This would save the purpose and effect of existing statutory provisions if their validity is subsequently challenged.

The Bill also requires that a person who is under a legal obligation to produce a computer record must make it available in a form in which it can be understood.

2—Clarifying the status of various components of an Act

Acts, regulations, rules, by-laws or statutory instruments may contain various components. They may contain preambles, schedules, dictionaries, appendices, chapter headings, part headings, division headings, subdivision headings, section headings, marginal notes, footnotes, other notes, examples, qualifications, exceptions, tables, diagrams, maps, other illustrations (and their headings), punctuation, lists of contents and so on. The status of one component or its omission might be a matter relevant to the interpretation of a provision or an entire instrument.

The Bill provides greater clarity in understanding the nature of these components. It lists all the components mentioned above, and clarifies, subject to any express provisions to the contrary, which of them form part of an Act or statutory instrument, and which do not.

The Bill also provides that no portion of an Act (including any Schedule or preamble) requires enacting words such as "the Parliament of South Australia enacts" to be effective as a substantive enactment.

The Bill also deals with the effect of examples in Acts. It provides that examples are not intended to be exhaustive and may extend, but not limit, the meaning of a provision. This matter is currently dealt with in some Acts where examples appear, but not others. The section represents a consistent provision that can be relied upon across the Statute Book. Corresponding Acts of the Commonwealth, the Australian Capital Territory, the Northern Territory, Queensland and Victoria contain similar provisions dealing with the standing of examples.

3—Fixing commencement dates and times

The Bill clarifies the Governor's powers to fix not only a day but also a time for commencement of Acts, provisions in Acts and statutory instruments. It includes, in Schedule 1, amendments to the *Subordinate Legislation Act 1978* that are consequential.

The Bill also enables a commencement proclamation to be subsequently varied so as to delay the day or time of commencement of an Act.

4—Variation, revocation and expiration of regulations, rules and by-laws

The Bill substitutes section 39 of the Act to bring it into line with the corresponding provisions of most other Australian jurisdictions (although the Commonwealth and Victorian provisions make an exception "where the contrary intention appears"). Each jurisdiction provides that the restrictions that apply to the making of the subordinate legislation apply also to the variation or revocation of the subordinate legislation.

The provision allowing for the variation or revocation of regulations, rules or by-laws will not introduce any extraneous limitation on the exercise of the power that does not apply to the initial making of the regulations, rules or by-laws.

If there is an intention not to allow variation or revocation of a regulation then an express provision to that end should be enacted in the relevant Act.

The Bill also clarifies that regulations etc. may include a provision specifying a day on which the regulations etc. expire.

5—Other definitions and meanings

The *Acts Interpretation Act* defines "***statutory instrument***" to include any "instrument of a legislative character." Difficult questions can arise as to whether a particular instrument is of a legislative or administrative character. The amendment includes as statutory instruments all proclamations, notices, orders or other instruments made by the Governor or a Minister and published in the *Gazette*. The result is that the provisions of the Acts Interpretation Act relating to matters such as citation, commencement and construction of statutory instruments will clearly apply to all such instruments.

The Bill also includes an amendment to resolve potential uncertainty and the need for cumbersome definitions when Acts use different grammatical forms of a defined word or phrase. For example, the words "build" and "builder" are related to the word "building". If, in an Act, the word "building" was defined but the words "build" and "builder" were not separately defined, the legal meaning of "build" and "builder" might not necessarily correspond to the legal definition of "building". The amendment establishes a general presumption that such corresponding meanings apply. There is a similar provision in section 7 of the corresponding New South Wales statute, the *Interpretation Act 1987* (NSW).

The Bill also clarifies that a reference in an Act to sitting days of Parliament includes days that may span successive sessions of Parliament and successive Parliaments.

The Bill updates references to certified mail and registered post to reflect current services provided by Australia Post.

The Bill provides that an Act under which a body corporate signs or executes a document is taken to require or authorise either the fixing of a common seal, or signing in accordance with the Act under which the body was incorporated.

Finally, the Bill removes two unnecessary references to "statutory instruments" in section 44. These references are unnecessary because statutory instruments are already within the meaning of an "Act" in section 44, under the provisions of section 14BA(1).

I commend the Bill to members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Acts Interpretation Act 1915*

4—Amendment of section 4—Interpretation

This clause inserts a number of definitions into section 4 of the principal Act. The definitions include definitions of "data storage device", "record" and "document", and these definitions reflect new digital technology, as against simply the analog technology contemplated at the time of many Acts being enacted. By doing so, the measure clarifies any possible confusion as to whether new forms of technology are caught by existing terminology as used in those Acts. For example, items such as computer discs are now clearly included as a form of device on which information is capable of being stored.

This clause also alters the definition of statutory instrument. It provides that a proclamation, notice, order or other instrument made by the Governor or a Minister under an Act and published in the Gazette will be regarded as a statutory instrument, whether or not it is of a legislative character. The result is that the provisions of the *Acts Interpretation Act*

relating to matters such as citation, commencement and construction of statutory instruments will clearly apply to all such instruments. This will avoid the need to delve into the question of whether a particular instrument is or is not of a legislative character.

The clause also inserts new subsection (2) into section 4 of the principal Act, which extends references to analog methods or items of information capture or storage to include a reference to the digital equivalent. For example, a reference to "videotape", in the form of a verb, would include a reference to digital videorecording, rather than simply recording images and sound on a videocassette.

5—Insertion of section 4AA

This clause inserts new section 4AA into the principal Act, which provides that if an Act defines a word or phrase, other parts of speech and grammatical forms of the word or phrase have, unless the contrary intention appears, corresponding meanings

6—Substitution of section 6

This clause substitutes section 6 of the principal Act, and provides that separate enacting words for a section or other portion of an Act are not required in order to have effect as a substantive enactment.

7—Amendment of section 7—Commencement of Acts

Section 7 is amended to allow for commencement of Acts by proclamation at a specified time as an alternative to commencement on a specified day. This is sometimes necessary in a uniform law situation where the commencement proclamation needs to take into account different time zones. Section 7 is also amended to enable commencement to be delayed by a further proclamation.

8—Insertion of section 10A—Commencement of certain statutory instruments

This clause makes it clear that statutory instruments (other than regulations, rules and by-laws) may commence on a day or at a time specified in the instrument. It also states that, if no commencement provision is included, the instrument will be taken to come into operation on the day on which it is made, approved or adopted. The rules for regulations, rules and by-laws are set out in the *Subordinate Legislation Act 1978*.

9—Amendment of section 14A—Application and interpretation

This clause inserts new subsection (3) into section 14A of the principal Act, and provides that a reference to a section in the relevant Part extends to a clause of an Act and a regulation, rule, by-law and a clause of a statutory instrument.

10—Amendment of section 14B—Citation

Section 14B(3) is amended so that, unless the contrary intention appears, a reference in legislation to an interstate or Commonwealth Act will be a reference to that Act as in force from time to time.

11—Substitution of section 19

This clause substitutes section 19 of the principal Act, and sets out what does, and does not, form part of an Act. The clause also inserts section 19A into the principal Act, setting out the limits of examples in an Act.

New section 19 deals with the question of what material forms or does not form part of an Act. The current provision does not cover all the components of an Act used in accordance with current drafting practice. For example, it does not mention dictionaries (a device used in the Australian Road Rules and some other regulations under the *Road Traffic Act*) or examples, exceptions or qualifications. It does not cover Chapter, subsection or paragraph headings. The new provision clarifies the position.

It provides that the following form part of an Act:

- preambles, schedules, dictionaries and appendices (including their headings);
- chapter headings, part headings, division headings and subdivision headings;
- examples, qualifications, exceptions, tables, diagrams, maps and other illustrations (including their headings), except where they form part of a note;
- punctuation;

and that the following do not form part of an Act:

- section headings;
- notes (including their headings);
- lists of contents.

New section 19A deals with the effect of examples in Acts. It provides that examples are not exhaustive and may extend, but not limit, the meaning of a provision. This matter is currently dealt with in some individual pieces of legislation where examples appear but not others. The section presents a consistent provision that can be relied on across the Statute Book. The *Interpretation Acts* of the Commonwealth, the ACT, the NT, Queensland and Victoria contain provisions dealing with the standing of examples. The provision is subject to any express provision to the contrary in an Act.

12—Insertion of section 27A

A new section is inserted about the interpretation of legislation that refers to a number of sitting days. The provision provides that, subject to a contrary intention, sitting days are to be counted regardless of whether they fall within the same session of Parliament or even within the same Parliament.

13—Amendment of section 33—Service by post

This clause amends section 33 to reflect current postal arrangements. A reference to certified mail is to be read as a reference to registered post.

14—Substitution of section 39

This clause substitutes section 39 of the principal Act, and sets out provisions relating to the variation, revocation and expiration of subordinate instruments.

The *Interpretation Acts* of each Australian jurisdiction contain provisions corresponding to section 39. This amendment brings the South Australian provision into line with the corresponding provisions (except the corresponding provisions in the Commonwealth and Victoria where reference is retained to "unless the contrary intention appears").

Each jurisdiction provides that the restrictions that apply to the making of the subordinate legislation apply also to the variation or revocation of the subordinate legislation. Proposed subsection (2) reflects this aspect of the current provision and of the corresponding provisions in other Australian jurisdictions.

The result is that there will be a power to vary or revoke regulations, rules or by-laws in the same manner as they were made. However, an Act could always expressly limit that power in a particular case.

The new section also provides that regulations, rules and by-laws may include a provision specifying a day on which the regulations, rules or by-laws expire.

15—Amendment of section 44—Interpretation of references to summary proceedings

This clause amends section 44 of the principal Act to delete unnecessary references to statutory instruments. The whole Part is expressed to apply to both Acts and statutory instruments.

16—Insertion of sections 51 and 52

This clause inserts new section 51 into the principal Act, setting out that where a person who keeps information by computer or other process is required under an Act to produce the information or a document containing the information or to make the information or a document containing the information available for inspection, the requirement obliges the person to produce or make available for inspection a document containing the information in a form capable of being understood.

This clause also inserts new section 52 into the principal Act, setting out how a provision requiring or authorising the signing or execution of a document is to be read in relation to a body corporate. The provision contemplates the common seal being affixed to the document or the document being signed as authorised by the Act under which the body corporate is incorporated.

Schedule 1—Related amendment of *Subordinate Legislation Act 1978*

1—Amendment of section 10AA—Commencement of regulations

This amendment provides that regulations, rules and by-laws may come into operation at a time specified in the relevant instrument.

Dr McFETRIDGE secured the adjournment of the debate.

CRIMINAL ASSETS CONFISCATION BILL

The Hon. M.J. ATKINSON (Attorney-General) obtained leave and introduced an act to provide for confiscation of proceeds and instruments of crime; to make related amendments to the Controlled Substances Act 1984, the Criminal Law Consolidation Act 1935, the Financial Transaction Reports (State Provisions) Act 1992 and the Legal Services Commission Act 1977; to repeal the Criminal Assets Confiscation Act 1996; and for other purposes. Read a first time.

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

That this bill be now read a second time.

At the last election the Labor Party promised 'new laws to allow the seizure of assets gained using the proceeds from crime'. The Rann government's strategic plan under Objective 2, Improving Well-being—Priority Action, states:

> Legislate to target organised crime and outlaw motorcycle gangs, and to extend the powers to strip convicted criminals of their criminal profits and assets. The proceeds will be made available to victims through the Criminal Injuries Compensation Fund.

This bill fulfils those promises. It proposes the enactment of a comprehensive and extensive set of new powers targeting the assets and profits of criminals. It proposes to do so by measures corresponding to the commonwealth Proceeds of Crime Act 2002 so as to promote consistency between state and commonwealth provisions. In doing so, it has taken advantage of the experience in the commonwealth jurisdiction and includes innovations that practice has suggested are both necessary and desirable. I seek leave to have the rest of the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

History

The first Australian criminal assets confiscation scheme was introduced through an amendment to the Commonwealth *Customs Act 1901* in 1977. This amendment provided for the forfeiture, upon conviction, of money used in or in connection with drug related conduct found in the possession or control of a person. General proceeds of crime legislation grew out of the scandals uncovered by the Royal Commissions of the late 1970s and early 1980s into organised crime and illicit drug trading. Interest in the legislation also grew after consideration had been given to the American legislation of the 1970s, most famously RICO—the *Racketeer Influenced and Corrupt Organizations Act, 1970*. Bureaucratically, legislation was triggered by the Australian Police Ministers' Council (A.P.M.C.) in 1983 and, with the help of the Standing Committee of Attorneys General (SCAG), was taken to the Special Premier's Conference on Drugs in 1985, where it was endorsed. Thereafter, largely driven by the Commonwealth, a Model Bill was developed by Parliamentary Counsel's Committee and each jurisdiction introduced its own version at its own time. The South Australian version, the *Crimes (Confiscation of Profits) Act, 1986*, was different from the model legislation, at least in form.

At the time, the general idea of legislating in this area was seen as a new cure for organised crime. The then Attorney-General of the Commonwealth, Lionel Bowen, said of the aims of the legislation in introducing the Commonwealth version:

> ". . . strike at the heart of major organised crime by depriving persons involved of the profits and instrumentalities of their crimes. By so doing, it will suppress criminal activity by attacking the primary motive—profit—and prevent the reinvestment of that profit in further activity.

This, of course, remains the aim of criminal assets confiscation legislation.

Elements of the Existing Model

In very general terms, the model embraced in the 1980s contained four basic elements—more accurately five, depending on how one counts. They (inclusively) are:

- *restraining orders*—these provisions authorise a court on the application of a prosecuting authority to freeze part or all of the property of an accused in anticipation of forfeiture but in any event pending the determination of final proceedings;
- *forfeiture orders*—these provisions empower a court, upon conviction, or proof beyond reasonable doubt of criminal activity, to order the forfeiture to the State of "tainted property". Tainted property generally takes two forms—first, the profits of criminal activity and second, the objects, instruments or things used to commit the criminal offence.
- *pecuniary penalty orders*—these provisions provide an alternative to forfeiture orders. In essence, a court is empowered to order the offender to pay a sum to the State equivalent to any benefit that the offender derived from the offence;
- *police powers* to require evidence and the production of documents—these provisions contain extensive information-gathering powers by way of search warrants, production orders, monitoring orders and powers to examine the offender personally; and
- *money-laundering offences*—these provisions create criminal offences aimed at making it a criminal offence to engage in dealing in any way with the proceeds of crime. In general terms, there were two levels of seriousness in the national model—a serious offence of doing so knowingly or intentionally, and a less serious offence of merely dealing in property reasonably suspected of being the proceeds of crime.

This is a necessarily brief summary of a complicated and very detailed area of statutory law. In South Australia, the relevant State law is contained in the *Criminal Assets Confiscation Act, 1996*, with one exception. That exception is money laundering offences, which are now contained in the *Criminal Law Consolidation Act*. They are not within the scope of this Bill. It is generally accepted the confiscation legislation, in the broad sense described above, is a necessary and appropriate part of the law enforcement arsenal against crime, particularly serious crime and profit-driven crime. The question is what form the law should take. Professor Freiberg, a noted expert in the area, has summarised the aim as follows:

> "[T]o incapacitate, by depriving a person of the physical or financial ability, power or opportunity to continue to engage in proscribed conduct, to prevent offenders from unjustly enriching themselves, by eliminating the advantages and benefits which the offender has gained through his or her illegality, to deter the offender and others from crime by undermining the ultimate profitability of the venture and to protect the community by curbing the circulation of prohibited items.

Reform is Suggested

Law enforcement authorities have been of the opinion since the 1990s that the original form of the legislation was not working. In December, 1997, the then Commonwealth Attorney-General commissioned the Australian Law Reform Commission (A.L.R.C.) to review the whole area of the law on the confiscation of the proceeds of crime. The A.L.R.C. Report, released in June, 1999, concluded that the current conviction-based proceeds of crime legislation was "largely ineffective". Among the more important of its recommendations were:

- a non-conviction based confiscation regime;
- amendments to ensure the profits of unlawful conduct are not consumed in legal expenses;
- increased protection for the property rights of innocent third parties and secured creditors;
- increased police powers to track the proceeds of crime; and
- new provisions to expand the scope of money-laundering offences.

Of these, the first is the most important by far. The second and fifth of these objectives have already been met in South Australia, although the Government is examining the money-laundering offence as a result of the COAG agreement on Terrorism and Multi-jurisdictional crime.

Civil Confiscation

An important feature of the current South Australian Act is that forfeiture is "conviction based". This means that for confiscation of criminal assets to take place, it must be proved to the criminal standard that the holder of the assets at the relevant time committed the relevant criminal offence. By contrast, "civil confiscation" is, in general terms, confiscation of the proceeds of crime without proof

beyond reasonable doubt that a crime has been committed. The A.L.R.C. Report said of the principle involved:

> 2.64 If the conclusion is reached that the justification for confiscation of profits springs from conviction for a criminal offence, the establishment of a complementary civil regime under which confiscation would follow from a civil finding of unlawful conduct on the balance of probabilities could be seen to give rise to civil liberties concerns. Specifically, the question might be raised whether what was seen as in essence a remedy ancillary to a finding of proven criminality beyond a reasonable doubt could now be brought to bear on a defendant without such a finding, i.e. by the discharge of the lower civil burden of proof.
>
> 2.65 If, on the other hand, the better analysis is that the denial of profits is to be regarded as rooted in a broader concept that no person should be entitled to be unjustly enriched from any unlawful conduct, criminal or otherwise, conviction of a criminal offence could properly be seen as but one circumstance justifying forfeiture rather than as the single precipitating circumstance for recovery of unjust enrichment.
>
> 2.66 It is the Commission's considered opinion that the latter analysis is to be preferred. Its assessment is based on public policy considerations, taking into account a clear pattern of developing judicial and legislative recognition of a general principle that the law should not countenance the retention by any person, whether at the expense of another individual or society at large, of the profits of unlawful conduct.

The Commonwealth has enacted the recommended civil confiscation scheme in the *Proceeds of Crime Act 2002*. N.S.W. has a similar scheme in its *Criminal Assets Recovery Act 1990*. W.A. has enacted a *Criminal Property Confiscation Act 2000* in reaction to so-called "outlaw motor cycle gangs" and, in particular, the supposed assassination by one (or more) of them of a retired senior police officer. This represents the enactment of the most draconian criminal-assets confiscation scheme in analogous jurisdictions. The W.A. model was considered and rejected by the Commonwealth Government and the Senate Constitutional and Legal Affairs Committee in enacting the Commonwealth legislation in 2001-2002. It is proposed in this Bill that South Australia follow the Commonwealth model as well, thus bringing itself into line with the Commonwealth and N.S.W. There are obvious inter-jurisdictional benefits in this—as well as the benefit of applying consistent law in S.A. to State and Commonwealth offences. Victoria enacted similar legislation in December, 2003.

The Elements of the Scheme

The core elements of the Commonwealth model resemble the elements of the original SCAG regime. They are:

- restraining orders;
- forfeiture orders;
- pecuniary penalty orders;
- literary proceeds orders; and
- information gathering (including examinations, production orders, notices to financial organisations, search and seizure and monitoring orders).

Restraining Orders

A restraining order is designed, as its name suggests, to stop specified property being dealt with until further order. This is a measure used to ensure that assets that may be liable to forfeiture or confiscation are not dissipated, or find some other way to disappear, before the authorities can get hold of them. It is an order made by a court on the application of the DPP and the court *must* grant the order if the pre-conditions are met. There are several innovations in this Bill when compared with existing law. For example, it is provided that the court must make a restraining order, even if it cannot be demonstrated that there is a risk that the property will be disposed of or otherwise dealt with; the Bill introduces the concept of restraining property under the effective control of the defendant; and, most notably, the Bill incorporates a feature from the Victorian legislation known as a 'freezing order' which is a short-term restraint that may be put upon financial assets by police before the making of an application of a restraining order.

The Bill contains a complete code of provisions dealing with the making of the application, allowing for reasonable expenses out of the property restrained, excluding property from the restraining order and the rights of innocent third parties, registration of an interest where the property is registrable (for example, real property), offences of contravening the restraining order, ancillary orders and the role of the Administrator and the duration and cessation of restraining orders.

Forfeiture

The Bill contains, as one might expect, comprehensive provisions on the forfeiture of tainted property. It is fundamental that proceeds of crime are dealt with differently than instruments of crime. If the court is satisfied that the asset is the proceeds of crime, then forfeiture is mandatory, assuming certain pre-conditions are met. On the other hand, forfeiture of the instruments of crime is discretionary and criteria are provided for to guide the courts' discretion. The pre-conditions for forfeiture are similar in both cases. They are:

1 a person has been convicted of a serious offence and the property relates to that offence; or

2 the property has been the subject of a restraining order in force for six months and the court is satisfied that the property relates to a serious offence committed by the person the subject of the restraining order; or

3 the property has been the subject of a restraining order in force for six months and the court is satisfied that the property relates to a serious offence and no application has been made by an innocent third party to claim it and the DPP has taken reasonable steps to find any innocent claimant.

Classes 2 and 3 are sometimes known as "automatic forfeiture". It is clear that the fact that a person has been acquitted of an offence or there is reasonable doubt about the offence does not affect the ability to forfeit property under those two heads of power; the onus is a civil one—hence civil forfeiture. Further, if a forfeiture takes place under the conviction head, and the conviction is later quashed, forfeiture can still take place on the civil basis if the DPP applies successfully for what the Bill calls a confirmation order. There is also a less formal procedure provided for automatic forfeiture if a conviction for a serious criminal offence stands.

Again, the Bill provides a complete code for all of these forms of forfeiture, including the protection of the rights of innocent third parties, the protection of dependants from hardship and so on. One novel feature bears highlighting. That is the inclusion of instrument substitution declarations. The reason for them is that canny crooks may use rented cars or houses (for example) as instruments of crime rather than their own in an attempt to forestall the forfeiture process. The rented property is owned by an innocent third party who cannot justly be made subject to forfeiture. An instrument substitution declaration permits a court to substitute equivalent property owned by the perpetrator for the property used as an instrument of crime but not owned by that perpetrator.

Pecuniary Penalty Orders

Although pecuniary penalty orders are not new to the general scheme of confiscation laws, they are new to South Australia. They are a kind of combination of forfeiture and fine. Instead of attacking tainted property specifically through the forfeiture of it, the DPP may seek forfeiture of a sum of money that represents, or is equivalent to, the value of the property that was used as an instrument of crime or which was proceeds of crime. As with forfeiture, it is proposed that this order may be made on application to a court on the basis of the civil burden of proof. In addition, there are strong and definite presumptive rules about the assessment of the benefits that a defendant has received from the commission of a serious offence, including an assessment of the total value of his or her assets before and after the commission of the offence. In effect, an onus is placed upon the defendant to provide a lawful explanation for increased wealth.

Literary Proceeds Orders

By contrast, literary proceeds orders are not new to South Australia. What is new about the proposals in the Bill is the comprehensive treatment of these orders and, of course, the transformation from criminal to civil onus for establishing the foundation offence. Literary proceeds orders are designed to confiscate the proceeds of the commercial exploitation of a person's notoriety obtained by the commission of a serious offence. These orders have not proved controversial in South Australia, but there was recent controversy in N.S.W. about a case in which a person to be charged for a shooting was paid a sum of money for an interview by a current affairs television show. That money was frozen on charge. The same result might well be obtained here.

Information Gathering

The Bill proposes extensive investigative and information gathering powers. None are new in concept, but the Bill is more detailed and extensive than current provisions. In general terms, the powers are (a) examination orders; (b) production orders; (c) notices to financial institutions; (d) monitoring orders; and (e) search warrants. *Examination orders* are orders made by a court permitting the DPP to conduct an examination of a suspect or a person related

to the suspect (principally by traced assets) with the objective of identifying assets that may be subject to confiscation. *Production orders* are made by a magistrate on the application of an authorised officer and require the production by the subject of the order of what the Bill calls "property-tracking documents", which are exactly what they sound like. There is an extensive statutory definition of "property-tracking documents". *Notices to financial institutions* are orders made by a police officer of or above the rank of Superintendent to a financial institution to provide information to the police about details of accounts held at that financial institution by any specified person. *Monitoring orders* are orders made by a judge of the District Court that require a financial institution to provide information about transactions in an account or accounts held by a specific person over a specified period. *Search warrants* are the familiar specific search warrants issued by a magistrate for property reasonably suspected of being property liable to be confiscated. A novel feature of these provisions is a power to require the owner of a computer to disclose the key to data encrypted or hidden in some other way on that computer. There is also an emergency power to search and seize without warrant.

Miscellaneous

The Bill proposes a range of miscellaneous provisions dealing with the appointment powers and duties of an Administrator, how and in what circumstances legal costs will be borne by restrained property, charges on property and, of course, requiring the chief beneficiary of confiscation to be the Victims of Crime Fund. It should also be noted that existing orders of a kind recognised by the Bill will be translated into orders under the provisions of this Bill when it comes into force, so that there are not two confiscation systems running together for an indeterminate period of time.

Conclusion

This Bill represents a major plank in the Government's overall platform to strengthen the criminal law and associated legislation to make life even harder for criminals, particularly organised criminals. It brings the confiscation legislation in this State into line with that of most jurisdictions in Australia.

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 terms used in the Bill.

4—Meaning of abscond

This clause defines the meaning of ***abscond*** for the purposes of the Bill. A person will be taken to abscond in connection with an offence if an information or complaint has been laid in relation to the offence against the person, a warrant issued for the person's arrest and (at the end of 6 months) either the person cannot be found or is not amenable to justice and, if they are outside of Australia, extradition proceedings are either not on foot or have been terminated without an order for extradition having been made.

5—Meaning of convicted of an offence

This clause defines the meaning of ***convicted*** of an offence for the purposes of the Bill. There are 6 ways a person can be taken to have been convicted of an offence:

- the person is convicted, whether summarily or on indictment, of the offence; or
- the person is charged with, and found guilty of, the offence but is discharged without conviction; or
- a court, with the consent of the person, takes the offence, of which the person has not been found guilty, into account in passing sentence on the person for another offence; or
- the person absconds in connection with the offence; or
- a court has, under Part 8A Division 2 of the *Criminal Law Consolidation Act 1935*, recorded findings that the person is mentally incompetent to commit the offence and also that the objective elements of the offence are established; or
- a court has, under Part 8A Division 3 of the *Criminal Law Consolidation Act 1935*, recorded findings that the person is mentally unfit to stand trial on a charge of the offence and also that the objective elements of the offence are established.

The clause also defines the day on which such a conviction is taken to have occurred in relation to each type of deemed conviction.

6—Meaning of effective control

This clause sets out a number of principles which apply in determining whether property is subject to the effective control of a person. The principles are as follows:

- property may be subject to the effective control of a person whether or not the person has an interest in the property;
- property that is held on trust for the ultimate benefit of a person is taken to be under the effective control of the person;
- if a person is one of 2 or more beneficiaries under a discretionary trust, the undivided proportion of the trust property taken to be under the effective control of the person is 1 divided by the number of beneficiaries;
- if property is initially owned by a person and, within 6 years (whether before or after) of an application for a restraining order or a confiscation order being made, is disposed of to another person without sufficient consideration, then the property is taken still to be under the effective control of the first person;
- property may be subject to the effective control of a person even if one or more other persons have joint control of the property.

The clause also provides that regard may be had to a number of factors when making such a determination, such as shareholdings in a company that has an interest in the property, any relevant trusts and family and other relationships between certain persons and companies.

7—Meaning of proceeds and instrument of an offence

This clause sets out a number of rules which apply in determining whether property is proceeds or an instrument of an offence. Those rules are:

- property is ***proceeds*** of an offence if it is wholly or partly derived or realised, whether directly or indirectly, from the commission of the offence, whether the property is situated within or outside the State;
- property is an ***instrument*** of an offence if it is used in or in connection with, or intended to be used in or in connection with, the commission of an offence, whether the property is situated within or outside the State;
- property becomes proceeds of an offence or an instrument of an offence (as the case requires) if it is wholly or partly derived or realised from the disposal of, or other dealing with, proceeds of the offence or an instrument of the offence, or is wholly or partly acquired using proceeds of the offence or an instrument of the offence;
- property remains proceeds of an offence or an instrument of an offence even if it is credited to an account or disposed of or otherwise dealt with;
- property can be proceeds of an offence or an instrument of an offence even if no person has been convicted of the offence.

The clause also sets out when property ceases to be proceeds of or an instrument of an offence, including when:

- it is acquired by a third party for sufficient consideration without the third party knowing, and in circumstances that would not arouse a reasonable suspicion, that the property was proceeds of an offence or an instrument of an offence (as the case requires);
- it vests in a person from the distribution of the estate of a deceased person, having been previously vested in a person from the distribution of the estate of another deceased person while the property was still proceeds of an offence or an instrument of an offence (as the case requires);
- it has been distributed in accordance with either an order in proceedings under the *Family Law Act 1975* of the Commonwealth with respect to the property of the parties to a marriage or either of them, or a financial agreement within the meaning of that Act, and 6 years have elapsed since that distribution (other than where, despite the distribution, the property is still subject to the effective control of a person who has been convicted of, charged with or is proposed to be charged with, or has

committed or is suspected of having committed the offence in question—see subclause (4));

- it has been distributed in accordance with an order in proceedings under the *De Facto Relationships Act 1996* with respect to the division of property of de facto partners and 6 years have elapsed since that distribution;
- it is acquired by a person as payment for reasonable legal expenses incurred in connection with an application under this Act or defending a criminal charge;
- a forfeiture order in respect of the property is satisfied;
- a recognised Australian restraining order or a recognised Australian forfeiture order is satisfied in respect of the property;
- it is otherwise sold or disposed of under this Act;
- in any other circumstances specified in the regulations.

Subclause (3) provides that, if a person once owned property that was proceeds of an offence or an instrument of an offence and then ceased to be the owner of the property and (at that time or a later time) the property stopped being proceeds of an offence or an instrument of the offence under subclause (2) (other than because a forfeiture order is satisfied) and the person subsequently acquires the property again, then the property again becomes proceeds of an offence or an instrument of the offence.

8—Meaning of quashing a conviction

This clause sets out the circumstances in which a person's conviction of an offence will be taken to be quashed, namely:

- if the person is taken to have been convicted of the offence because of clause 5(1)(a)—the conviction is quashed or set aside;
- if the person is taken to have been convicted of the offence because of clause 5(1)(b)—the finding of guilt is quashed or set aside;
- if the person is taken to have been convicted of the offence because of clause 5(1)(c)—either the person's conviction of the other offence referred to in that paragraph is quashed or set aside, or the decision of the court to take the offence into account in passing sentence for that other offence is quashed or set aside;
- if the person is taken to have been convicted of the offence because of clause 5(1)(d)—after the person is brought before a court in respect of the offence, the person is discharged in respect of the offence or a conviction of the person for the offence is quashed or set aside;
- if the person is taken to have been convicted of the offence because of clause 5(1)(e) or (f)—the finding that the objective elements of the serious offence have been established is set aside or reversed.

9—Act binds Crown

The Crown is bound by this measure.

10—Application of Act

This clause provides that the measure applies to property within or outside the State to a serious offence committed at any time (whether the offence occurred before or after the commencement of this measure and whether or not a person is convicted of the offence) and to a person's conviction of a serious offence (whether the conviction occurred before or after the commencement of this measure).

11—Interaction with other Acts

This measure does not limit or derogate from, the provisions of any other Act.

12—Corresponding laws

This clause provides that the Governor may, by proclamation, declare certain other laws to be corresponding laws for the purposes of this Bill. This Governor may also vary or revoke such a proclamation.

13—Delegation

This clause provides that the DPP or the Administrator may, by instrument in writing, delegate a power or function under this Act.

14—Jurisdiction of Magistrates Court

This clause provides that the Magistrates Court has jurisdiction to hear and determine any application that may be made to a court under this Bill unless the application involves property with a value exceeding $300 000.

The clause also provides that, if the Magistrates Court makes an order under this Bill requiring a person to pay to any other person, or to the Crown, a monetary amount exceeding the amount specified under the *Magistrates Court Act 1991* as the monetary limit on the Court's civil jurisdiction in relation to actions to recover a debt, the Principal Registrar of the Magistrates Court must issue a certificate containing the particulars specified in the regulations in relation to the order. Such a certificate may be registered, in accordance with the regulations, in the District Court and, on registration, is enforceable in all respects as a final judgment of the District Court.

Part 2—Freezing orders

15—Interpretation

This clause defines ***authorised police officer*** for the purposes of the Bill.

16—Commissioner may authorise police officers for purposes of Part

This clause provides that the Commissioner of Police may authorise a police officer, or a specified class of police officers, for the purposes of this Part of the Bill.

17—Authorised police officer may apply for freezing order

This clause provides that, if satisfied that one of the circumstances specified in the clause exists, a magistrate may, on an application by an authorised police officer, make a ***freezing order***. Such an order requires that a specified financial institution must not allow any person to make transfers or withdrawals from a specified account, except in the manner and circumstances, if any, specified in the order. The Magistrate must have regard to the amount of money to be frozen, whether more than one person owns the account, and any hardship that is likely to be caused by the order. Evidence in the form of an affidavit must be submitted in support of the application.

18—Urgent applications

This clause provides that an application for a freezing order may be made by telephone if, in the opinion of the applicant, the order is urgently required and there is not enough time to make the application personally. The clause further sets out the requirements for obtaining such an order.

19—Notice of freezing order to be given to financial institution

This clause provides that a freezing order issued in relation to an account at a financial institution takes effect on the date and at the time that notice of the order is given to the financial institution. The clause sets out the requirements relating to the giving of such notice, including providing that an order is of no force or effect if notice is not given within 72 hours after the order was made.

20—Effect of freezing order

This clause provides that it is irrelevant whether or not money is deposited into the account in relation to which the freezing order was made after the order takes effect. The clause also provides that a freezing order does not prevent a financial institution from making withdrawals from an account for the purpose of meeting a liability imposed on the financial institution in connection with that account by any law of the State or the Commonwealth.

21—Duration of freezing order

This clause provides that a freezing order ceases to be in force on the making of a restraining order in respect of the money in the account, or on the expiration of 72 hours after the time at which the freezing order took effect, whichever occurs first. The clause also provides that an authorised police officer may apply to a magistrate for an extension of the duration of a freezing order, and sets out what must happen for such an extension to be made, and the requirements relating to such an extension.

22—Failure to comply with freezing order

This clause provides that a financial institution that has been given notice of a freezing order must not, without reasonable excuse, fail to comply with the order. The maximum penalty for an offence under the clause is a $20 000 fine.

23—Offence to disclose existence of freezing order

This clause provides that a financial institution that has been given notice of a freezing order made in relation to an account must not, while the order is in force, disclose the existence or operation of the order except to persons specified

in subclause (1). The maximum penalty for an offence under the clause is a $20 000 fine.

Subclause (2) further provides that if the existence of a freezing order is disclosed to a person in accordance with subclause (1) in the course of the person performing duties as a police officer, an officer or agent of a financial institution or a legal practitioner, the person must not, while the order is in force, disclose the existence or operation of the order except for the purposes specified in the subclause. The maximum penalty for an offence under the clause is a $5 000 fine.

Part 3—Restraining orders

Division 1—Restraining orders

24—Restraining orders

This clause provides that a court must, on application by the DPP and if satisfied that one of the circumstances specified in subclause (1) exists, make a ***restraining order***. Such an order prevents specified property from being disposed of or otherwise dealt with by any person (except in the manner and circumstances, if any, specified in the order).

An application for an order under this clause must specify the property to which the application relates, the DPP may submit evidence in support of the application in the form of an affidavit, and subject to certain limitations, the court must specify in the restraining order all property specified in the application for the order.

However, the court may only specify property in a restraining order made under subclause (1)(a) or (b) if satisfied that there are reasonable grounds to suspect that the property is property of the suspect, or property of another person (whether or not that other person's identity is known) that is subject to the effective control of the suspect, or is proceeds of, or is an instrument of, the serious offence. The court may only specify property in a restraining order made under subclause (1)(d) if satisfied that there are reasonable grounds to suspect that the property is property of the suspect, or property of another person (whether or not that other person's identity is known) that is subject to the effective control of the suspect.

The court must make a restraining order even if there is no risk of the property being disposed of or otherwise dealt with.

The court may specify that a restraining order covers property that is acquired by the suspect after the court makes the order, and a restraining order may be made subject to conditions.

25—Notice of application

This clause provides that the DPP must give written notice of an application for a restraining order covering property to the owner of the property, along with any other person the DPP reasonably believes may have an interest in the property.

A court must not (except on the application of the DPP)hear an application unless it is satisfied that the owner of the property to which the application relates has received reasonable notice of the application. The clause also provides that the DPP must give notices to other persons under specified circumstances.

The clause also provides that a person who claims an interest in property may appear and adduce evidence at the hearing of the application, and that such a person is not required to answer a question or produce a document if the court is satisfied that the answer or document may prejudice the investigation of, or the prosecution of a person for, an offence.

26—Refusal to make an order for failure to give undertaking

This clause provides that a court may refuse to make a restraining order if the Crown refuses or fails to give the court an appropriate undertaking with respect to the payment of damages or costs, or both, for the making and operation of the order

27—Order allowing expenses to be paid out of restrained property

This clause provides that a court that has made a restraining order may (when the restraining order is made or at a later time) order that one or more of the following may be met out of property, or a specified part of property, covered by the restraining order:

- the reasonable living expenses of the person whose property is restrained;
- the reasonable living expenses of any of the dependants of that person;
- the reasonable business expenses of that person;
- a specified debt incurred in good faith by that person.

However, the court may only make such an order if:

- the person whose property is restrained has applied for the order; and
- the person has notified the DPP, in writing, of the application and the grounds for the application; and
- the person has disclosed all of his or her interests in property, and his or her liabilities, in a statement on oath that has been filed in the court; and
- the court is satisfied that the expense or debt does not, or will not, relate to legal costs that the person has incurred, or will incur, in connection with proceedings under this Act or proceedings for an offence against a law of the Commonwealth, a State or a Territory; and
- the court is satisfied that the person cannot meet the expense or debt out of property that is not covered by specified restraining orders.

The clause also provides that property that is covered by specified restraining orders is taken, for the purposes of subclause (2)(e), not to be covered by the order if it would not be reasonably practicable for the Administrator to take custody and control of the property.

28—Excluding property from or revoking restraining orders in certain cases when expenses are not allowed

This clause provides that the court may exclude certain property from a restraining order, or, if the property is the only property covered by the restraining order, revoke the restraining order. This may only happen if, because of the operation of clause 27(3), property that is covered by a restraining order is taken for the purposes of clause 27(2)(e) not to be covered by the order and, as a result, and for no other reason, the court refuses an application to make an order under clause 27(1). However, the court must not exclude the property or revoke the order unless satisfied that the property is needed to meet one or more of the following:

- the reasonable living expenses of the person whose property is restrained;
- the reasonable living expenses of any of the dependants of that person;
- the reasonable business expenses of that person;
- a specified debt incurred in good faith by that person.

The clause also provides that, if the court excludes the property from, or revokes, the restraining order, the DPP must give written notice of the exclusion or revocation to the owner of the property (if the owner is known) and any other person the DPP reasonably believes may have an interest in the property. However, the DPP need not give notice to the applicant for the order.

Division 2—Giving effect to restraining orders

29—Notice of a restraining order

This clause provides that, if a court makes a restraining order covering property, the DPP must give written notice of the order to the owner of the property. The DPP must, if the documents have not already been given to the owner, include with the notice a copy of the application and a copy of any affidavit supporting the application. However, the clause also provides that the court may (if the court considers it appropriate in order to protect the integrity of any investigation or prosecution), at the request of the DPP, order that all or part of the application or affidavit is not to be given to the owner, or that the DPP delay giving the notice (and any documents required to be included with the notice) for a specified period.

30—Registering restraining orders

This clause provides that a registration authority that keeps a register of property of a particular kind must, on the application of the DPP, record in the register particulars of a restraining order covering property of that kind.

The clause further provides that, if particulars of a restraining order covering property are recorded in a register in accordance with this clause, each person who subsequently deals with the property is, in the absence of evidence to the contrary, taken not to be acting in good faith for the purposes of clause 32, and taken to have notice of the restraining order for the purposes of clause 33.

31—Notifying registration authorities of exclusions from or variations to restraining orders

This clause provides that if the DPP has made an application to a registration authority under clause 30 in relation to particular property, the DPP must notify the registration authority if certain events occur. The registration authority must then vary the record of the restraining order accordingly.

32—Court may set aside a disposition contravening a restraining order

This clause provides that the DPP may apply to the court to set aside a disposition or dealing with property that contravenes a restraining order if it was not for sufficient consideration, or not in favour of a person who acted in good faith. The DPP must give, to each party to the disposition or dealing, written notice of both the application and the grounds on which it seeks the setting aside of the disposition or dealing.

33—Contravening restraining orders

Subclause (1) of this clause creates an offence where a person disposes of, or otherwise deals with, property covered by a restraining order. The person must know or be reckless as to the fact that the property is covered by a restraining order and that the disposition or dealing contravenes the order. The maximum penalty for an offence is a fine of $20 000 or imprisonment for 4 years.

Subclause (2) also creates a strict liability offence where a person disposes of, or otherwise deals with, property covered by a restraining order, where the disposition or dealing contravenes the order (whether or not the person knows or is reckless as to that fact) and where the person was either given notice of the order or particulars of the order were recorded in a register. The maximum penalty for an offence is a fine of $10 000 or imprisonment for 2 years.

Division 3—Excluding property from restraining orders

34—Court may exclude property from a restraining order

This clause provides that the court to which an application for a restraining order under clause 24 was made may, when the order is made or at a later time, exclude specified property from the order if an application is made under clause 35 or 36 and if the court is satisfied that the property is neither proceeds nor an instrument of unlawful activity, that the owner's interest in the property was lawfully acquired and that it would not be contrary to the public interest for the property to be excluded from the order.

However, the court must not exclude certain property from a restraining order to which clause 24(1)(a) or (b) applies unless satisfied that neither a pecuniary penalty order nor a literary proceeds order could be made against the persons referred to subclause (2)(a), and (if clause 24(1)(a) applies to the property) that the property could not be subject to an instrument substitution declaration if the suspect were convicted of the offence.

35—Application to exclude property from a restraining order after notice of the application for the order

This clause enables a person whose property would be covered by a restraining order to apply to the court to exclude specified property from the restraining order within 14 days after being notified of the application for the order.

36—Application to exclude property from a restraining order after notice of the order

This clause provides that a person may apply to the court to exclude specified property from a restraining order at any time after being notified of the order. However, unless the court gives leave, a person cannot apply if the person appeared at the hearing of the application for the restraining order, or was notified of the application for the restraining order, but did not appear at the hearing of the application. The court may only give leave in the certain circumstances.

37—Application not to be heard unless DPP has had reasonable opportunity to conduct an examination

This clause provides that the court must not hear an application to exclude specified property from the restraining order if the restraining order is in force and the DPP has not been given a reasonable opportunity to conduct examinations under this measure.

38—Giving security etc to exclude property from a restraining order

This clause provides that a court may exclude specified property from a restraining order that covers property of the suspect if the suspect applies to the court to exclude the property, gives written notice of the application to the DPP and gives security that is satisfactory to the court to meet any liability that may be imposed on the suspect under this measure.

The clause also provides that a court may exclude specified property from a restraining order that covers property of a person who is not the suspect if the person applies to the court to exclude the property, gives written notice of the application to the DPP and gives an undertaking that is satisfactory to the court.

Division 4—Further orders

39—Court may order Administrator to take custody and control of property

This clause provides that the court that made a restraining order, or any other court that could have made the restraining order, may order the Administrator to take custody and control of property covered by a restraining order if the court is satisfied that this is required.

40—Ancillary orders

This clause provides that the court that made a restraining order, or any other court that could have made the restraining order, may make any ancillary orders that the court considers appropriate.

41—Contravening ancillary orders relating to foreign property

This clause creates an offence of knowingly or recklessly contravening an order requiring a person whose property is covered by a restraining order to do anything necessary or convenient to bring the property within the State. The maximum penalty for an offence under the clause is a fine of $20 000 or imprisonment for 4 years.

Division 5—Duration of restraining orders

42—When a restraining order comes into force

This clause provides that a restraining order is in force from the time it is made.

43—Application to revoke a restraining order

This clause provides that a person who was not notified of the application for a restraining order may apply to the court that made the order to revoke the order. The court may revoke the restraining order if satisfied there are no grounds on which to make the restraining order at the time of considering such an application.

44—Giving security etc to revoke a restraining order

This clause provides that a court may revoke a restraining order that covers property of the suspect if the suspect applies to the court to exclude the property, gives written notice of the application to the DPP and gives security that is satisfactory to the court to meet any liability that may be imposed on the suspect under this measure.

The clause also provides that a court may revoke a restraining order that covers property of a person who is not the suspect if the person applies to the court to exclude the property, gives written notice of the application to the DPP and gives an undertaking that is satisfactory to the court.

45—Notice of revocation of a restraining order

This clause provides that if a restraining order is revoked under clause 43 or 44, the DPP must give written notice of the revocation to the owner of any property covered by the restraining order (if the owner is known) and any other person the DPP reasonably believes may have an interest in the property, although the DPP need not give notice to the applicant for the order.

46—Cessation of restraining orders

This clause provides that a restraining order that relates to one or more serious offences ceases to be in force 28 days after:

- all charges that relate to the restraining order are withdrawn; or
- the suspect is acquitted of all serious offences with which the suspect was charged; or
- the convictions for the serious offences of which the suspect was convicted are quashed,

unless—

- there is a confiscation order that relates to the serious offences; or
- there is an application for a confiscation order that relates to the serious offences before the court; or
- there is an application under clause 64, 83 or 125 for confirmation of a forfeiture, or a confiscation order, that relates to the serious offences; or

· the suspect is charged with a related offence.

Subclause (2) further provides that a restraining order relating to property ceases to be in force if, not more than 28 days after the order was made, the suspect has not been convicted of, or charged with, the serious offence, or at least one serious offence, to which the restraining order relates and there is no confiscation order or application for a confiscation order that relates to the property.

Subclause (3) further provides that a restraining order ceases to be in force in respect of property covered by the restraining order if one of a number of prescribed events occurs, or has yet occur.

Subclause (4) provides that a restraining order ceases to be in force to the extent that property that it covers vests absolutely in the Crown under proposed Part 4 Division 2 or Division 3.

Subclause (5) provides that a restraining order that relates to one or more serious offences ceases to be in force in respect of property covered by the restraining order if a pecuniary penalty order or a literary proceeds order relates to the offence or offences, and one or more of the following occurs:

· the pecuniary penalty order or the literary proceeds order is satisfied;

· the property is sold or disposed of to satisfy the pecuniary penalty order or literary proceeds order;

· the pecuniary penalty order or the literary proceeds order is discharged or ceases to have effect.

Subclause (6) provides that, despite subclause (1), if:

· a restraining order covers property of a person who is not a suspect; and

· the property is an instrument of, but is not proceeds of, a serious offence to which the order relates; and

· the property is not subject to the effective control of another person who is a suspect in relation to the order,

then the restraining order ceases to be in force in respect of that property if the suspect has not been charged with the serious offence or a related offence within 28 days after the restraining order is made.

Part 4—Forfeiture

Division 1—Forfeiture orders

Subdivision 1—Forfeiture orders

47—Forfeiture orders

This clause provides that a court must, on application by the DPP, make an order that property specified in the order is forfeited to the Crown if:

· a person has been convicted of one or more serious offences and the court is satisfied that the property to be specified in the order is proceeds of one or more of those offences; or

· the property to be specified in the order is covered by a restraining order made under clause 24 that has been in force for at least 6 months and the court is satisfied that the property is proceeds of one or more serious offences committed by the person whose conduct (or suspected conduct) formed the basis of the restraining order; or

· the property to be specified in the order is covered by a restraining order made under clause 24(1)(c) that has been in force for at least 6 months and the court is satisfied of the matters referred to in that paragraph.

Subclause (3) provides that a court may, on application by the DPP, make an order that property specified in the order is forfeited to the Crown, if:

· a person has been convicted of one or more serious offences the court is satisfied that the property is an instrument of one or more of the offences or is subject to an instrument substitution declaration under clause 48; or

· the property to be specified in the order is covered by a restraining order made under clause 24(1)(b) that has been in force for at least 6 months and the court is satisfied that the property is an instrument of one or more serious offences committed by the person whose conduct (or suspected conduct) formed the basis of the restraining order; or

· the property to be specified in the order is covered by a restraining order made under clause 24(1)(c) that has been in force for at least 6 months and the court is satisfied of the matters referred to in that paragraph.

Subclause (4) sets out matters that the court may have regard to when considering whether it is appropriate to make a forfeiture order under subclause (3) in respect of particular property.

Subclause (5) provides that, if evidence is given, at the hearing of an application for a forfeiture order under this section that relates to a person's conviction for a serious offence, that property was in the possession of a person at the time at which, or immediately after, the person committed a serious offence to which the application relates then:

· if no evidence is given that tends to show that the property was not used in, or in connection with, the commission of the offence—the court must presume that the property was used in, or in connection with, the commission of the offence; or

· in any other case—the court must not make a forfeiture order against the property unless it is satisfied that the property was used or intended to be used in, or in connection with, the commission of the offence.

Subclause (6) provides that an application for a forfeiture order under this section that relates to a person's conviction for a serious offence must be made before the end of the period of 6 months after the conviction day.

Subclause (7) provides that if a person is taken been convicted of a serious offence because the person has absconded, a court must not make a forfeiture order relating to the person's conviction unless the court is satisfied, on the balance of probabilities, that the person has absconded, and that either the person has been committed for trial for the offence, or that a reasonable jury, properly instructed, or the Magistrates Court (as the case requires) could lawfully find the person guilty of the offence.

48—Instrument substitution declarations

This clause provides that a court determining an application for a forfeiture order relating to a person's conviction of a serious offence may, on the application of the DPP, declare property to be subject to an ***instrument substitution declaration*** if satisfied of the following:

· the convicted person had, at the time of the offence, an interest in the property;

· the property is of the same nature or description as property that was an instrument of the offence (whether or not the property is of the same value);

· the property that was an instrument of the offence is not available for forfeiture or is not able to be made the subject of an order for forfeiture.

49—Additional application for a forfeiture order

This clause provides that the DPP cannot, unless the court gives leave, apply for a forfeiture order under clause 47 in relation to a serious offence if an application has previously been made under that section for the forfeiture of the property in relation to the offence and that application has been finally determined on the merits.

However, the DPP may apply for a forfeiture order against property in relation to a serious offence even though an application has previously been made for a pecuniary penalty order or a literary proceeds order in relation to the offence.

50—Notice of application

This clause requires the DPP to give written notice of an application for a forfeiture order to the people specified in the clause, although a court may dispense with the requirement to give such notice to a person if the court is satisfied that the person has absconded. The court may also direct the DPP to give or publish notice of the application to a specified person or class of persons.

51—Procedure on application

This clause sets out the procedure in relation to an application for a forfeiture order, and provides that the court may make a forfeiture order if a person entitled to be given notice of the relevant application fails to appear at the hearing of the application.

52—Amending an application

This clause provides that the court hearing an application for a forfeiture order may, on the application or with the consent of the DPP, amend the application.

However, the court must not amend the application to include additional property in the application unless:

· satisfied that the property was not reasonably capable of identification when the application was originally made, or necessary evidence became available only after the application was originally made; or

· the forfeiture order applied for is an order to which clause 47(1)(b) or (c), or clause 47(3)(b) or (c), applies and the court is satisfied that including the additional property in the application for the order might have prejudiced the investigation of, or the prosecution of a person for, an offence, or it is for any other reason appropriate to grant the application to amend.

The clause also sets out procedures relevant to such an application.

53—Forfeiture orders can extend to other interests in property

This clause provides that court may, in specifying an interest in property in a forfeiture order, specify any other interests in the property (regardless of whose they are) if the amount received from disposing of the combined interests would be likely to be greater than the amount received from disposing of each of the interests separately, or if disposing of the interests separately would be impracticable or significantly more difficult than disposing of the combined interests.

The court may then make such ancillary orders as it thinks fit for the protection of a person having one or more of those other interests.

54—Forfeiture orders must specify the value of forfeited property

This clause provides that a court must specify the amount it considers to be the value, at the time the order is made, of the property (other than money) specified in the forfeiture order.

55—Declaration by court in relation to buying back interests in forfeited property

This clause provides that a court that makes a forfeiture order may make a declaration in relation to a person's interest in property subject to a forfeiture order, and may declare that the interest may be excluded under clause 72 from the operation of the forfeiture order.

Such declarations may only be made if the court is satisfied that it would not be contrary to the public interest for a person's interest in the property to be transferred to the person, and that there is no other reason why the person's interest should not be transferred to the person.

56—Court may make supporting directions

This clause provides that a court that makes a forfeiture order may give any directions that are necessary or convenient for giving effect to the order.

Subdivision 2—Reducing the effect of forfeiture orders

57—Relieving certain dependants from hardship

This clause provides that a court making a forfeiture order specifying a person's property must make an order directing the Crown to pay a specified amount to a specified dependant, or dependants, of the person.

The court must be satisfied that:

· the forfeiture order would cause hardship to the dependant; and

· the specified amount would relieve that hardship; and

· if the dependant is aged at least 18 years—the dependant had no knowledge (at the time of the conduct) of the person's conduct that is the subject of the forfeiture order.

The clause also limits the amount that can be paid under the clause.

58—Making exclusion orders before forfeiture order made

This clause requires a court that is hearing, or is to hear, an application for a forfeiture order, to make an order excluding property from forfeiture in certain circumstances, and sets out requirements in relation to making such an order.

59—Making exclusion orders after forfeiture

This clause requires a court that made a forfeiture order to make an order excluding property from forfeiture in certain circumstances, and sets out requirements in relation to making such an order.

60—Applying for exclusion orders

This clause provides that a person may apply for an exclusion order if a forfeiture order that could specify the person's property has been applied for, but is yet to be made. However, a person cannot, except with leave of the court, apply for an exclusion order after a forfeiture order specifying the person's property has been made if:

· the person appeared at the hearing of that application, or was given notice of the application for the forfeiture order, but did not appear at the hearing of that application; or

· 6 months have elapsed since the forfeiture order was made.

The clause also limits when such leave may be given by the court.

61—Making compensation orders

This clause provides that a court that made a forfeiture order must make an order (called a compensation order) if a person has applied for the order, if the forfeiture order specifies the applicant's property as proceeds of a serious offence to which the forfeiture order relates, and if the court is satisfied that, when the property first became proceeds of the serious offence, a proportion of the value of the property was not acquired using the proceeds of any unlawful activity.

Such an order must specify the proportion of the value of the property not acquired using the proceeds of any offence referred to in subclause (1)(c)and must direct the Crown to (if the property has not been disposed of) dispose of the property and pay the applicant an amount equal to that proportion of the difference between the amount received from disposing of the property and the total of any costs of administering this Act (of a kind referred to in clause 209(1)) in connection with the forfeiture order.

The clause also sets out procedures in relation to the making of such an order.

62—Applying for compensation orders

This clause sets out who may apply for a compensation order and limits when such an application may be made.

Subdivision 3—The effect of acquittals and quashing of convictions

63—Certain forfeiture orders unaffected by acquittal or quashing of conviction

This clause provides that a forfeiture order made under clause 47(1)(b) or (c), or (3)(b) or (c), against a person in relation to a serious offence is not affected if, having been charged with the offence, the person is acquitted, nor is such an order affected if the person is convicted of the offence and the conviction is subsequently quashed.

64—Discharge of conviction based forfeiture order on quashing of conviction

This clause provides that a forfeiture order made under clause 47(1)(a) or (3)(a) in relation to a person's conviction of a serious offence is discharged if:

· the person's conviction of the offence is subsequently quashed (whether or not the order relates to the person's conviction of other offences that have not been quashed); and

· the DPP does not, within 14 days after the conviction is quashed, apply to the court that made the order for the order to be confirmed.

The clause also provides that, unless a court decides otherwise on an application under subclause (1), such quashing does not affect the forfeiture order for 14 days after the conviction is quashed, nor if the DPP makes an application under subclause (1).

65—Notice of application for confirmation of forfeiture order

This clause requires the DPP to give written notice of an application for confirmation of the forfeiture order to certain people. The clause also provides that the court may direct the DPP to give or publish notice of the application to a specified person or class of persons.

66—Procedure on application for confirmation of forfeiture order

This clause sets out procedures in relation to an application for confirmation of a forfeiture order.

67—Court may confirm forfeiture order

This clause provides that a court may confirm a forfeiture order made under clause 47(1)(a) or (3)(a) if satisfied that the court could, at the time it made that order, have instead made a forfeiture order under some other provision of clause 47 (if the DPP had applied for an order under that other provision).

68—Effect of court's decision on confirmation of forfeiture order

This clause provides that, if a court confirms a forfeiture order under clause 67, the order is taken not to be affected by

the quashing of the person's conviction of the serious offence.

The clause also provides that if the court decides not to confirm the forfeiture order, the order is discharged.

69—Administrator must not deal with forfeited property before the court decides on confirmation of forfeiture order

This clause provides that the Administrator must not, during the period starting on the day after the person's conviction of the serious offence was quashed and ending when the court confirms, or decides not to confirm, the forfeiture order, do any of the things required under clause 93 in relation to property covered by the order, or amounts received from the disposal of the property.

70—Giving notice if a forfeiture order is discharged on appeal or by quashing of a conviction

This clause provides that the DPP must give written notice to certain persons if a forfeiture order that covered particular property is discharged by a court hearing an appeal against the making of the order, or is discharged under clause 64 or clause 68(2).

The clause also sets out requirements in relation to such a notice.

71—Returning property etc following the discharge of a forfeiture order

This clause provides that the Minister must, if certain property is vested in the Crown, cause an interest in the property equivalent to the interest held by the person immediately before the order was made to be transferred to the person, or, if the property is no longer vested in the Crown, cause an amount equal to the value of the interest held by the person immediately before the order was made in the property to be paid to the person.

Such action must happen if a forfeiture order has been discharged in relation to property specified in the order by a court hearing an appeal against the making of the order, or under clause 64 or 68, and a person who had an interest in the property immediately before the order was made applies in writing to the Minister for the transfer of the interest to the person.

Subdivision 4—Buying back interests in forfeited property etc

72—A person may buy back interest in forfeited property

This clause provides that the payment to the Crown, while the property is still vested in the Crown, of an amount declared under clause 55(c) to be the value of the person's interest, discharges the forfeiture order to the extent to which it relates to the interest and the Minister must then cause the interest to be transferred to the person in whom it was vested immediately before the property was forfeited.

73—A person may buy out another person's interest in forfeited property

This clause provides that the Minister must cause an interest in property to be transferred to a person if:

- the property is forfeited to the Crown under this proposed Division 1; and
- the interest is required to be transferred to the person under clause 71(1) or 72(1), or under a direction under clause 59(2)(c); and
- the person's interest in the property, immediately before the forfeiture, was not the only interest in the property; and
- the person gives the prescribed written notice to each other person who had an interest in the property immediately before the forfeiture; and
- no person served with a notice under paragraph (d) in relation to the interest lodges a written objection under that paragraph; and
- the person pays to the Crown, while the property is still vested in the Crown, an amount equal to the value of the interest.

Division 2—Forfeiture on conviction of a serious offence

Subdivision 1—Forfeiture on conviction of a serious offence

74—Forfeiting restrained property without a forfeiture order if a person has been convicted of a serious offence

This clause provides for automatic forfeiture of certain property in the following circumstances:

- a person is convicted of a serious offence; and
- either at the end of the relevant period, the property is covered by a restraining order that relates to the offence, or the property was covered by a restraining order that relates to the offence but the property was excluded, or the order revoked, under clause 38 or 44 (the clauses relating to the giving of security etc to exclude property from, or to revoke, a restraining order respectively); and
- the property is not subject to an order under clause 76 excluding the property from forfeiture under this proposed Division 2.

However, this section does not apply if the person is taken to have been convicted under clause 5(1)(d).

In the case of property excluded from a restraining order under clause 38, or where a restraining order that covered particular property is revoked under clause 44, and if the relevant security given in connection with the exclusion or revocation is still in force, then the security is taken, for the purposes of this clause, to be the property referred to in subclause (1).

Relevant period is defined in subclause (6) to mean the 6 month period starting on the day of the conviction, or, if an extension order is in force at the end of that period, the extended period relating to the extension order.

75—Making an extension order extending the period before property is forfeited

This clause provides that the court that made the restraining order referred to in clause 74(1)(b) may make an order specifying an extended period for the purposes of that section.

The clause sets out the requirements for making such an order, and also the conditions that attach to it.

76—Excluding property from forfeiture under this Division

This clause provides that the court that made the restraining order referred to in clause 74(1)(b) may make an order excluding particular property from forfeiture under this proposed Division if the prescribed conditions are met.

An order under this section cannot be made in relation to property if the property has already been forfeited under this proposed Division.

77—Court may declare that property has been forfeited under this Division

This clause provides that the court that made the restraining order referred to in clause 74(1)(b) may make a declaration that particular property has been forfeited under this proposed Division.

Subdivision 2—Recovery of forfeited property

78—Court may make orders relating to transfer of forfeited property etc

This clause provides that, if property is forfeited to the Crown under clause 74, the court that made the restraining order referred to in clause 74(1)(b) may, if a person who claims an interest in the property applies under clause 80 and if satisfied of certain matters, by order, declare the nature, extent and value of the applicant's interest in the property. The court may then, if the interest is still vested in the Crown, direct the Crown to transfer the interest to the applicant. Alternatively, the court may declare that there is payable by the Crown to the applicant an amount equal to the value declared under paragraph (d).

79—Court may make orders relating to buying back forfeited property

This clause provides that, if property is forfeited to the Crown under clause 74, the court that made the restraining order referred to in clause 74(1)(b) may, on the application under clause 80 by a person who claims an interest in the property and if satisfied of certain matters, declare the nature, extent and value (as at the time when the order is made) of the interest and declare that the forfeiture ceases to operate in relation to the person's interest if payment is made under clause 72.

80—Applying for orders under sections 78 and 79

This clause sets out requirements and procedure for applying for an order under clause 78 or 79.

81—A person may buy back interest in forfeited property

This clause provides that the Administrator must cause an interest to be transferred to the person in whom it was vested

immediately before specified property was forfeited to the Crown if:

- the property is forfeited to the Crown under clause 74; and
- a court makes an order under clause 79 in respect of an interest in the property; and
- the amount specified in the order as the value of the interest is, while the interest is still vested in the Crown, paid to the Crown.

82—A person may buy out another person's interest in forfeited property

This clause provides that the Administrator must cause an interest in property to be transferred to a person if:

- the property is forfeited to the Crown under clause 74; and
- the interest is required to be transferred to the person under this proposed Division; and
- the person's interest in the property, immediately before the forfeiture, was not the only interest in the property; and
- the person gives the required written notice to each other person who had an interest in the property immediately before the forfeiture; and
- no person served with notice under paragraph (d) in relation to the interest lodges a written objection under that paragraph; and
- the purchaser pays to the Crown, while the interest is still vested in the Crown, an amount equal to the value of the interest.

Subdivision 3—The effect of acquittals and quashing of convictions

83—The effect on forfeiture of convictions being quashed

This clause sets out what must happen to property forfeited under clause 74 in relation to a person's conviction of a serious offence when that conviction is quashed.

The clause also provides that the DPP may, within 14 days after the conviction is quashed, apply to the court that made the restraining order referred to in clause 74(1)(b) for the forfeiture to be confirmed, and sets out what must happen if such an application is unsuccessful.

84—Notice of application for confirmation of forfeiture

This clause requires the DPP to give written notice of an application for confirmation of a forfeiture to certain people. The clause also provides that the court may direct the DPP to give or publish notice of the application to a specified person or class of persons.

85—Procedure on application for confirmation of forfeiture

This clause sets out procedures in relation to an application for confirmation of a forfeiture.

86—Court may confirm forfeiture

This clause provides that the court may confirm the forfeiture if satisfied that it could make a forfeiture order under clause 47 in relation to the serious offence in relation to which the person's conviction was quashed if the DPP were to apply for an order under that clause.

87—Effect of court's decision on confirmation of forfeiture

This clause provides that, if a court confirms a forfeiture under clause 86, the forfeiture is taken not to be affected by the quashing of the person's conviction of the serious offence.

88—Administrator must not deal with forfeited property before the court decides on confirmation of forfeiture

This clause provides that the Administrator must not, during the period starting on the day after the person's conviction of the serious offence was quashed and ending when the court confirms, or decides not to confirm, the forfeiture, do any of the things required under clause 93 in relation to the forfeited property, or amounts received from the disposal of the property.

89—Giving notice if forfeiture ceases to have effect on quashing of a conviction

This clause provides that the DPP must, if property was forfeited under clause 74 but clause 83(1) or (2) applies to the forfeiture, give written notice of the cessation to any person the DPP reasonably believes may have had an interest in that property immediately before the forfeiture. The clause also provides that the court may require the DPP to give or publish notice of the cessation to a specified person or class of persons.

Division 3—Forfeited property

90—What property is forfeited and when

This clause sets out the principles as to when property specified in a forfeiture order, and forfeited property, vests in the Crown.

91—When the Crown can begin dealing with property specified in a forfeiture order

This clause provides that the Crown may only dispose of, or otherwise deal with, property specified in a forfeiture order:

- after, and only if the order is still in force, if an appeal has not been lodged within the period provided for lodging an appeal against the order, the end of that period. If an appeal against the order has been lodged within the period provided for lodging an appeal against the order, the Crown may only dispose of, or otherwise deal with, the property after the appeal lapses or is finally determined.
- if the order was made in relation to a person's conviction of a serious offence and an appeal has not been lodged within the period provided for lodging an appeal against the conviction, after the end of the period. If an appeal against the conviction has been lodged, the Crown may only dispose of, or otherwise deal with the appeal lapses or is finally determined.

Subclause (2) provides, however, that the Crown may dispose of, or otherwise deal with, property specified in a forfeiture order at an earlier time with the leave of, and in accordance with any directions of, the court.

92—When the Crown can begin dealing with property forfeited under section 74

This clause provides that the Crown may only dispose of, or otherwise deal with, property forfeited under clause 74 in relation to a person's conviction of a serious offence if the period applying under clause 74(6) has come to an end, and the conviction has not been quashed by that time.

Subclause (2) provides that, for the purposes of subclause (1), the Crown may dispose of or otherwise deal with the property at the times specified.

Subclause (3) provides, however, that the Crown may dispose of, or otherwise deal with, property specified in a forfeiture order at an earlier time with the leave of, and in accordance with any directions of, the court.

93—How forfeited property must be dealt with

This clause provides that the Administrator must, if the relevant forfeiture order is still in force, or after the relevant period in the case of forfeiture under clause 74, dispose of the relevant forfeited property (other than money). Any amounts received from the disposal of property in accordance with this clause must, along with any monetary amounts specified in the forfeiture order or forfeited under clause 74, then be dealt with in accordance with clause 209.

94—Dealings with forfeited property

This clause establishes an offence for a person who knows that a forfeiture order has been made in respect of registrable property to dispose of, or otherwise deal with, the property before the Crown's interest has been registered on the appropriate register (whether or not the person knows the Crown's interest has not yet been registered) if the forfeiture order has not been discharged. The maximum penalty for an offence under the clause is a fine of $20 000 or imprisonment for 4 years.

Part 5—Other confiscation orders

Division 1—Pecuniary penalty orders

Subdivision 1—Pecuniary penalty orders

95—Making pecuniary penalty orders

This clause provides that a court must, on application by the DPP, make a pecuniary penalty order, requiring a specified person to pay an amount determined under proposed Subdivision 2 to the Crown if satisfied that the person has been convicted of, or has committed, a serious offence and either the person has derived benefits from the commission of the offence, or an instrument of the offence is owned by the person or is under his or her effective control.

The clause also sets out procedures in relation to applying for such an order and restrictions on when such an order can be made.

96—Additional application for a pecuniary penalty order

This clause provides that he DPP cannot, unless the court gives leave, apply for a pecuniary penalty order against a person in respect of benefits derived from the commission of a serious offence or an instrument of the offence if an application has previously been made for a pecuniary penalty under this proposed Division in respect of the benefits or instrument, and that application has been finally determined on the merits. The clause also provides restrictions on when the court may give such leave.

97—Pecuniary penalty orders made in relation to serious offence convictions

This clause sets out when, in terms of timing, a court can make a pecuniary penalty order. A court must not (except in the case of a person taken to have been convicted of the serious offence because of clause 5(1)(d)) make a pecuniary penalty order in relation to a person's conviction of a serious offence until after the end of the period of 6 months commencing on the conviction day. However, the court may make a pecuniary penalty order in relation to the person's conviction when it passes sentence on the person.

98—Making of pecuniary penalty order if person has absconded

This clause provides that, if a person is taken under clause 5(1)(d) to have been convicted of a serious offence, a court must not make a pecuniary penalty order relating to the person's conviction unless satisfied (to the civil standard) that the person has absconded, and either the person has been committed for trial for the offence, or the court is satisfied, having regard to all the evidence before the court, that a reasonable jury, properly instructed, or the Magistrates Court (as the case requires) could lawfully find the person guilty of the offence.

Subdivision 2—Pecuniary penalty order amounts

99—Determining penalty amounts

This clause provides a mechanism for determining the amount that a person is ordered to pay under a pecuniary penalty order. This is called the penalty amount.

In the case of an application relating to benefits derived from the commission of a serious offence, the amount is determined by assessing under this proposed Subdivision the total value of the benefits the person derived from the commission of the serious offence along with the commission of any other offence that constitutes unlawful activity; and then subtracting from the total value the sum of the reductions (if any) in the penalty amount under clauses 107 and 108.

In the case of an application relating to an instrument of a serious offence, the amount is determined by assessing the value of the instrument (as at the time of assessment) and subtracting from the value the sum of the reductions (if any) in the penalty amount under clauses 107 and 108.

100—Evidence the court is to consider in assessing the value of benefits

This clause sets out evidence that the court must have regard to in assessing the value of benefits that a person has derived from the commission of a serious offence or serious offences.

101—Value of benefits derived

This clause provides that, if an application is made for a pecuniary penalty order against a person in relation to a serious offence or serious offences and, at the hearing of the application, evidence is given that the value of the person's property during or after the commission of the offence or offences, or any other unlawful activity that the person has engaged in, exceeded the value of the person's property before the commission of the offence or offences, then the court is to treat the value of the benefits derived by the person from the commission of the offence or offences as being not less than the amount of the greatest excess.

However, the amount treated as the value of the benefits under this clause is reduced to the extent (if any) that the court is satisfied that the excess was due to causes unrelated to the commission of the serious offence or serious offences or any other unlawful activity that the person has engaged in.

Subclause (3) provides that if, at the hearing of the application, evidence is given of the person's expenditure during or after the commission of the serious offence or serious offences, or any other unlawful activity that the person has engaged in, the amount of the expenditure is presumed, unless the contrary is proved, to be the value of a benefit that was provided to the person in connection with the commission of the serious offence or serious offences. However, this subclause does not apply to expenditure to the extent that it resulted in the acquisition of property that is taken into account under subclause (1).

102—Value of benefits may be as at time of assessment

This clause provides that a court may treat as the value of the benefit the value that the benefit would have had if derived at the time the court makes its assessment of the value of benefits.

103—Matters that do not reduce the value of benefits

This clause sets out amounts that must not be subtracted when assessing the value of benefits that a person has derived from the commission of a serious offence or serious offences.

104—Benefits already the subject of pecuniary penalty

This clause provides that a benefit (including a literary proceeds amount) is not to be taken into account for the purposes of this proposed Subdivision if a pecuniary penalty has been imposed in respect of the benefit under this measure or any other law.

105—Property under a person's effective control

This clause provides that, for the purposes of determining the value of benefits derived, the court may treat as property of the person any property that is, in the court's opinion, subject to the person's effective control.

106—Effect of property vesting in an insolvency trustee

This clause provides that, for the purposes of determining the value of benefits derived, property of a person is taken to continue to be the person's property despite vesting in one of the prescribed persons or bodies.

107—Reducing penalty amounts to take account of forfeiture and proposed forfeiture

This clause provides that, if a pecuniary penalty order relates to benefits derived from the commission of a serious offence, the penalty amount under the order is reduced by an amount equal to the value, at the time of the making of the order, of any property that is proceeds of the serious offence if the property has been forfeited, under this measure or any other law, in relation to the offence to which the order relates, or if an application has been made for a forfeiture order that would cover the property.

108—Reducing penalty amounts to take account of fines etc

This clause provides that a court may, if it considers it appropriate, reduce the penalty amount under a pecuniary penalty order against a person relating to benefits derived from the commission of a serious offence by an amount equal to a monetary sum payable by the person in relation to a serious offence to which the order relates. A monetary amount means a monetary amount paid by way of fine, restitution, compensation or damages.

109—Varying pecuniary penalty orders to increase penalty amounts

This clause provides that court may, on the application of the DPP, vary a pecuniary penalty order against a person if the penalty amount was reduced under clause 107 to take account of a forfeiture of property or a proposed forfeiture order against property and an appeal against the forfeiture or forfeiture order is allowed, or the proceedings for the proposed forfeiture order terminate without the proposed forfeiture order being made. The variation is an increase in the penalty amount by an amount equal to the value of such property.

Such a variation may also be made if the penalty amount was reduced under clause 107 to take account of an amount of tax paid by the person and an amount is repaid or refunded to the person in respect of that tax. In that case, the variation is an increase in the penalty amount by an amount equal to the amount repaid or refunded.

Division 2—Literary proceeds orders

Subdivision 1—Literary proceeds orders

110—Meaning of literary proceeds

This clause defines the meaning of literary proceeds, namely any benefit a person derives from the commercial exploitation of the person's notoriety resulting from the person committing a serious offence, or that of another person involved in the commission of the serious offence resulting from the first-mentioned person committing the offence. The clause also provides that, in determining whether a person has derived literary proceeds or the value of literary proceeds derived, a

court may treat as property of the person any property that, in the court's opinion, is subject to the person's effective control, or was not received by the person, but was transferred to, or (in the case of money) paid to, another person at the person's direction.

111—Making literary proceeds orders

This clause provides that a court must, on application by the DPP, make a literary proceeds order, requiring a specified person to pay an amount to the Crown if satisfied that the person has committed a serious offence (whether or not the person has been convicted of the offence) and has derived literary proceeds in relation to the offence. Such literary proceeds must have been derived after the commencement of this measure. The clause also sets out procedural matters in relation to making such orders.

112—Matters taken into account in deciding whether to make literary proceeds orders

This clause provides that the court, in determining whether to make a literary proceeds order, may take into account any matter it thinks fit, and further sets out matters the court must take into account.

Subdivision 2—Literary proceeds amounts

113—Determining literary proceeds amounts

This clause provides that he amount that a person is ordered to pay under a literary proceeds order is the amount that the court thinks appropriate. This amount is called the literary proceeds amount. The clause also sets out limitations on the amount, and provides that the court may take into account any matter it thinks fit in determining the amount.

114—Deductions from literary proceeds amounts

This clause provides that, in determining the amount to be paid under a literary proceeds order against a person, the court must deduct, to the extent that the property is literary proceeds:

- any expenses and outgoings that the person incurred in deriving the literary proceeds; and
- the value of any property of the person forfeited under this measure, a recognised Australian forfeiture order, or a foreign forfeiture order, relating to the serious offence to which the literary proceeds order relates; and
- an amount payable by the person under a pecuniary penalty order, a recognised Australian pecuniary penalty order, or a foreign pecuniary penalty order, relating to the serious offence to which the literary proceeds order relates; and
- the amount of any previous literary proceeds order made against the person in relation to the same exploitation of the person's notoriety resulting from the person committing the serious offence in question.

115—Varying literary proceeds orders to increase literary proceeds amounts

This clause provides that a court may, on the application of the DPP, vary a literary proceeds order against a person to increase the literary proceeds amount to take into account specified events.

Subdivision 3—Literary proceeds amounts may cover future literary proceeds

116—Literary proceeds orders can cover future literary proceeds

This clause provides that court may, on the application of the DPP, include in a literary proceeds order one or more amounts in relation to benefits that the person who is the subject of the order may derive in the future if the court is satisfied that the person will derive the benefits, and that, if the person derives the benefits, they will be literary proceeds in relation to the serious offence to which the order relates. The clause also sets out a requirement in relation to determining such an amount.

117—Enforcement of literary proceeds orders in relation to future literary proceeds

This clause provides that, if an amount is included in a literary proceeds order in relation to benefits that the person who is the subject of the order may derive in the future and the person subsequently derives the benefits, then from the time the person derives the benefits, proposed Part 5 Division 3 Subdivision 4 applies to the amount as if it were a literary proceeds amount.

Division 3—Matters generally applicable to orders under this Part

Subdivision 1—Applications for confiscation orders under this Part

118—Notice of application

This clause provides that the DPP must give written notice of an application for a confiscation order, along with a copy of the application and any affidavit supporting the application, to the person who would be subject to the order if it were made. However, the DPP in certain circumstances may delay giving a copy of an affidavit to the person.

119—Amending an application

This clause provides a procedure for amending an application for a confiscation order.

Subdivision 2—Ancillary orders

120—Ancillary orders

This clause provides that the court that made a confiscation order under this proposed Part, or any other court that could have made the confiscation order, may make any ancillary orders that the court considers appropriate.

Subdivision 3—Reducing pecuniary penalty amount or literary proceeds amount

121—Reducing penalty amounts and literary proceeds amounts to take account of tax paid

This clause provides that the court must reduce the penalty amount or literary proceeds amount under a confiscation order (other than a pecuniary penalty order that relates to an instrument of a serious offence) under this proposed Part against a person by an amount that, in the court's opinion, represents the extent to which tax that the person has paid is attributable to the benefits or literary proceeds (as the case requires) to which the order relates.

Subdivision 4—Enforcement

122—Enforcement of confiscation orders under this Part

This clause provides that a confiscation order under this proposed Part is enforceable under the *Enforcement of Judgments Act 1991*.

However, subclause (2) provides that if a pecuniary penalty order was made under clause 97(2) when sentence was being passed on the person for the serious offence to which the order relates, the order cannot be enforced against the person within the period of 6 months commencing on the day the order was made.

123—Property subject to a person's effective control

This clause provides that the court may, in the prescribed circumstances, make an order declaring that the whole, or a specified part, of particular property subject to the effective control of a person is available to satisfy a confiscation order to which the person is subject.

The clause also sets out procedural matters related to such a declaration.

Subdivision 5—Effect of acquittals and quashing of convictions

124—Acquittals do not affect confiscation orders under this Part

This clause provides that the fact that a person has been acquitted of a serious offence does not affect the court's power to make a confiscation order under this proposed Part in relation to the offence.

125—Discharge of confiscation order under this Part if made in relation to a conviction

This clause provides that a confiscation order under this proposed Part made in relation to a person's conviction of a serious offence is discharged if:

- the person's conviction of the offence is subsequently quashed (whether or not the order relates to the person's conviction of other offences that have not been quashed); and
- the DPP does not, within 14 days after the conviction is quashed, apply to the court that made the order for the order to be confirmed.

The clause also provides that, unless a court decides otherwise on an application under the clause, such quashing does not affect the forfeiture order for 14 days after the conviction is quashed, nor if the DPP makes an application under subclause (1).

126—Confiscation order under this Part unaffected if not made in relation to a conviction

This clause provides that a confiscation order under this proposed Part made in relation to a serious offence, but not in relation to a person's conviction of the offence, is not

affected if the person is convicted of the offence and the conviction is subsequently quashed.

127—Notice of application for confirmation of confiscation order under this Part

This clause provides that the DPP must give written notice of an application for confirmation of a confiscation order under this proposed Part to the person who is the subject of the order.

128—Procedure on application for confirmation of confiscation order under this Part

This clause sets out procedures for the confirmation of a confiscation order under this proposed Part.

129—Court may confirm confiscation order under this Part

This clause provides that a court may confirm a confiscation order under this Part if satisfied that, when the DPP applied for the order, the court could have made the order:

- in the case of a pecuniary penalty order—on the ground that the person had committed the serious offence or some other serious offence; or
- in the case of a literary proceeds order—on the ground that the person had committed the serious offence in relation to which the person's conviction was quashed or some other serious offence; or
- in any case—without relying on the person's conviction of the serious offence.

The clause also provides that a court that confirms a confiscation order under this Part may vary the order or make ancillary orders.

130—Effect of court's decision on confirmation of confiscation order under this Part

This clause provides that, if a court confirms a forfeiture order under this proposed Part, the order is taken not to be affected by the quashing of the person's conviction of the serious offence.

The clause also provides that if the court decides not to confirm the confiscation order, the order is discharged.

Part 6—Information gathering

Division 1—Examinations

Subdivision 1—Examination orders

131—Examination orders relating to restraining orders

This clause provides that, if an application for a restraining order has been made or a restraining order is in force, a relevant court may, on the application of the DPP, make an order for the examination of any person about the affairs (including the nature and location of any property) of a specified person. The ***relevant court*** is, if an application for a restraining order has been made, the court to whom the application has been made, or, if a restraining order is in force, the court that made the restraining order or any other court that could have made the restraining order. The clause also provides for the cessation of such an order.

132—Examination orders relating to applications for confirmation of forfeiture

This clause provides that, if an application under certain clauses relating to the quashing of a person's conviction of a serious offence is made, the court to which the application is made may, on the application of the DPP, make an order for the examination of any person about the affairs (including the nature and location of any property) of a specified person. The clause also provides for the cessation of such an order.

Subdivision 2—Examination notices

133—Examination notices

This clause provides that the DPP may give to a person who is the subject of an examination order a written notice (an ***examination notice***) for the examination of the person. The clause also provides that such a notice may not be given in certain circumstances.

134—Form and content of examination notices

This clause sets out requirements in relation to the form and content of an examination notice.

Subdivision 3—Conducting examinations

135—Time and place of examination

This clause provides that the examination of a person subject to an examination order must be conducted at the time and place specified in the examination notice, or at such other time and place as the DPP decides on the request of the examinee, the lawyer of the examinee or a person who is entitled to be present during an examination because of a direction under clause 137(2).

The clause also provides that, if an examinee refuses or fails to attend the examination at the time and place required the DPP may apply to the Magistrates Court for the issue of a warrant to have the person arrested and brought before the DPP for the purpose of conducting the examination.

This clause also sets out procedural matters relating to examinations.

136—Requirements made of person examined

This clause sets out requirements in relation to an examinee, including that:

- the person subject to an examination order may be examined on oath by the DPP;
- the DPP may, for that purpose, require the person to take an oath and administer an oath to the person;
- the oath to be taken by the person for the purposes of the examination is an oath that the statements that the person will make will be true; and
- an examination must not relate to a person's affairs in certain circumstances; and
- the DPP may require the person to answer certain questions.

137—Examination to take place in private

This clause requires that an examination take place in private, and provides that the DPP may give directions about who may be present during an examination.

The clause also provides that the following persons are entitled to be present:

- the person being examined, and the legal practitioner representing the person;
- the DPP;
- any other person who is entitled to be present because of a direction under subclause (2).

138—Role of the examinee's legal practitioner during examination

This clause sets out the role of the examinee's legal practitioner in relation to an examination.

139—Record of examination

This clause provides that the DPP may, and in some cases must, cause a record to be made of statements made at an examination. A copy of such a record, if it is in, or is reduced to, writing, must, if the examinee makes a request in writing, be provided to the examinee without charge.

140—Questions of law

This clause provides that the DPP may refer a question of law arising at an examination to the court that made the examination order.

141—DPP may restrict publication of certain material

This clause provides that the DPP may give directions preventing or restricting disclosure to the public of certain matters or records. The clause also provides that the DPP must have regard to certain matters before so directing.

142—Protection of DPP etc

This clause provides that the various participants in an examination have certain protections.

Subdivision 4—Offences

143—Failing to attend an examination

This clause provides that it is an offence for a person required to attend an examination to refuse or fail to attend the examination at the time and place specified in the notice. The maximum penalty for an offence under the clause is a fine of $2 500 or imprisonment for 6 months.

144—Offences relating to appearance at an examination

This clause provides that it is an offence for a person attending an examination in order to answer questions or produce documents to:

- refuse or fail to be sworn;
- refuse or fail to answer a question that the DPP requires the person to answer;
- refuse or fail to produce at the examination a document specified in the examination notice that required the person's attendance;
- leave the examination before being excused by the DPP.

The maximum penalty for an offence under the clause is a fine of $2 500 or imprisonment for 6 months.

145—Self-incrimination

This clause provides a qualified exclusion of the privilege against self-incrimination.

146—Unauthorised presence at an examination

This clause provides that it is an offence for a person who is not entitled to be present at an examination to be present. The maximum penalty for an offence under the clause is a $2 500 fine.

147—Breaching conditions on which records of statements are provided

This clause provides that it is an offence for a person who breaches a condition imposed under clause 141(1)(d) relating to a record given to the person under clause 139. The maximum penalty for an offence under the clause is a $2 500 fine.

148—Breaching directions preventing or restricting publication

This clause provides that it is an offence for a person to publish certain material in contravention of a direction given under clause 141 by the DPP who conducted the examination. The maximum penalty for an offence under the clause is a $2 500 fine.

The clause also provides that subclause (1) does not apply in the case of disclosure of a matter to obtain legal advice or legal representation in relation to the order, or for the purposes of, or in the course of, legal proceedings.

Division 2—Production orders

149—Interpretation

This clause defines what a property-tracking document is.

150—Making production orders

This clause provides that a magistrate may, on the application of an authorised officer, make an order requiring a person to produce one or more property-tracking documents, or make one or more property-tracking documents available, to an authorised officer for inspection.

However, a magistrate must not make a production order unless the magistrate is satisfied by information on oath that the person is reasonably suspected of having possession or control of the documents.

151—Contents of production orders

This clause sets out the requirements related to the form and content of a production order, along with procedural matters related to making such an order.

152—Powers under production orders

This clause provides that an authorised officer may inspect, take extracts from, or make copies of, a document produced or made available under a production order.

153—Retaining produced documents

This clause provides that an authorised officer may retain a document produced under a production order for as long as is necessary for the purposes of this measure. The clause also provides that a person to whom a production order is given may require the authorised officer to certify in writing a copy of the document retained to be a true copy and give the person the copy, or allow the person to inspect, take extracts from and make copies of the document.

154—Self-incrimination

This clause provides a qualified exclusion of the privilege against self-incrimination.

155—Varying production orders

This clause provides that a magistrate who made a production order requiring a person to produce a document to an authorised officer under the production order may vary the order so that it instead requires the person to make the document available for inspection.

156—Making false statements in applications

This clause provides that it is an offence to make a false or misleading statement in, or in connection with, an application for a production order or an application for a variation of a production order. The maximum penalty for an offence under the clause is a fine of $5 000 or imprisonment for 1 year.

157—Disclosing existence or nature of production orders

This clause provides that disclosure of the existence of certain production orders, or of information from which another person could infer the existence or nature of the order, is an offence, the penalty for which is a fine of $10 000 or imprisonment for 2 years.

The clause also provides exceptions to the above.

158—Failing to comply with a production order

This clause provides that it is an offence for a person given a production order in relation to a property-tracking document to fail to comply with the order unless the person has been excused from complying under subclause (2).

159—Destroying etc a document subject to a production order

This clause provides that it is an offence for a person to destroy, deface or otherwise interfere with a property-tracking document knowing, or recklessly indifferent to the fact, that a production order is in force requiring the document to be produced or made available to an authorised officer. The maximum penalty for an offence under the clause is a fine of $2 500 or imprisonment for 6 months.

Division 3—Notices to financial institutions

160—Giving notices to financial institutions

This clause provides for the giving of notices by a police officer of or above the rank of Superintendent to a financial institution requiring the institution to provide to an authorised officer certain information or documents.

The clause also sets out requirements as to the form and content of such a notice, along with limiting the circumstances in which such a notice may be given to where the officer reasonably believes that giving the notice is required to determine whether to take any action under this Act, or in relation to proceedings under this Act.

161—Immunity from liability

This clause limits the liability of a financial institution, or an officer, employee or agent of the institution, in relation to any action taken by the institution or person under a notice under clause 160 or in the mistaken belief that action was required under the notice.

162—Making false statements in notices

This clause provides that it is an offence to make a false or misleading statement in, or in connection with, a notice under clause 160. The maximum penalty for an offence under the clause is a fine of $5 000 or imprisonment for 1 year.

163—Disclosing existence or nature of notice

This clause provides that disclosure of the existence of certain notices under clause 160, or of information from which another person could infer the existence or nature of the notice, is an offence, the penalty for which is a fine of $10 000 or imprisonment for 2 years.

The clause also provides exceptions to the above.

164—Failing to comply with a notice

This clause provides that it is an offence for a person given a notice under clause 160 to fail to comply with the notice. The maximum penalty for an offence under the clause is a fine of $2 500 or imprisonment for 6 months.

Division 4—Monitoring orders

165—Making monitoring orders

This clause provides that a judge of the District Court may, on the application of an authorised officer, make an order that a financial institution provide information about transactions conducted during a specified period (including a future period) through an account held by a specified person with the institution.

The clause also limits when such an order can be made.

166—Contents of monitoring orders

This clause sets out requirements relating to the form and content of a monitoring order, along with procedural matters related to making such an order.

167—Immunity from liability

This clause limits the liability of a financial institution, or an officer, employee or agent of the institution, in relation to any action taken by the institution or person in complying with a monitoring order or in the mistaken belief that action was required under the order.

168—Making false statements in applications

This clause provides that it is an offence to make a false or misleading statement in, or in connection with, an application for a monitoring order. The maximum penalty for an offence under the clause is a fine of $10 000 or imprisonment for 2 years.

169—Disclosing existence or operation of monitoring order

This clause provides that disclosure of the existence or operation of a monitoring order to a person other than a specified person, or of information from which another

person could infer the existence or operation of an order, is an offence.

It is also an offence for a person who receives information relating to a monitoring order in accordance with subclause (4), and then ceases to be a person to whom information could be disclosed in accordance with that subclause, to make a record of, or disclose, the existence or the operation of the order.

The penalty for an offence under the clause is a fine of $20 000 or imprisonment for 4 years.

Subclause (4) specifies persons to whom such disclosure can be made.

170—Failing to comply with monitoring order

This clause provides that it is an offence for a person given a monitoring order to fail to comply with the notice. The maximum penalty for an offence under the clause is a fine of $2 500 or imprisonment for 6 months.

Division 5—Search and seizure

Subdivision 1—Preliminary

171—Interpretation

This clause provides a definition of ***material liable to seizure under this Act***.

Subdivision 2—Search warrants

172—Warrants authorising seizure of property

This clause provides that a magistrate may, if reasonable grounds exist and on application by an authorised officer, issue a warrant authorising the seizure of material liable to seizure under this measure, or the search of a particular person, or particular premises, and the seizure of material liable to seizure under this measure found in the course of the search.

173—Applications for warrants

This clause sets out the procedure for an application for a warrant.

174—Powers conferred by warrant

This clause sets out the powers that are conferred on an authorised officer by a warrant, and the limitations on exercising such powers.

175—Hindering execution of warrant

This clause provides that it is an offence to, without lawful excuse, hinder an authorised officer, or a person assisting an authorised officer, in the execution of a warrant. The maximum penalty for an offence under the clause is a fine of $2 500 or imprisonment for 6 months.

176—Person with knowledge of a computer or a computer system to assist access etc

This clause provides that an authorised responsible for executing a warrant may apply to a magistrate for an order requiring a specified person to provide information or assistance in relation to accessing and dealing with certain data held in or accessible from a computer that is on the premises specified in the warrant.

The clause sets out when such an order can be made.

The clause also provides that it is an offence for the specified person to fail to comply with such an order, the penalty for which is a fine of $2 500 or imprisonment for 6 months.

177—Providing documents after execution of a search warrant

This clause provides that, if documents were on, or accessible from, the premises of a financial institution at the time when a search warrant relating to those premises was executed, and those documents were not able to be located at that time, and the financial institution provides them to the authorised officer who executed the warrant as soon as practicable after the execution of the warrant, then the documents are taken to have been seized under the warrant.

Subdivision 3—Seizure without warrant

178—Seizure without warrant allowed in certain circumstances

This clause provides that an authorised officer may seize material if the officer suspects on reasonable grounds that the material is liable to seizure under this Act and the person in possession of the material consents to the seizure, or the material is found in the course of a search conducted under another law and the officer suspects on reasonable grounds that the material is liable to seizure under this measure.

179—Stopping and searching vehicles

This clause provides that, if an authorised officer suspects on reasonable grounds that material liable to seizure under this measure is in or on a vehicle, and that it is necessary to exercise a power under this clause in order to prevent the material from being concealed, destroyed, lost or altered, and, because the circumstances are serious and urgent, it is necessary to exercise the power without the authority of a search warrant, then the authorised officer may, with such assistants as he or she considers necessary, do the following things:

- stop and detain the vehicle; and
- search the vehicle and any container in or on the vehicle, for the material; and
- seize the material if he or she finds it there.

The clause also sets out requirements for dealing with other material liable to seizure under this measure found during a search, along with requirements relating to the conduct of such a search.

Subdivision 4—Dealing with material liable to seizure under this Act

180—Receipts for material seized under warrant

This clause provides that the authorised officer who executes a warrant, or a person assisting the authorised officer, must provide a receipt for material liable to seizure under this Act that is seized.

181—Responsibility for material seized

This clause provides that the responsible custodian must arrange for material seized to be kept until it is dealt with in accordance with this measure, and must ensure that all reasonable steps are taken to preserve the material while it is kept.

182—Effect of obtaining forfeiture orders

This clause provides that the responsible custodian must deal with seized material that has, since being seized and whilst in the possession of the responsible custodian, become subject to a forfeiture order as required by the order.

183—Returning seized material

This clause provides that, if material is seized on the ground that it is evidence relating to property in respect of which action has been or could be taken under this measure, benefits derived from the commission of a serious offence, or literary proceeds, and either the reason for the material's seizure no longer exists or it is decided that the material is not to be used in evidence, or (if the material was seized under proposed Subdivision 3) the period of 60 days after the material's seizure has ended, the authorised officer who executed the warrant, or who seized the material under proposed Subdivision 3, (as the case requires) must take reasonable steps to return the material to the person from whom it was seized or to the owner if that person is not entitled to possess it.

However, subclause (2) provides certain exceptions to the above.

184—Magistrate may order that material be retained

This clause provides that, if an authorised officer has seized material liable to seizure under this measure under this proposed Division, and proceedings in respect of which the material might afford evidence have not commenced before the end of 60 days after the seizure, or a period previously specified in an order of a magistrate under this clause, the authorised officer may apply for, and a magistrate grant, an order that the authorised officer may retain the material for a further period.

185—Return of seized material to third parties

This clause provides that person who claims an interest in material seized on the ground that it is suspected of being tainted property may apply to a court for an order that the material be returned to the person, and a court must order the responsible custodian of the material to return the material to the applicant if the court is satisfied of the prescribed matters.

186—Return of seized material if applications are not made for restraining orders or forfeiture orders

This clause provides that if material has been seized on the ground that a person believes on reasonable grounds that it is tainted property, and at the time when the material was seized an application had not been made for a restraining order or a forfeiture order that would cover the material, such an application is not made during the period of 25 days after the day on which the material was seized, the responsible custodian of the material must arrange for the material to be returned to the person from whose possession it was seized as soon as practicable after the end of that period. However,

this clause does not apply to material to which clause 187 applies.

187—Effect of obtaining restraining orders

This clause provides that, if material has been seized on the ground that a person believes on reasonable grounds that it is tainted property and, but for this subclause, the responsible custodian of the material would be required to arrange for the material to be returned to a person as soon as practicable after the end of a particular period, and before the end of that period, a restraining order is made covering the material, then:

- if the restraining order directs the Administrator to take custody and control of the material—the responsible custodian must arrange for the material to be given to the Administrator in accordance with the restraining order; or
- if the court that made the restraining order has made an order under subclause (3) in relation to the material—the responsible custodian must arrange for the material to be kept until it is dealt with in accordance with another provision of this measure.

The clause also provides that in certain circumstances the Administrator may apply to the court that made the restraining order for an order that the responsible custodian retain possession of the material, and sets out procedures in relation to such applications.

188—Effect of refusing applications for restraining orders or forfeiture orders

This clause provides that, if material has been seized on the ground that a person believes on reasonable grounds that it is tainted property, and an application is made refused for a restraining order or a forfeiture order that would cover the material, and at the time of the refusal the material is in the possession of the responsible custodian, then the responsible custodian must arrange for the material to be returned to the person from whose possession it was seized as soon as practicable after the refusal.

Subdivision 5—Miscellaneous

189—Making false statements in applications

This clause provides that it is an offence to make a false or misleading statement in, or in connection with, an application for a search warrant. The maximum penalty for an offence under the clause is a fine of $10 000 or imprisonment for 2 years.

Part 7—Administration

Division 1—Powers and duties of the Administrator

Subdivision 1—Preliminary

190—Appointment of Administrator

This clause provides that the Minister may appoint a person, or a person for the time being holding or acting in a particular office or position, as the Administrator under this Bill.

191—Property to which the Administrator's powers and duties under this Division apply

This clause provides that the Administrator must perform a duty imposed by, and may exercise a power conferred by, this proposed Division in relation to controlled property. The clause also provides that the Administrator must perform a duty imposed, and may exercise a power conferred, by proposed Subdivision 4 in relation to property that is the subject of a restraining order, whether or not the property is controlled property.

Subdivision 2—Obtaining information about controlled property

192—Access to documents

This clause provides that the Administrator, or another person authorised in writing by the Administrator, may, by notice in writing, require the suspect in relation to a restraining order covering the controlled property, or any other person entitled to, or claiming an interest in, the controlled property, to produce specified documents in the possession of the person.

The clause also sets out what the Administrator, or person making the requirement, can do in relation to the documents, and sets out procedural matters in relation to what happens if the documents are not produced.

The clause also provides that it is an offence to refuse or fail to comply with a requirement under this clause, and to obstruct or hinder a person in the exercise of a power under this clause. The maximum penalty for an offence under the clause is a fine of $2 500 or imprisonment for 6 months.

193—Suspect to assist Administrator

This clause provides that a suspect in relation to a restraining order covering controlled property must not, unless excused by the Administrator or with a reasonable excuse, refuse or fail to do certain things. The clause also provides that it is an offence to obstruct or hinder the Administrator in the exercise of a power under subclause (1), the maximum penalty for which is a fine of $2 500 or imprisonment for 6 months.

194—Power to obtain information and evidence

This clause provides that the Administrator may require a person to give to the Administrator such information as the Administrator may require, and to attend before the Administrator, or a person authorised in writing by the Administrator, and give evidence and produce all documents in the possession of the person notified, relating to the exercise of the Administrator's powers or the performance of the Administrator's duties under this proposed Division. The clause also provides procedural matters, and an offence of refusing or failing to comply with a requirement under this section, the maximum penalty for which is a fine of $2 500 or imprisonment for 6 months.

195—Self-incrimination

This clause provides a qualified exclusion of the privilege against self-incrimination.

196—Failure of person to attend

This clause provides that it is an offence for a person who, being required to attend before the Administrator, or a person authorised in writing by the Administrator, to fail to attend as required. The maximum penalty for an offence under the clause is a fine of $2 500 or imprisonment for 6 months.

197—Refusal to be sworn or give evidence etc

This clause provides that person who, being required to attend before the Administrator or a person authorised in writing by the Administrator, attends but refuses or fails to be sworn, or to answer a question that the person is required to answer, or to produce any documents that the person is required to produce, is guilty of an offence. The maximum penalty for an offence under the clause is a fine of $2 500 or imprisonment for 6 months.

Subdivision 3—Dealings relating to controlled property

198—Preserving controlled property

This clause provides that the Administrator may do anything that is reasonably necessary for the purpose of preserving the controlled property.

199—Rights attaching to shares

This clause provides that the Administrator may exercise the rights attaching to any of the controlled property that is shares as if the Administrator were the registered holder of the shares and to the exclusion of the registered holder.

200—Destroying or disposing of property

This clause provides that the Administrator may destroy controlled property in certain circumstances. The clause also provides that he Administrator may dispose of controlled property, by sale or other means in certain circumstances.

201—Objection to proposed destruction or disposal

This clause provides that a person who has been notified under clause 200(3) of a proposed destruction or sale under that section may object in writing to the Administrator within 14 days of receiving the notice.

202—Procedure if person objects to proposed destruction or disposal

This clause provides that, if an objection to a proposed destruction or disposal of controlled property has been made, the Administrator may apply to the court that made the restraining order covering the controlled property for an order that the Administrator may destroy or dispose of the property. The clause also provides that the court may make such an order if it is in the public interest to do so, or it is required for the health or safety of the public.

The clause also provides that the court may make an order to dispose of the controlled property if, in the court's opinion the property is likely to lose value, or if the cost of controlling the property until it is finally dealt with by the Administrator is likely to exceed, or represent a significant proportion of, the value of the property when it is finally dealt with. The court may also order that a specified person bear the costs of controlling the controlled property until it is finally dealt with by the Administrator, or that a specified person bear the costs

of an objection to a proposed destruction or disposal of the property.

203—Proceeds from sale of property

This clause clarifies the status of amounts realised from a sale of controlled property under clause 200.

Subdivision 4—Discharging pecuniary penalty orders and literary proceeds orders

204—Direction by a court to the Administrator

This clause provides that a court that makes a pecuniary penalty order or literary proceeds order may, in the order, direct the Administrator to pay the Crown, out of property that is subject to a restraining order, an amount equal to, the penalty amount under a pecuniary penalty order or the amount to be paid under a literary proceeds order in certain circumstances.

The clause provides a similar provision relating to restraining orders.

Subclause (3) provides that court that made a pecuniary penalty order, a literary proceeds order or a restraining order may, on the application of the DPP, direct the Administrator to pay the Crown, out of property that is subject to a restraining order, an amount equal to, the penalty amount under a pecuniary penalty order or the amount to be paid under a literary proceeds order in certain circumstances.

The clause also provides that a court may, in the order in which the direction is given or by a subsequent order, direct the Administrator to sell or otherwise dispose of such of the property that is subject to the restraining order as the court specifies, and appoint an officer of the court or any other person to execute any deed or instrument in the name of a person who owns or has an interest in the property.

205—Administrator not to carry out directions during appeal periods

This clause sets out when the Administrator, if he or she is given a direction under clause 204 in relation to property, may take any action to comply with the direction.

206—Discharge of pecuniary penalty orders and literary proceeds orders by credits to the Victims of Crime Fund

This clause provides that, if the Administrator pays the Crown, in accordance with a direction under this proposed Subdivision, an amount of money equal to the penalty amount under a pecuniary penalty order, or the amount to be paid under a literary proceeds order, made against a person, then that money must be dealt with as required by clause 209 and the person's liability under a pecuniary penalty order or literary proceeds order (as the case requires) is discharged.

Division 2—Legal assistance

207—Payments to Legal Services Commission for representing suspects and other persons

This clause provides that the Administrator may pay to the Legal Services Commission, out of the property of a suspect that is covered by a restraining order, legal assistance costs for representing the suspect in criminal proceedings, and for representing the suspect in proceedings under this measure.

The clause also provides that the Administrator may pay to the Legal Services Commission, out of the property of a person other than the suspect that is covered by a restraining order, legal assistance costs for representing the person in proceedings under this measure.

The clause also sets out conditions relating to the payment of such costs.

208—Disclosure of information to Legal Services Commission

This clause provides that the DPP or the Administrator may, for the purpose of the Legal Services Commission determining whether a person should receive legal assistance under this proposed Division, disclose to the Commission information obtained under this measure that is relevant to making that determination.

Division 3—Victims of Crime Fund

209—Credits to the Victims of Crime Fund

This clause provides that proceeds of confiscated assets and any money deriving from the enforcement in the State of an order under a corresponding law must be applied towards the costs of administering this measure and the balance must be paid into the Victims of Crime Fund. The clause also provides that certain other money received by Crown under the equitable sharing program, or paid by the Commonwealth to the Crown following its receipt under a treaty or arrangement providing for mutual assistance in criminal matters, must be paid into the Victims of Crime Fund.

The clause also defines certain terms used in the clause.

Division 4—Charges on property

Subdivision 1—Charge to secure certain amounts payable to the Crown

210—Charge on property subject to restraining order

This clause provides that, if a confiscation order is made against a person in relation to a serious offence, and a restraining order relating to the offence or a related offence is, or has been, made against the person's property, or another person's property in relation to which an order under clause 123(1) is, or has been, made, then upon the making of the later of the orders, there is created, by force of this section, a charge on the property to secure the payment to the Crown of the penalty amount or the literary proceeds amount (as the case requires). The clause also provides for when such a charge ceases to have effect.

Subdivision 2—Charge to secure certain amounts payable to Legal Services Commission

211—Legal Services Commission charges

This clause provides that, if the Legal Services Commission is to be paid an amount out of property that is covered by a restraining order, and either the court revokes the restraining order or the order ceases to be in force under clause 46, there is created by force of this clause a charge on the property to secure the payment of the amount to the Legal Services Commission. The clause also provides that such a charge may be registered, and provides for when such a charge ceases to have effect.

Subdivision 3—Registering and priority of charges

212—Charges may be registered

This clause provides that the Administrator or the DPP may cause a charge created by this measure on property of a particular kind, to be registered under the provisions of an Act providing for the registration of title to, or charges over, property of that kind.

The clause also provides that, for the purposes of clause 210(2)(e), a person who purchases or otherwise acquires an interest in the property after registration of the charge is taken to have notice of the charge at the time of the purchase or acquisition.

213—Priority of charges

This clause provides that a charge created by this measure is subject to every encumbrance on the property that came into existence before the charge and that would otherwise have priority, has priority over all other encumbrances and, subject to this measure, is not affected by a change of ownership of the property.

Part 8—Miscellaneous

214—Authorised officers to be issued identity cards

This clause requires that an authorised officer (other than the DPP or a police officer) must be issued with an identity card. The clause sets out information such a card must contain.

The clause also provides that an authorised officer (other than the DPP) must, at the request of a person in relation to whom the authorised officer intends to exercise any powers under this measure, produce for the inspection of the person his or her warrant card (in the case of an authorised officer who is a police officer) or identity card (in any other case).

215—Immunity from civil liability

This clause limits the liability of the Administrator, the DPP, an authorised officer or any other person engaged in the administration of this measure, in relation to an honest act or omission in the exercise, or purported exercise, of a power, function or duty under this measure.

216—Manner of giving notices etc

This clause provides procedural requirements in relation to a notice, order or other document required or authorised by this measure to be given to or served on a person.

217—Registration of orders made under corresponding laws

This clause provides that an order under a corresponding law may be registered, on application by the Administrator, in the Supreme Court, and further provides for the effect of such registration.

218—Certain proceedings to be civil

This clause provides that proceedings on an application for a freezing order, a restraining order or a confiscation order are civil proceedings.

219—Consent orders

This clause provides that a court may make an order in a proceeding under proposed Part 3, 4 or 5 with the consent of the applicant in the proceeding, and each person that the court has reason to believe has an interest in property the subject of the proceeding. The clause also sets out procedural matters in relation to such an order.

220—Onus and standard of proof

This clause provides that the applicant in any proceedings under this measure bears the onus of proving the matters necessary to establish the grounds for making the order applied for. The clause also provides that, subject to clause 47(7) and clause 98, any question of fact to be decided by a court on an application under this measure is to be decided on the balance of probabilities.

221—Applications to certain courts

This clause provides that where the DPP applies for an order under this measure relating to a serious offence during the course of criminal proceedings in respect of the offence, the court must deal with the application during the course of those proceedings unless satisfied by the defendant that to do so would not be appropriate in the circumstances, along with procedural matters relating to such an application.

222—Proof of certain matters

This clause establishes a number of evidentiary presumptions.

223—Stay of proceedings

This clause provides that the fact that criminal proceedings have been instituted or have commenced (whether or not under this measure) is not a ground on which a court may stay proceedings under this measure that are not criminal proceedings.

224—Effect of the confiscation scheme on sentencing

This clause provides that a court passing sentence on a person in respect of the person's conviction of a serious offence:

- may have regard to any cooperation by the person in resolving any action taken against the person under this Act; and
- must not have regard to any forfeiture order that relates to the offence, to the extent that the order forfeits proceeds of the offence; and
- must have regard to the forfeiture order to the extent that the order forfeits any other property; and
- must not have regard to any pecuniary penalty order, or any literary proceeds order, that relates to the offence.

225—Deferral of sentencing pending determination of confiscation order

This clause provides that a court may, if satisfied that it is reasonable to do so in all the circumstances, defer passing sentence until it has determined the application for the confiscation order in certain circumstances.

226—Appeals

This clause provides for a right of appeal for a person against whom a confiscation order is made, or who has an interest in property against which a forfeiture order is made, or who has an interest in property that is declared in an order under clause 123 to be available to satisfy a pecuniary penalty order or literary proceeds order. The DPP has the same right of appeal, and may also appeal against a refusal by a court to make an order as if such an order had been made and the DPP was appealing against that order. The clause also sets out procedural matters relating to such an appeal.

227—Costs

This clause provides for the awarding of certain costs in favour of a person successfully bringing, or appearing at, proceedings to prevent a forfeiture order or restraining order from being made against property of the person, or to have property of the person excluded from a forfeiture order or restraining order. However, the person must not have been involved in any way in the commission of the serious offence in respect of which the forfeiture order or restraining order was sought or made.

228—Interest

This clause provides for the payment of interest to a person if money of the person is seized or forfeited under this measure, and not less than one month after the seizure or forfeiture, the money (or an equal amount of money) is required under this measure to be paid back to the person or the person is required to be compensated by the Crown under this measure in respect of the seizure or forfeiture.

However, except as provided by this clause, no interest is payable by the Crown in respect of property seized or forfeited under this measure.

229—Effect of a person's death

This clause sets out procedural matters relating to how proceedings under the measure are affected by the death of a person.

230—Regulations

This clause provides that the Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this measure.

Schedule 1—Related amendments, repeals and transitional provisions

This proposed Schedule repeals the *Criminal Assets Confiscation Act 1996*, and makes consequential amendments to the *Controlled Substances Act 1984*, the *Criminal Law Consolidation Act 1935*, the *Financial Transaction Reports (State Provisions) Act 1992* and the *Legal Services Commission Act 1977*.

The proposed Schedule also provides a transitional provision that an order in force under the *Criminal Assets Confiscation Act 1996* immediately before the commencement of this measure continues in force, subject to this measure, as if this measure had been in force when the order was made and the order had been made under this measure.

Dr McFETRIDGE secured the adjournment of the debate.

AUDITOR-GENERAL'S REPORT

The Hon. K.O. FOLEY (Deputy Premier): I move:

That standing orders be and remain so far suspended as to enable the report of the Auditor-General to be referred to a committee of the whole house and for ministers to be examined on matters contained in the papers in accordance with the following timetable as distributed—

Wednesday 10 November 2004

Premier, Minister for Economic Development, Minister for Social Inclusion, Minister for the Arts, Minister for Volunteers—(30 minutes)

Deputy Premier, Treasurer, Minister for Police, Minister for Federal/State Relations—(45 minutes)

Minister for Health—(30 minutes)

Minister for Administrative Services, Minister for Industrial Relations, Minister for Recreation, Sport and Racing, Minister for Gambling—(30 minutes)

Attorney-General, Minister for Justice, Minister for Multicultural Affairs—(30 minutes)

Thursday 11 November 2004

Minister for Transport, Minister for Urban Development and Planning, Minister for Science and Information Economy—(30 minutes)

Minister for Families and Communities, Minister for Housing, Minister for Ageing, Minister for Disability—(30 minutes)

Minister for Agriculture, Food and Fisheries, Minister for State/Local Government Relations, Minister for Forests—(30 minutes)

Minister for the River Murray, Minister for Regional Development, Minister for Small Business, Minister for Consumer Affairs—(30 minutes).

Motion carried.

In committee.

The CHAIRMAN: The committee will now deal with the Premier, Minister for Economic Development, Minister for Social Inclusion, Minister for the Arts and Minister for Volunteers.

The Hon. R.G. KERIN: I refer to the minute from the Chief Executive of the Department of Premier and Cabinet, Mr Warren McCann, dated 26 October 2004 which the Premier tabled on that date and which states:

I gave no instructions to Kate Lennon to deposit funds transferred to the Department of Social Justice from DPC into the Solicitor General's Trust Account.

The Premier stated further, in referring to the minute, that the Chief Executive of DPC did not authorise or was not aware of Ms Lennon's conduct in depositing the money in the Crown Solicitor's Trust Account. Can the Premier rule out that none of his officers was aware of Ms Lennon's depositing money into the Crown Solicitor's Trust Account, because, contrary to what the Premier stated on 26 October 2004, Mr McCann's statement only referred to making no instruction and made no mention of knowledge of the transaction.

The Hon. M.D. RANN: I thank the honourable Leader of the Opposition, my friend and colleague, for that question. It relates to funding transfers from the Social Inclusion Unit to Kate Lennon as Chief Executive of the Department of Social Justice. Cabinet, of course, approved funding of $28.4 million over four years for the School Retention Action Plan, providing the Department of the Premier and Cabinet with appropriation and expenditure authority. To put this in context, because I think that is what we need, under the social inclusion initiative—and the chair of the board is Monsignor David Cappo, the Vicar General of the Catholic Church—there is a unit headed by Madeleine Woolley which reports to Warren McCann, the Chief Executive of the Department of Premier and Cabinet, who in turn reports to me.

The social inclusion initiative is about our putting a series of references to the Social Inclusion Board for their consideration and advice on how to tackle protracted issues of social exclusion or deprivation, and how to deal with it in a cross-government, cross-community way. Very early on after setting up the initiative, I put a series of references to Monsignor David Cappo principally to set up a drugs summit and to help us look at drug policy, to test its effectiveness in terms of prevention of young people getting involved in drugs, and also to look at other issues such as education campaigns in schools. We then had a specific reference in terms of homelessness: how could we, as a state, lower the rate of homelessness in South Australia and, indeed, cut the number of people sleeping rough, or sleeping out, by 50 per cent during the term of this government?

The other one, of course, was that we had serious concerns about the drop in the retention level in our schools. I have been concerned because the figures used to be around 90 per cent, I am told, but they had plummeted over eight or nine years. Because school retention relates to a whole series of matters, just as homelessness does—it is not just about housing; it is about mental health, alcohol, poverty, unemployment, and so on—we asked Monsignor David Cappo's group to come up with a coordinated campaign to convince and support our young people to stay on at school to get the qualifications they need to go on and make the most of their potential.

As a result—and I am coming directly to the leader's question, because I hate to be discursive—cabinet approved funding of $28.4 million over four years for the school retention plan, providing the Department of Premier and Cabinet, headed by Warren McCann, with appropriation and expenditure authority.

During the six months to June 2004 funds were dispersed to several agencies, as approved in the October 2003 cabinet submission, to take the lead on specific initiatives in the School Retention Action Plan. The Chief Executive's coordinating committee for school retention endorsed the funding arrangements, including allocations under the School Retention Action Plan Initiative 4—Advocacy and Support for Learners, in May 2004. Under Initiative 4, funding of $445 000 was provided to Family and Communities, formerly the Family and Youth Services or FAYS, Department of Social Justice—

The Hon. R.G. KERIN: I rise on a point of order. I appreciate the information that the Premier has given us but, given that we only have half an hour for this, the question was actually about whether or not anyone in his department knew that Kate Lennon had deposited the money in the Solicitor-General's Trust Account.

The Hon. M.D. RANN: I have almost finished this.

Mr Hamilton-Smith: A privileges committee—let's have it all out!

The Hon. M.D. RANN: Apparently the member wants to move a privileges committee on this.

Mr HAMILTON-SMITH: I have suggested that already. Let's just have it all out in the open.

The Hon. M.D. RANN: The member wants to move a privileges committee. I know it is his big run—he wants to jump from being Private Pike to Captain Mannering in one giant leap—but the point is that if he wants to move a substantive motion on a privileges matter then I am happy for him to do so.

Mr Hamilton-Smith interjecting:

The ACTING CHAIRMAN (Ms Thompson): Premier, have you completed your remarks in response to the leader?

The Hon. M.D. RANN: No, I have not. It is difficult with this degree of aggression and interjection—and, might I say, testosterone. Under Initiative 4, funding of $445 000 was provided to Families and Communities for programs relating to assertive case management for high risk children under the guardianship of the minister. The payment was approved—this is the nub of the matter—by the Chief Executive of DPC and sent on 24 May 2004 to the Department of Social Justice with a letter prescribing reporting requirements and the need for identification of the funding in a discrete cost centre in the agency's ledger.

Once funds for the program were disbursed, accountability and other roll-over arrangements rested with the agencies concerned. So, I am reliably advised by my senior officer here, the answer to the question, to the best of my awareness, is no.

The Hon. R.G. KERIN: I am a little confused. The Premier said that the money was transferred to the Department of Social Justice. I was unaware that there was any such department. Can the Premier tell us which department it was actually sent to?

The Hon. M.D. RANN: I will actually read you the letter. This is to Kate Lennon, Chief Executive, Department of Social Justice, Level 8, Terrace Towers, 178 North Terrace, Adelaide SA 5000, and is dated 24 May 2004. It reads:

> Dear Kate,
> Re: Social Inclusion Initiative School Retention Action Plan Funding for Initiative 4.
> As you are aware—

so this is breaking news, basically—

> within the School Retention Action Plan, Initiative 4, Advocacy and Support for Learners, is comprised of various projects and programs (refer attachment) and the Department of Social Justice (FAYS) is the lead agency for the following:
> · Assertive management of educational needs (GOM) (Initiative 4.1i).
> · Youth Education Centre Programs (together with DECS) (Initiative 4.2ii).
> Partner agencies working with FAYS on these projects and programs are DECS, DHS, DFEEST, Justice and DAARE. Resources for implementation of the projects and programs are listed below:
> · Project/Program 2003-2004 $445 000
> · 2004-2005—

The Hon. R.G. KERIN: Point of order, Madam Acting Chair: I think the question was, was it breaking news that we have actually got a Department of Social Justice?

The Hon. M.D. RANN: I've got the letter.

The Hon. R.G. KERIN: Yes, but because someone has got it wrong on the letter does not mean that it creates a government department.

The Hon. M.D. RANN: The point is, you will remember that the minister, who was the former minister, was known as the minister for social justice.

The Hon. R.G. Kerin: Well, change the name.

The Hon. M.D. RANN: So, do you want me to get up and read a letter incorrectly? Is that what you were like as premier? Would you deliberately mislead this place, or would you like me to read what I have in front of me in an honest and authentic way?

Mr Hamilton-Smith interjecting:

Ms RANKINE: Point of order, Madam Acting Chair: the member for Waite accused the Premier of covering up and I think that imputes improper motive on behalf of the Premier, and I call on the member for Waite to withdraw.

Members interjecting:

The ACTING CHAIRMAN: Order! The member for Wright has made a point of order indicating that the Premier has been affronted. In that case he needs to indicate whether he seeks withdrawal.

The Hon. R.G. KERIN: I think that people on this side are a little bit gobsmacked because the question was about the transfer of money. The Premier said that it was transferred from the Department of Premier and Cabinet to the Department of Social Justice. My understanding is that the Social Justice Unit presides within DPC. If he has got it wrong and he is talking about the Department of Justice, then that is exactly what we were trying to work out, how it finished up in the Department of Justice? So, I think that the Premier owes it to us to tell us which department it was transferred to and who knew about it.

The Hon. M.D. RANN: I am reading out of the letter of transfer of the money, and it is addressed to Kate Lennon, Chief Executive, Department of Social Justice, and it is signed by—

Members interjecting:

The ACTING CHAIRMAN: Order! The Premier has the call.

The Hon. M.D. RANN: Do you want me to read it out and censor it or change it? Then you will be saying, 'He misled the house; a substantive motion the next day; the privileges committee; cover-up.'

The Hon. R.G. KERIN: Point of order, Madam Chairperson: simply all we want is for the Premier to explain which department it went to. There is no department of social justice, it is a typo, but I would have thought that the Premier might understand that we have not got a department of social justice, and tell us which department it actually is.

The Hon. M.D. RANN: As I read out before, and if you had been listening, but you clearly were not, I talked about, under Initiative 4, funding of $445 000 was provided to Families and Communities, formerly Family and Youth Services (FAYS) Department of Social Justice.

So, I am telling you that I then read from a letter. I will not read from it dishonestly or inaccurately. If the letter has got a typo in it, I do not intend to mislead this house by changing the letter because we would have Jimmy the Goose over there jumping up and moving a privileges committee.

The Hon. R.G. KERIN: I hope I am not wasting my time, but I will move on to the section in here on consultants. The Premier and I had long discussions at estimates about what is a consultant and what is a contractor. We had several different definitions put forward for contractors and consultants—but within the Auditor-General's Report it talks about consultants of $322 000. Does that include contractors?

The Hon. M.D. RANN: I want to praise the Leader of the Opposition for raising this because the issue of definition is one of clarity and accountability, and therefore—

Mr Hamilton-Smith interjecting:

The Hon. M.D. RANN: What was that?

Mr Hamilton-Smith: I said you would not know much about clarity and accountability.

The Hon. M.D. RANN: You think you're going to parachute into the leadership with this sort of inane—

Members interjecting:

The Hon. M.D. RANN: The definition of consultants and contractors is contained in Accounting Policy Statement 13, Form and Content of General Purpose Financial Reports.

The Hon. R.G. KERIN: The question was: are contractors included in the figures here for consultants?

The Hon. M.D. RANN: I was asked about the definition of consultants and then I go to answer and then you change the subject, it appears to me. Let us look at the figures for consultants only: 01-02, who was the Premier in 01-02?

The Hon. R.G. KERIN: Point of order: the question was quite simple. When I received questions from estimates, they were not for the years that were asked. The Premier is going back to the same thing again. The question is: in the Auditor-General's Report which is in front of us both, does the figure for consultants include contractors, or is that a separate figure and, if so, how much?

The Hon. M.D. RANN: I have just been advised that the figure is only for consultants and does not include contractors, and the figures for consultants are: 01-02 $1.671 million; 02-03 $0.428 million; 03-04 $0.322 million. Seems to be going down.

The Hon. R.G. KERIN: I rise on a point of order, Madam Acting Chairman.

The Hon. M.D. Rann interjecting:

The ACTING CHAIRMAN: Order!

The Hon. R.G. KERIN: I think he's finished, Madam Acting Chairman, because he wasn't answering the question. We have 14 minutes left, and other shadow ministers want to ask questions. The Premier is trying to work the time down. My question was concise: it was about whether or not it included contractors. The Premier says no. The next question is: what is the figure for contractors?

The Hon. M.D. RANN: We can provide that, but it is important to know the difference between a consultant and a contractor, and it is quiet clear—

The Hon. R.G. KERIN: On a point of order, Madam Acting Chairman—

The Hon. M.D. Rann interjecting:

The ACTING CHAIRMAN: Order!

The Hon. R.G. KERIN: The government has been totally miserly in the time it has allowed us to ask questions on the Auditor-General's Report. I would appreciate it if we could ask questions and get answers rather than have the government filibuster through the full half-hour.

The Hon. M.D. RANN: I don't need to filibuster when you're in the leader's position. I want the Leader of the Opposition to tell me where in the Auditor-General's Report

contractors are mentioned. Show me where in the report. Reveal which page it is on.

The Hon. R.G. Kerin interjecting:

The Hon. M.D. RANN: No. You just said it was in the report. Where in the report are contractors mentioned?

The ACTING CHAIRMAN: Order!

The Hon. M.D. RANN: If you're fair dinkum about it—

Members interjecting:

The Hon. R.G. KERIN: Madam Acting Chairman—

The Hon. M.D. RANN: Where is the issue of contractors mentioned in the Auditor-General's Report? The Leader of the Opposition just said it was.

Members interjecting:

The ACTING CHAIRMAN: Order!

The Hon. R.G. KERIN: Given what the Premier just said, is the Auditor-General's Report incomplete? If there are contractors and they are not included in the report, can the Premier give us an absolute assurance that no people are employed by the department as contractors or consultants who are not included in the Auditor-General's Report?

The ACTING CHAIRMAN: Order! Will the Premier please resume his seat. Visitors in the gallery may not be aware that photography is not permitted in this chamber. I ask all people in the gallery to please put cameras away and not take any photographs within the chamber. The Premier.

Members interjecting:

The Hon. M.D. RANN: Will the real Leader of the Opposition please stand up? Which one of you wants to ask the questions? We have had the Leader of the Opposition pointing to the Auditor-General's Report and talking about contractors, but he cannot find the reference. Tell me where the reference is. Which page is it on?

The Hon. R.G. KERIN: Madam Acting Chairman, I ask that you take control, because the agreement is that we ask the questions. The Premier is responsible for everything in his department. If the Premier cannot assure us that there were no contractors employed by DPC, is he saying—

The Hon. M.D. Rann: Of course there are.

The Hon. R.G. KERIN: Well, where are they?

The ACTING CHAIRMAN: Order!

The Hon. M.D. RANN: I am happy to provide the Leader of the Opposition with information. If he cannot find the page reference, if that is the degree of his research: sit outside for two minutes, write on the back of an envelope, 'I know what I'll ask Ranny. Heck, this will really cause the chemistry in the parliament to change'—the fact is—

Members interjecting:

The ACTING CHAIRMAN: Order!

The Hon. M.D. Rann interjecting:

The ACTING CHAIRMAN: Order, the Premier!

The Hon. R.G. KERIN: Madam Acting Chairman, I ask that you either take control or we will move for an extension of time for this questioning. The Premier has filibustered for about 15 of the past 20 minutes.

The ACTING CHAIRMAN: Order! It would be helpful if all members ceased interjecting and there was an orderly atmosphere in the chamber. It will then be possible for the matter to proceed in an orderly manner. Does the leader have a further question?

The Hon. R.G. KERIN: I have asked it.

The ACTING CHAIRMAN: Premier, your response.

The Hon. M.D. RANN: I was asked about the definition of contractors and consultants. I tried to answer. I was prevented from answering it. Then I was asked about things in the Auditor-General's Report, but he cannot provide the page reference. Get your act together and ask the next question!

The ACTING CHAIRMAN: Order!

The Hon. R.G. KERIN: The opposition has been given a miserly half-hour for each minister. I ask the Premier whether or not contractors are included under consultants.

The Hon. M.D. RANN: I have already answered that. The answer is no. If you want a list of the amount spent on contractors, we cut the amount of money spent by you on consultants because we would rather spend it on our priorities. I am quite happy to provide information relating to contractors, but please give me the courtesy of allowing me to answer the question.

The ACTING CHAIRMAN: Does the leader have any further questions?

The Hon. R.G. KERIN: Yes, Madam Acting Chairman. Will the Premier advise the reason for the significant increase in marketing promotions costs from $1.7 million to $2.8 million?

The ACTING CHAIRMAN: Can you supply a reference for that?

The Hon. R.G. KERIN: This is not estimates; this is the Auditor-General's Report.

The ACTING CHAIRMAN: The Premier may be able to identify it, but it was a very broad question. Have you been given a page number?

The Hon. R.G. KERIN: Page 993.

The Hon. M.D. RANN: I have page 993 and I cannot see the mention of marketing. Can you please point out to me what you are referring to? Where is it on page 993, Rob?

Mr Hamilton-Smith interjecting:

The Hon. M.D. RANN: Come on, Marty, you are not going to undermine your leader by the death of a thousand cuts. Who dares wins—just remember that.

The ACTING CHAIRMAN: Order! Do you have a clear page reference?

The Hon. M.D. RANN: I am happy to provide the information. If the leader cannot find it, I am happy to find it for him.

Mr HAMILTON-SMITH: I would like to ask a question on economic development. I notice the fine assembly of board members on the Economic Development Board. I refer to page 1 184, and I note that board members received generally between $10 000 and $19 000 each. However, I notice on page 1 181 that one member of the Economic Development Board, Mr Grant Belchamber, seems to receive far more than that. He is on a special deal. He gets between $30 000 and $40 000 on some sort of a consultancy deal. He is on $30 000 to $40 000, yet the rest of the members of the Economic Development Board are on $10 000 to $19 000. I just wonder, since Mr Grant Belchamber is a union luminary, why he gets so much more than the other members of the board.

The Hon. M.D. RANN: I think you will find it is under the Deputy Premier's line for economic development.

Mr HAMILTON-SMITH: Madam Acting Chairman, if you will excuse me, the program shows that the first half hour is the Premier, Minister for Economic Development, Minister for Social Inclusion, Minister for the Arts and Minister for Volunteers. The next half hour is Minister for Police, Minister for Federal-State Relations. We are in the period of the Minister for Economic Development. Premier, you are the Minister for Economic Development, and I am asking you the question.

The Hon. M.D. RANN: And I am happy to get you an answer.

Mr HAMILTON-SMITH: I would be interested to know under economic development why Shackleton Management was paid a consultancy (referring to page 1 181) of $80 000 to $90 000, when I understand—and correct me if I am wrong—that Mr Shackleton was an employee of the department at the time, working in the defence industry section. Is that not correct?

The Hon. K.O. Foley: No.

Mr HAMILTON-SMITH: If that is not so, then is the $80 000 to $90 000 of consultancy fees all that Mr Shackleton was paid, if you cannot answer the first question about Mr Belchamber?

The Hon. M.D. RANN: The DIAB reports to the Deputy Premier, but you are referring to Vice-Admiral David Shackleton of the Senior Service, Royal Australian Navy retired, and I will get a report for the honourable member on this matter. If you are now going to start disparaging people such as David Shackleton, the former head of the Australian Navy, when we are in the process of trying to win a multi-billion dollar air warfare destroyers contract for the state, then that shows what a patriot you are.

Mr HAMILTON-SMITH: Madam Acting Chairman, Admiral Shackleton—

Members interjecting:

The ACTING CHAIRMAN: Order!

Mr HAMILTON-SMITH: I am sure that Admiral Shackleton and Mr Grant Belchamber are fine men doing good work. I am asking questions about consultancy fees and mysterious entries revealed in the Auditor-General's Report. However, I will move on to the Adelaide Festival Centre Trust. The Auditor-General reveals some interesting observations about the Festival Centre. I am referring to page 881 and other pages in that section. Instances have occurred where established policy and procedures have not been consistently applied, and where important control processes did not have adequate independent review necessary for the segregation of duties. Why did the minister fail to ensure, following the Auditor-General's comments last year, that additional controls in relation to ticketing systems be improved?

Why it is that the minister announced in the budget, I think, a half a million dollar emergency funding for the Festival Centre? Why it is that the minister has failed—and that is you Premier—to ensure that a number of weaknesses raised in the 2002-03 Auditor-General's Report have not been revealed? Why it is that the 44 per cent increase has occurred in the deficit at the centre from $2.5 million in 2003 to $3.6 million? What is going on at the Adelaide Festival Centre, Premier?

The Hon. M.D. RANN: I know it has been a very eventful night for you and you are very excited. You are ringing around and out in the lobby, telling one another how exciting it all is and it is your big moment. I understand that—it has been a long time coming. However, part B, Volume 3, page 881, the report of the Auditor-General for the year ended 30 June 2004 raises some issues for attention by the Adelaide Festival Centre Trust. The report does identify opportunities for the AFCT to improve its existing controls in the areas of policies and procedures, segregation of duties, ticketing system and expenditure processing. The Auditor-General's Report also states that a number of important areas were identified as needing management attention within the information systems and related computer processing environments.

Since being advised of these matters, management has undertaken an evaluation of risk and determined priorities for addressing them. Management will be reporting to the trust via the Finance and Audit Committee on progress in resolving the issues raised. I thank the Auditor-General for raising those issues. We have a very good chairman in Richard Ryan. It is very easy for members opposite to disparage people and disparage people who are doing their best for the state, and I also believe that Kate Brennan has done a great deal for this state as well. You might want to undermine her, that is your privilege—and we will not have to have a committee about it. The point is that they are addressing these concerns raised by the Auditor-General. That is why you have an Auditor-General.

The ACTING CHAIRMAN (Ms Thompson): The time for this examination has expired.

We now move to the examination of the Deputy Premier, the Treasurer, the Minister for Police and Minister for Federal/State Relations. Is there a question from my left?

The Hon. I.F. EVANS: There is a recommendation for further disclosure in the Treasurer's Statements on page four, Part A, of the Audit Overview. It states:

> It is to be noted that the Treasurer's Statements do not disclose additions to the agencies' appropriations arising from allocations from the contingency balances. Consistent with the principle of openness in public administrative matters and enhanced disclosures that are now being made, it is respectfully suggested that these disclosures be made.

Will the Treasurer provide to the house an answer revealing this information for the 2003-04 year, and will the government implement the Auditor-General's recommendation for all future years?

The Hon. K.O. FOLEY: Thank you for the question, and I have an answer. During each financial year Treasury and Finance makes payments to agencies from contingency balances held in Administrated Items for Treasury and Finance. An example is payments from centrally-held wage provisions. A funding for these payments is provided from annual appropriations to Treasury and Finance from the Consolidated Account. Aggregate amounts paid from the contingency balances are already disclosed in the annual financial statements for Treasury and Finance along with other payments and receipts processed as Administered Items. I refer the honourable member to the 2004 Auditor-General's Report, Vol. 5, page 1 625 notes 37 and 38. It is reported in these notes as:

> Transfers to entities within SA government.

In preparing the 2004-05 annual financial statements, Treasury and Finance will positively consider the Auditor-General's suggestions that greater disclosure be made in the Treasurer's statements of amounts paid to individual agencies from the contingency balances.

The Hon. I.F. EVANS: Just following on from that question, I thought that the Treasurer said that they were already disclosed. Later in his answer the Treasurer said that he would positively consider disclosing them. Is the Treasurer saying that they are disclosed but not to the level of detail that he thinks the Auditor-General thinks appropriate?

The Hon. K.O. FOLEY: For clarification, I said that aggregate amounts are disclosed in the annual financial statements. I understand the Auditor-General to be referring

to a breakdown of the respective amounts and, if we can, we will look at doing that in the next set of statements.

The Hon. I.F. EVANS: There would be no reason why you could not do it. Journal entries would make up the consolidated amounts. One would assume that it is just a procedural matter.

The Hon. K.O. FOLEY: Access Economics recently rated the quality of disclosure in our published accounts as the second best in Australia. Certainly, we have made significant improvements in recent years, and that is not necessarily a criticism of the last government. I am very pleased with the work that we are doing; but, as long as I am the Treasurer of this state, I while strive for even greater disclosure and more detailed information to be made public. I am happy to be criticised for insufficient disclosure. I think that the point needs to be made that it is lot more than has been done in previous years.

The Hon. I.F. EVANS: Again, I refer to Part A of the Audit Overview at page 33 point 3.4.3 (the cash alignment policy). In October 2003 the government introduced a cash alignment policy with respect to aligning agency cash balances with appropriation expenditure authorities. The policy will apply in 2004-05. Pursuant to the cash alignment, policy payments will be required to be made to return surplus cash to the Consolidated Account. The implication of this policy is that agents have an incentive to spend the cash allocated to them to avoid having surplus cash. Is the government concerned that what the Auditor-General is saying is correct, and has the Auditor-General provided any evidence to Department of Treasury and Finance officers to support the Auditor-General's judgment?

The Hon. K.O. FOLEY: My advice is no to the last part of the honourable member's question, that is, the advice provided to me. However, I can elaborate on the point with the following remarks. One of the aims of the cash alignment policy is to ensure that an appropriate framework is in place to avoid the build-up of cash balances in government agencies. Surplus cash has been accumulated by agencies in the past as a result of under-expenditure on programs or projects. As has been the case in previous years, where an agency underspends its budget and requires the funds for the following financial year, the agency is required to request approval for carry-over expenditure—a topical discussion point.

These requests are considered by cabinet (that is, those of which we are advised) and, where appropriate, carry-over expenditure authority is approved. The process does not change with the cash alignment policy to the extent that this policy encourages agencies to spend their allocated funds on the projects and programs approved in the state budget in a timely manner. Of course, this is a very timely outcome.

One of the problems that we have in government (certainly, it occurred under previous governments) is getting agencies to spend the money which they are allocated and for which appropriations are made. Agencies and public servants have a duty not to spend up in an irresponsible manner at the end of the year, therefore, to avoid having surplus cash removed from their accounts. Clearly, the onus is on agencies and individuals to behave responsibly. Section 6 of the Public Sector Management Act requires public sector employees to 'utilise resources at their disposal in an efficient, responsible and accountable manner'. Public sector agencies are expected to manage all resources effectively, prudently and in a fully accountable manner.

The cash alignment policy is intended to support behaviour and information flows which will deliver better financial management. It will improve financial accountability and, as a consequence, improve financial management.

The Hon. I.F. EVANS: I understand the Treasurer's comments in relation to the request to cabinet to get approval for their under-expenditure to hold the money or to get the money allocated back, but what process does he have in place to ensure that agencies simply do not spend their money to avoid having to make that request to cabinet, which is the point the Auditor-General is making? For instance, what is to stop the Department of Transport in the middle of June, realising that it has a slab of money that it has not spent, going out and forward ordering, say, 50 000 tonnes of quarry rubble and avoid the request to cabinet that way? What processes are put in place to avoid those sorts of practices?

The Hon. K.O. FOLEY: Under accrual accounting it would not work. Prepayments are not permitted under our protocols. Under accrual accounting the expenditure is not brought to book until the money is actually expended.

The Hon. I.F. EVANS: Under the government's cash alignment policy, is a minister and his or her agency able to make savings on a low priority spending area within their overall expenditure of appropriation and divert the savings to a higher priority spending area within their portfolio without the approval of either Treasurer or cabinet?

The Hon. K.O. FOLEY: I will get a considered reply on that. However, since we have come into office we have put in place an Expenditure Review and Budget Cabinet Committee (ERBCC), a budget committee of cabinet. My advice and recollection is that, for amounts above $500 000, those matters are required to be reported to ERBCC for approval. It is expected that it will be fully adhered to—that is for ongoing savings, as the Under Treasurer points out—but there is more flexibility for one-off savings. I will get a considered response and bring it back to the house.

The Hon. I.F. EVANS: Do I understand your answer to mean that if an agency has more than $500 000 saved in a program and wants to transfer it to another program or, indeed, to another account, they have to get the approval of the Expenditure Review and Budget Committee of Cabinet?

The Hon. K.O. FOLEY: My advice is that, if that occurs within one financial year, they have flexibility to reallocate. But if it is an ongoing savings measure, it is required to come back to the ERBCC for approval. If it is an ongoing saving and that money is to be diverted to a different expenditure, we would want to get an approval put in place for that to occur.

The Hon. I.F. EVANS: On the matter of cash balances then, does the Treasurer agree that agencies should be holding large cash balances for the purposes of settling long-term employee liabilities such as long service leave and sick leave?

The Hon. K.O. FOLEY: My advice is that we maintain sufficient and appropriate cash balances for long service leave but, for sick leave, that is not the case. Like all these answers, we will clarify and come back to the house with anything that needs to be corrected or further information provided.

The Hon. I.F. EVANS: Sorry I missed that, Treasurer, you hold large cash balances for—was it sick leave?

The Hon. K.O. FOLEY: No, for long service leave provisioning. But we would not keep cash balances to cover sick leave as that would just be a normal operating funding issue to be managed within the portfolio.

The Hon. I.F. EVANS: In relation to Treasurer's Statement 1, 'Indebtedness of the Treasurer as at 30 June

2004', at page 31: in your equity contributions, the statements disclose that equity contributions to the government agencies at 30 June is over $1 billion. What are the criteria for agencies seeking and receiving equity contributions from the Treasurer?

The Hon. K.O. FOLEY: I think we might come back to the house with a considered response to that detailed question from the member.

The Hon. I.F. EVANS: Any idea when?

The Hon. K.O. FOLEY: Soon.

The Hon. I.F. EVANS: So we will get that answer very soon?

The Hon. K.O. FOLEY: As soon as we can provide it.

The Hon. I.F. EVANS: What is the process for the provision of an equity contribution from the Treasurer: who approves it; does the cabinet, the Treasurer and/or the relevant minister?

The Hon. K.O. FOLEY: I have a part answer to that but if you can allow me to get you a considered response as quickly as we can, we would want to make a number of points. It would be much easier and simpler for me to get a considered answer within the next week.

The Hon. I.F. EVANS: I do not wish to appear difficult, Treasurer, but if it is the process for provision of equity contribution from you as Treasurer, then you should be able to at least clarify whether you as Treasurer approve it.

The Hon. K.O. FOLEY: Absolutely. But the specifics of the examples, how it is used and whatever, I could tie up the committee for some time and give you an answer, but it might be easier for me to get a written response for you from officers.

The Hon. I.F. EVANS: When the equity contributions are approved, what conditions are placed by the Treasurer or by cabinet on the granting of the equity contribution? And then what monitoring or regime process is in place in DTF to ensure that these conditions are adhered to?

The Hon. K.O. FOLEY: We will take that question on notice and come back to the member with a detailed answer.

The Hon. I.F. EVANS: Treasurer, we know that you approve the equity contributions, and I appreciate that you are coming back with a more detailed response. But can you give me an example of the condition that you might put on it as an approving Treasurer?

The Hon. K.O. FOLEY: When the amount required for capital expenditure exceeds depreciation, that would require a capital contribution through the appropriation bill. But this is detailed information to which I would be much happier to provide a written response. However, I assume it is the same as what occurred for a number of years under the former treasurer.

The Hon. I.F. EVANS: We are just trying to refresh ourselves with respect to those guidelines; they slip by every now and then. What was the purpose of the additional equity contribution of $26 million to the Department of Human Services in 2003-04?

The Hon. K.O. FOLEY: My advice is that we would assume it is for some capital procurement. Again, we will have that checked out and come back to the member.

The Hon. I.F. EVANS: I refer to Treasurer's Statement 1 on page 31. In relation to 'other indebtedness', the unallocated debt is negative $1.495 billion. It was negative $1.136 billion as at 30 June 2003. Can the Treasurer advise what this number represents?

The Hon. K.O. FOLEY: My advice is that it would be reasonable to assume that that is debt accrued over time from the running of budgets, but we will have that clarified for the member. It is a consolidated figure, not allocated to individual agencies.

The Hon. I.F. EVANS: That is probably why it is called 'unallocated debt', because it is not allocated. I have picked that bit up. Why is the number a negative, and why did it increase by $360 million in 2003-04, if it is simply to do with the trading of the budget? I am sure the advice will not be that you overspent by $360 million.

The Hon. K.O. FOLEY: I will take that question on notice and come back to the member with an answer.

The Hon. I.F. EVANS: When the Treasurer comes back with an answer, will he provide a detailed breakdown of the make-up? It is, no doubt, made up of a number of small parts: it will not be just one debt figure. Can we have a detailed breakdown?

The Hon. K.O. FOLEY: If that excites the member, I am happy to see what I can do.

The Hon. I.F. EVANS: Is that a yes?

The Hon. K.O. FOLEY: Yes, absolutely; I can do it.

The Hon. I.F. EVANS: I refer to the Department of Treasury and Finance, part B, Volume 5, page 1 600. There is a heading 'Appropriation Excess Funds Account'. There is quite a lengthy explanation by way of background information in the report, and in about the middle of the page it refers to 'Accrual appropriation excess funds'. No doubt the Treasurer will take this question on notice: can he provide a list of agencies and the amounts that comprise the $270 million in the Appropriation Excess Funds Account as at 30 June 2004, as well as the $206 million as at 30 June 2003? For what purposes are these agencies holding the moneys in this account?

The Hon. K.O. FOLEY: We do not have that information here, but we will be happy to provide the committee with a list.

The Hon. I.F. EVANS: Can the Treasurer explain to the committee the role of the account and why this special account needs to be maintained for surplus cash balances?

The Hon. K.O. FOLEY: I am advised that the account relates to the matter the member raised earlier about the cash required to fund accrued long service leave liabilities; it is the account used for that.

The Hon. I.F. EVANS: Is that the only purpose of the account: it is all long service leave?

The Hon. K.O. FOLEY: No, I would not say all. Again, we will obtain a considered response. That was an example. I have just been advised that it is a fund of accrued future liabilities that agencies have to meet, such as long service leave. If the member wants some other examples, we will have a look and come back with some more information.

The Hon. I.F. EVANS: If the Treasurer gives us a breakdown of it liability class by liability class per agency, that would help.

The Hon. K.O. FOLEY: Help what?

The Hon. I.F. EVANS: That would help keep us up at night, because we get excited about those sorts of matters. What action has been taken in relation to there being no formal policy and procedures documented in relation to the operation of this account?

The Hon. K.O. FOLEY: In respect of the previous question, the Under Treasurer has just advised me that we can break it down by agency but not by specific purpose.

The Hon. I.F. EVANS: I do not quite understand that. You know that environment has transferred across $20 million for long service leave: you must know the

purpose. Someone must ask them, 'Why are we getting this money?' It must be recorded somewhere that environment has transferred across $20 million for long service leave. Surely it is only a matter of consolidating that into a list?

The Hon. K.O. FOLEY: I will come back with a considered rationale for that answer, in that it is a longstanding accrual of liabilities and the funding to match it. I am told that the unravelling of that would be a very complex thing. But, again, if the member will indulge me, I would prefer to come back with a considered response and reasoning, unless he wants to take up time now.

The Hon. I.F. EVANS: When the minister comes back with the answer about the role of the account, could he give us an explanation as to the role of the account in relation to the operation of the cash alignment policy?

The Hon. K.O. FOLEY: Sure, and what I am prepared to do, Madam Acting Chairman, for my good friend the member for Davenport is extend an invitation so that at any time he would like to come in and receive a briefing from the Under Treasurer and his outstanding officers he should feel free to do so. I am sure he could ask a whole lot of questions, and I would have no difficulty with that whatsoever. I am not saying that I want to circumvent this important part of the parliamentary process but, if at any time he feels he needs more information on these administrative matters, I would be more than happy to make officers available.

The Hon. I.F. EVANS: Why is this account interest-bearing and the surplus funds under the cash alignment policy in the surplus cash working account not interest bearing?

The Hon. K.O. FOLEY: One is a short-term account and the other is a long-term account. The short-term account, I am advised, does not accrue interest and long term accounts do.

The Hon. I.F. EVANS: So, does this account fund things such as depreciation?

The Hon. K.O. FOLEY: It would be a long-term accruing liability and would be part of it, yes, I am advised. I am advised that depreciation would be included to the extent to which it exceeds investment.

The Hon. I.F. EVANS: In relation to page 86, point 7.4.4.2, Carryover Policy, will the Treasurer provide a copy of his minute to all the ministers dated 17 June 2003 in which the Treasurer outlined the government's new policy relating to carryovers?

The Hon. K.O. FOLEY: I am assuming that such a minute exists. The member is referring to a minute?

The Hon. I.F. EVANS: Yes.

The Hon. K.O. FOLEY: Yes, I am happy to provide it.

The Hon. I.F. EVANS: Page 1606 (probably the Treasurer's favourite page) refers to cash at the bank. Cash has increased from $20.7 million at 30 June 2003 to $23.9 million at 30 June 2004. The 2004 figure of $23.9 million is 34 per cent of their annual operating 2003-04 cash outflows. In other words, it is very high. As per the budget papers, the 2004 figure was expected to be $20.3 million, whereas the actual was $23.9 million. The cash at 30 June 2005 is expected to reduce to $11.3 million. How much of the surplus cash is expected to be returned to the government as a result of the cash alignment policy, and when?

The Hon. K.O. FOLEY: Under the cash alignment policy it is expected that the $14 million will shortly be transferred to the surplus cash working account.

The Hon. I.F. EVANS: In relation to debt management at page 1599, the report states that, as in previous years, the Auditor-General raised matters in relation to Revenue SA's debt management function, in particular, the absence of management reporting relating to outstanding debts in all tax head areas. The Auditor considers this exposes Revenue SA to the risk that outstanding debts may not be identified and followed up. What was the level of outstanding debt as at 30 June 2004, and will the Treasurer provide details on the number of taxpayers involved and the range of individual outstanding debts?

The Hon. K.O. FOLEY: I have a story to tell if you want to hear it. I have a nice briefing note. But, for the level of debt and the figures the member is after, I will have to come back to the committee. Do you want me to share a story with you?

The Hon. I.F. Evans interjecting:

The Hon. K.O. FOLEY: No, I will tell you a story. No, I will not, because it will just waste time and I am not sure you want to hear it. Do you want to hear it? It is not that exciting. I will give the member my briefing note.

The Hon. I.F. Evans: Are there a few big words that I cannot pronounce?

The Hon. K.O. FOLEY: I prepared my briefing folder on the possibility that you will FOI it, so it is all good, easy public information.

The Hon. I.F. EVANS: What is the process of follow-up in relation to the debt management matter of Revenue SA?

The Hon. K.O. FOLEY: From the paper I just gave you, read the answer. Don't be lazy.

The Hon. I.F. EVANS: I think it is point 3 on this page. Audit follow-up of the South Australian Government Captive Insurance Corporation during 2004 revealed that a draft SAICORP board charter had been prepared as part of a revised corporate government policy but had not been submitted to the board and the Treasurer for endorsement. The response was that SAICORP had advised that its board's corporate governance policy was presented to the board for review at its August 2004 meeting. Can the Treasurer provide an update as to the status of this matter?

The Hon. K.O. FOLEY: I do not have the appropriate officers here to answer that but I am happy to come back to the committee with that answer as soon as I can.

The Hon. I.F. EVANS: In relation to SAICORP again and directors' transactions with the corporation, during the year SAICORP engaged Price Waterhouse Coopers (Adelaide) as an extension to a whole-of-government arrangement to assist with the preparation of the corporate governance documents. Can the Treasurer advise the following in relation to the whole of government engagement of Price Waterhouse Coopers: which government agency or minister is the contract with?

The Hon. K.O. FOLEY: Again, we do not have that answer here with my officers. We will come back to the committee with it.

The Hon. I.F. EVANS: What circumstances led the government to engage PWC for a whole of government engagement, and what is the outcome expected from the engagement?

The Hon. K.O. FOLEY: I am advised it was general tax advice relating to the implications of the GST, and administering FBT. But, again, I am happy to expand on that once we work our way through these questions and will give the committee as much information as we can.

The Hon. I.F. EVANS: How long has the engagement been operating, and how much longer is the contract for?

The Hon. K.O. FOLEY: I will come back to the committee with that answer.

The Hon. I.F. EVANS: What amounts have been paid to PWC so far, what is the expected cost of the engagement, and does each agency pay for their share or does Treasury pick up all the cost?

The Hon. K.O. FOLEY: I will come back to the house with that answer.

The Hon. I.F. EVANS: Again in relation to SAICORP and the $1.8 million (as at 30 June 2004) owing from Baulderstone Hornibrook from the Glenelg flooding, can the Treasurer advise whether this has been paid?

The Hon. K.O. FOLEY: I do not want to sound as if we are avoiding direct answers but these are detailed questions, particularly as they relate to the operations of SAICORP. I will have to get an answer to that question for the member.

I would like to take this opportunity (I was waiting for a question on it), with the officers here, to put on the public record that it has been a very good year for Treasury and Finance—a year in which the government achieved its AAA credit rating—and the Under Treasurer, Jim Wright, and his officers can take full credit for achieving AAA for the state.

Mr BROKENSHIRE: Minister, I am doing police. In the Auditor-General's Report regarding the police department, on page 4 it talks about firearms licences and registrations and it shows that Audit advised in August that the practice of refunding licence fees when firearm licences are surrendered has been suspended, and that legal opinion will be sought regarding the matter. Do you have the legal opinion on that now and, for those people who are interested in this matter, could you advise what decision SAPOL has made?

The Hon. K.O. FOLEY: We do not have an answer here with us, but we will come back to the house with a considered answer on that as soon as we can.

Mr BROKENSHIRE: One of the things that I acknowledge was not easy when I was police minister, and it is still being reinforced today, is the procedures and time frames applied by the department in following up people with registered firearms and expired licences. The Audit Report shows that SAPOL was reviewing that. Could you give me some detail about where they are up to with the matter of reviews, given that it seems that in successive years (and I acknowledge it was a problem for me as well as for you) there seems to be a problem in actually addressing the matter of expired licences with firearms.

The Hon. K.O. FOLEY: My advice is that the review is, I think, still under way. We will get that clarified and come back to the house as quickly as we can.

Mr BROKENSHIRE: When we get that response can we also have some advice as to what additional resources, if any, have been put into the firearms branch to address this, or do you have the answer to that now?

The Hon. K.O. FOLEY: Additional resources, I am advised, were provided as part of the commonwealth government's funded buy-back scheme, to which we contributed moneys as well. We did see some additional resources, and we will get you the details of that.

Mr BROKENSHIRE: Regarding the bank accounts of the South Australian Police Department, in February 2004 Audit found no evidence of the Treasurer approving 130 bank accounts and seven imprest bank accounts operated by both local service areas and individual police stations. Does the Treasurer have any information on that matter?

The Hon. K.O. FOLEY: Yes, I do. SAPOL was unable to source documents to be provided to the Auditor-General stating approval for the bank accounts to be opened. An application for approval in terms of Treasurer's Instruction 7.5 for bank accounts operated by police stations and LSAs was forwarded to the Under Treasurer by the Director of Business Services, SAPOL, on 18 August 2004 for all accounts. Approval was received from the Treasurer's delegate, Mr Rob Schwartz, on 1 September 2004. I am advised that reasons for not being able to provide the source documents include that accounts were opened prior to the introduction of Treasurer's Instruction 7.5. Treasurer's Instructions are issued by the Treasurer under the authority of section 41 of the Public Finance and Audit Act 1987. Historic source documents were also not able to be located in some cases, and there was a lack of awareness by local personnel that Treasury approval was required.

Mr BROKENSHIRE: Supplementary to that, whilst I appreciate that in a big department these things do occur, is the Minister for Police—and I guess it does cross over into your capacity as Treasurer—satisfied with the revised processes around approving bank accounts and imprest bank accounts for SAPOL since Audit found this? Are you happy that the process has been changed to a satisfactory standard?

The Hon. K.O. FOLEY: My adviser tells me he is happy but, more importantly, I am advised that the audit officers are happy. Everyone seems to be happy, but that is not to say that there is non-compliance from time to time in a large agency. However, we have improved the processes and we think we are on top of it.

Mr BROKENSHIRE: On page 6 where it deals with payroll, during the 2003-04 financial year Audit identified instances where the personnel audit report was not certified and retained in accordance with the department's general orders. The department has indicated in there, minister, that they have responded by reminding relevant personnel of the need to certify and retain the personnel audit report. Given that there are so many directions put to officers of the Police Department, can you confirm whether, first of all, that was a written direction to those relevant personnel, and whether or not the department is now confident that that is put in place so that that will not happen in the future?

The Hon. K.O. FOLEY: I am advised that there were written instructions given and that they were followed up in the issues that have been identified. That is the advice that I am provided with.

Mr BROKENSHIRE: Regarding workers' compensation, it was interesting looking at the Auditor-General's Report there because, anecdotally, it seems to be, whether I am talking to police officers individually or even the Police Association (and I am sure that you have had similar discussions) that there are concerns about at least a perceived increase in workers' compensation claims and liabilities. Can the minister advise the house what are the total number of workers' compensation claims during that year as to the year prior to, and, if indeed the answer is that there has been an increase, why has that increase occurred and what is the department doing to address that matter?

The Hon. K.O. FOLEY: I am advised that in 2003-04 we have seen a flattening of the liability, but I am also advised that in 2002 there was a revaluation through the actuarial processes and there were some revised estimates undertaken which, I am advised, accounted for a significant jump in the WorkCover liabilities.

Mr BROKENSHIRE: Supplementary to that question: is the minister satisfied that the department is focused on addressing what is obviously not only costly as in financial terms but also immensely costly as in physical problems that occur not only to officers but also to their families having to

wear the stress of injury, be it physical or mental. Is the minister happy that the department is, in his opinion, addressing problems that appear to be there, in what is a difficult area I might add, namely WorkCover matters with policing?

The Hon. K.O. FOLEY: I have full confidence in the Police Commissioner. I do not question his administration of the agency and that needs to be put on the public record, which I repeatedly do. I am advised also that some additional resources and effort have been put into the management of workers' compensation within, what is, an extremely vulnerable working profession for workplace injury and stress given the obvious stress and rigour involved in policing. There is no question that managing the workers' compensation liabilities and problems associated with policing is an ever present challenge for the Police Commissioner and his management, but I am extremely confident that best practice is employed by the Commissioner and his senior management addressing this issue.

Mr BROKENSHIRE: Supplementary to that question: one of the problems that has occurred with workers' compensation and occupational health and safety has been the matter of firearms discharging inappropriately and causing injury to officers. Can you advise the house whether or not the department now has funding or a plan to replace those firearms, or what they are doing to overcome the problem that they have with the firearms, not only when they have to use them in an incident but also in training? A number of officers have been injured in recent times.

The Hon. K.O. FOLEY: My advice is, and this has been an issue that the Police Association has raised with me—as well as raising publicly, no doubt, with the opposition. We are using the same firearms model as was used when the member was the minister but we have a replacement program in place for, I am advised, an updated model of the handgun that is currently used. There is debate about this, and I think the Police Association has a view that we should be looking at a different handgun. But on a matter such as this I rely on the Police Commissioner, and the current program of replacing with updated models is the preferred position. That is the advice I have from the Police Commissioner, and clearly it has the support of the government.

Mr BROKENSHIRE: Supplementary to that, and I appreciate the answer: has there been additional funding provided to the department for that capital expenditure and, if not, how are they expected to fund the replacement?

The Hon. K.O. FOLEY: I am advised that the police are funding that program out of their annual equipment provisioning. You do not simply provide extra resources for what is clearly, in my view, a matter for the management of the procurement budget of the agency, and they have a procurement budget from which they can fund this program. It is part of the ongoing management of the resources requirements of the force.

Mr BROKENSHIRE: Following on from that, when it comes to cash flows for the department and—based on the Treasurer's Instructions to agencies that carryovers are subject to approval of Treasury or they go back to your Treasury portfolio—with matters like the mobile data terminals where the old KDTs, the old data terminals, are being replaced, I know that there were carryovers allowed and, in fact, from memory I think it was $6 million that was being accumulated to replace these KDTs. Can the Police Minister advise the house whether or not that money was approved to be kept back in SAPOL for the replacement of the KDTs to MDTs?

The Hon. K.O. FOLEY: I am advised that cabinet through its normal processes approved the timing adjustments for the cash flows for those acquisitions.

Mr BROKENSHIRE: Is the minister aware of any projects that the department may have been—if I can put it in lay terms—saving up for within its budgets that may not now proceed as a result of the instruction to take carryovers back into Treasury?

The Hon. K.O. FOLEY: I do not understand the question, because I am not quite sure what you mean by 'an agency saving up for a purchase for which it does not have authority or approval'. It sounds to me like the budget practices that might have occurred in the old department of health when the now deputy leader was there. We have processes in place. We do not have a policy of not approving carryovers; we have a policy of requiring approval for carryovers. In many cases, and with an agency like the police in most cases, carryovers are approved. We have a rigorous process requiring approval.

The ACTING CHAIRMAN: Order! The time for this part of the examination has expired. We will now proceed to questions addressed to the Minister for Health.

The Hon. DEAN BROWN: In the financial year 2003-04 there was an overrun by major metropolitan hospitals of $30.5 million, which was confirmed during estimates. Where is that dealt with in the Auditor-General's Report, and how is it dealt with in terms of paying off that $30.5 million?

The ACTING CHAIRMAN: Does the minister require a page reference?

The Hon. DEAN BROWN: It is all the pages in terms of human services. We are dealing with the accounts. We know there was a deficit of $30.5 million. I want to know where in the Auditor-General's Report that has been dealt with. That is the purpose of the question.

The ACTING CHAIRMAN: Is that figure mentioned on a particular page?

The Hon. DEAN BROWN: We are dealing with human services, and they start on page 349. I want to know where in the accounts the $30.5 million deficit has been dealt with. It is a pretty simple question.

The ACTING CHAIRMAN: Thank you for clarifying the question.

The Hon. DEAN BROWN: I simply want to know how the $30.5 million has been dealt with. On 22 June, six or seven days before the end of the financial year, the minister acknowledged in the house that no decision had yet been made by Treasury as to how the $30.5 million would be handled. I am sure the minister knows; I am surprised she has to refer to anything. I would like to know how this $30.5 million was handled. What was the instruction that came from Treasury in the last six days of the financial year?

The Hon. L. STEVENS: It would be easier if we were given a page reference. It is on page 578, if the deputy leader would like to open his copy of the report and have a look at the recurrent funding for incorporated health services. In late January 2004 all hospital CEOs presented the status of their 2003-04 budget position to their peers and indicated that they had identified the leading issues associated with their deficits. Most indicated that they had implemented savings strategies and expenditure review processes in order to contain the budget deficit to the level that we had projected. As at the end of October 2003 it was $34.8 million. In June 2004 the

government agreed to the allocation of $34.8 million in order to fund the deficits incurred by health services during 2003-04. I am pleased to put this on the record, because I have actually said it in the media, as the deputy leader probably knows. On Thursday 21 October the deputy leader put out a press release entitled '$30 million ripped from major public hospitals'. It states:

Liberal health spokesman—

The Hon. DEAN BROWN: On a point of order, Madam Acting Chair, I am quite happy to get into this subject, as long as you allow me to roam just as widely and deal with issues about the budget allocations which the minister is now talking about and which have come out of this year's appropriations. I am happy for the minister to give a full and frank answer but, equally, I expect to be able to ask questions on the same area.

The ACTING CHAIRMAN: Each question will be considered on its own merits.

The Hon. DEAN BROWN: I just want a fair handling by the chair.

The ACTING CHAIRMAN: And you will have a fair handling by the chair, but each question will be considered on its own merits.

The Hon. L. STEVENS: It will become clear why I raised this press release. The deputy leader said through his media release that the government had ripped $30 million out of this year's allocation to cover last year's hospital debt. This relates precisely to what the deputy leader just asked. The debt incurred from last year was covered in June this year by the $34.8 million allocated from Treasury. So there was nothing.

The Hon. DEAN BROWN: On 22 June, just six days earlier, the minister told this house that the anticipated deficit was going to be $30.5 million. I wonder where she picked up the extra $4.3 million deficit; and could she indicate perhaps by way of a written reply what was the deficit for each of the hospitals? However, now she has opened up that issue, will the minister acknowledge that this year she has not funded the major metropolitan regional boards for the hospitals (each now have a regional board) at the increased activity level of last year but what was budgeted for in terms of activity last year? Will the minister now acknowledge that she has taken $30 million out of the hospital budgets for this year because she has funded them using a different activity level, that is, not on what they achieved last year but what they were budgeted to achieve last year?

The ACTING CHAIRMAN: There seemed to be three questions there. Minister, are you able to answer all three questions?

The Hon. L. STEVENS: I might need to have the questions explained again, because I really need to be asked them one at a time. The first question was: what was the difference between $30.5 million and $34.8 million?

The Hon. Dean Brown: Yes.

The Hon. L. STEVENS: My advice is that the $34.8 million was the adjusted end of year position.

The Hon. Dean Brown interjecting:

The Hon. L. STEVENS: That was just the final adjusted end of year position and that was paid out at the end of June. My advice is that, if you refer again to page 578 and the figure $1 911 437 000, that $34.8 million is part of that total figure.

The Hon. L. STEVENS (Minister for Health): I move:

That the time for moving the adjournment of the house be extended beyond 10 p.m.

Motion carried.

The Hon. DEAN BROWN: I asked whether the minister would produce a table (I am not expecting it tonight) of each of the hospitals across the state and the deficits incurred.

The Hon. L. STEVENS: I am happy to provide that information, but I must emphasise to the committee that there were no end of year deficits across the board, because they were all dealt with by that $34.8 million figure which I mentioned previously.

The Hon. DEAN BROWN: Perhaps the minister could indicate to which hospitals the $34.8 million was allocated to remove what would have otherwise been the deficit.

The Hon. L. STEVENS: I just said that I would do that, but I wanted to emphasise the point—and we will go around and around again.

The Hon. DEAN BROWN: The other question I asked was: will the minister confirm that in the 2004-05 year the hospitals have been allocated an activity level which is equivalent to the activity level budgeted for last year, not the actual outcome last year? I will explain. For instance, if the Flinders hospital had, say, a budget of $200 million and it overshot that budget by $10 million (which was what it did because of largely increased activity), that means that it had $10 million of extra activity. I understand that the hospitals have been allocated an activity budget of $200 million this year, not $210 million, which was the actual outcome in terms of activity for last year. Will the minister confirm that?

The Hon. L. STEVENS: As we know, these were record health budgets in terms of the metropolitan health units. A marginal increase in activity has been funded, and the health service agreements are now on the verge of being completed and signed.

The Hon. DEAN BROWN: For the major metropolitan hospitals, I ask the minister to table or to forward the health service agreements both for those hospitals last year and for this year.

The Hon. L. STEVENS: One must look at the difference in funding between last year and this year. We should really return to last year, which is what we are looking at—

The Hon. Dean Brown interjecting:

The Hon. L. STEVENS: Can I just finish?

The Hon. Dean Brown interjecting:

The Hon. L. STEVENS: Can I just finish? I can say that about $150 million was the increase in funding to the metropolitan health units this year compared to last year. In relation to the tabling of the—

The Hon. Dean Brown interjecting:

The Hon. L. STEVENS: I will give that some consideration.

The Hon. DEAN BROWN: It would be interesting to see whether the government has the courage to table those documents, because they are crucial. I think that the parliament ought to have the chance to examine them.

The Hon. L. STEVENS: On a point of order, Madam Acting Chairman, the issue of this year's health service agreements are not the subject of tonight's examination.

The ACTING CHAIRMAN: That is quite so. There is no need for a point of order.

The Hon. DEAN BROWN: Perhaps the minister would table those for last year. I would be quite happy to have those. The minister raised the fact that she had finalised activities for this year. She was the one who said that there had been

a slight increase in activity. She raised the issue. I thought it only appropriate that I should be allowed to ask her to table the information about which she was talking. I did not raise it, the minister did.

I refer to pages 580 and 581. I would like a detailed list of all areas of funding that cabinet has formally approved for the carryover of unspent moneys of 2003-04 to 2004-05.

The Hon. L. STEVENS: My advice is that this is not a decision taken as a result of the Auditor-General's Report: it is a decision of cabinet. It is therefore not an appropriate request for tonight.

The Hon. DEAN BROWN: Madam Acting Chair, cabinet makes all sorts of decisions in relation to the Auditor-General's Report. Here we are, at the end of the financial year 2003-04, and I am asking a very simple question: in what areas has the minister received approval to carry over the funding? Because if the minister has not then we know that that money has gone back to Treasury. The Auditor-General covered this issue in great detail. It has been the subject of numerous discussions. I am asking the simple question: will the minister list all those areas in which there was unspent money at the end of the last financial year and where approval has been given to carry over the money for this year?

The Hon. L. STEVENS: In the interests of transparency, I can provide that information. I reiterate to the committee that this information is the result of a decision taken after the last financial year and does not relate to material in the Auditor-General's Report.

The Hon. DEAN BROWN: Note 17 in the budget lines (pages 588 and 581) deals with unexpended funding commitments. I ask whether the minister can give a clear indication of all areas where a carryover of unspent moneys from last year has been approved by cabinet. If the minister would like me to go back and refer to these areas, I will do so. The Department of Human Services was one of those departments that parked money in the Crown Solicitor's Trust Account and deliberately tried to avoid presenting accurate and full accounts to the Auditor-General and to the parliament. There is another mechanism, namely, the formal approval, and one would expect that to be therefore listed here. I ask for clarification of those exact amounts.

The Hon. L. STEVENS: I already said that I will provide them, so let us just get on with it. However, I do not have it with me now.

The Hon. DEAN BROWN: My next question relates to page 576 and deals with the number of employees who are on a salary of $100 000 or more. The chart shows that, at the end of the 2003 financial year, 59 people in the department were on a salary of $100 000 or more. At the end of 2004, that number had increased by 21 per cent—an increase of over 30 per cent. This government promised to cut out all these fat cats, yet we find that they have grown—and grown considerably—with a 30 per cent increase in the number of fat cats in the Department of Human Services. The Auditor-General acknowledged that some of this increase is due to wage or salary creep (in other words, people whose salary was just below $100 000 and the 4 or 5 per cent increase has put them over that amount).

There is also a group of extra employees, and I would like to know how many of those are extra employees. Looking at the figures, one assumes that, because nine employees were in the first bracket of $100 000 to $109 000 (and there were 19 this year, compared with nine last year), the number in the wage or bracket creep is probably in the range of nine or 10 or fewer, and could well be only half that number. Of the 80 people earning over $100 000, how many are earning that amount due to bracket creep and how many are additional employees put on a salary of over $100 000?

The ACTING CHAIRMAN (Ms Thompson): I draw the deputy leader's attention to the clock. It had been stuck, but it has now been reactivated, and the amount of time available to him has been carefully calculated.

The Hon. L. STEVENS: First, the deputy leader mentioned that the number of employees earning more than $100 000 had increased by 21 per cent. That is not correct: it has increased by 21, not 21 per cent.

The Hon. Dean Brown: I said 21.

The Hon. L. STEVENS: I think you said 21 per cent.

The Hon. Dean Brown: No—a 30 per cent increase.

The Hon. L. STEVENS: Perhaps the deputy leader will read the *Hansard* tomorrow, but I know what I heard, and I think he said 21 per cent, but it does not matter, because it is 21.

The Hon. Dean Brown: It is 30 per cent. I would not want to make that sort of error.

The Hon. L. STEVENS: No, you would not, but perhaps you should check the *Hansard*. Anyway, the important thing is that this information applies to the Department of Human Services, which is made up of two departments. My advice is that in Human Services there was an increase of 10 staff in the administrative services officers stream who earned over $100 000 per annum. Some of these staff choosing to be untenured under the PSM Act and some bracket creep has resulted in pushing these staff into the $100K-plus category. I will also provide for the deputy leader a breakdown in relation to what applied to health, because what I am talking about applies to human services.

The Hon. DEAN BROWN: I would certainly appreciate that, and I would appreciate the information fairly quickly. I think I am still waiting for some of the answers on the estimates committees; we still do not have the answers to the omnibus questions. In fact, I am still waiting for some from last year.

The Hon. L. Stevens: I cannot believe that; surely not.

The Hon. DEAN BROWN: Of course you can. There are quite a few questions I am waiting on answers for. My next question is in relation to page 578. I notice that under 7.2 'Capital funding to incorporated health services' there has been a significant reduction from $106 million spent in 2002-03 to $81 million spent in 2003-04, which is a reduction of $25 million in capital works in the health area. Could the minister explain why she has decided to slash the capital program in health in the last year?

The Hon. L. STEVENS: I am certainly happy to answer the question. While I am waiting for the chief executive to give me the advice, I will take up something the deputy leader mentioned in a previous question. From memory, he said that my department was one of the departments that had parked money—

The Hon. Dean Brown: That is right.

The Hon. L. STEVENS: I want to deal with that statement.

The Hon. Dean Brown interjecting:

The Hon. L. STEVENS: I am the Minister for Health.

The Hon. Dean Brown: And I am referring to the department.

The Hon. L. STEVENS: I am making quite clear that my chief executive has advised me that, following the Auditor-General's Report, a check was made. This check found no

transactions for the Department of Health similar to those recently identified and investigated by the Auditor within the Attorney-General's Department and the Department of Families and Communities. I wanted to make sure that was on the record.

The Hon. DEAN BROWN: The minister did not answer the question about capital funding. Perhaps she could answer that. I will move on to the next question as well.

The ACTING CHAIRMAN: The minister indicated that she was awaiting advice. She now has that advice, so I think she is ready to answer that question on capital funding.

The Hon. L. STEVENS: The figures on page 578 that the deputy leader quoted are actual expenditures. The difference is entirely related to the issues of market forces and the superheating of the property market and building industry.

The Hon. Dean Brown interjecting:

The Hon. L. STEVENS: No; what happened—and this was made public by my colleague the Minister for Administrative Services—was in relation to needing to change the tendering timetable.

The Hon. Dean Brown: Come on!

The Hon. L. STEVENS: No, I am not coming on at all.

The Hon. Dean Brown: They wouldn't have gone out to tender last financial year as it was; come on.

The Hon. L. STEVENS: No; my advice is that this was the reason for the delay in relation to projects in health.

The Hon. Dean Brown interjecting:

The ACTING CHAIRMAN: Order! Member for Finniss, do you have further information you wish to give, or was that the conclusion to your question?

The Hon. DEAN BROWN: Madam Acting Chairman, the answer lacked credibility because, in fact, the projects to which the minister referred had not gone out to tender. She only talked about them about three months before the end of the financial year. They had no chance of going out to tender, going through the Public Works Committee process or even having the tenders let, let alone any construction starting in the past financial year. Madam Acting Chairman—

The ACTING CHAIRMAN: Order! Member for Finniss, I have still not established whether the minister has concluded her answer.

The Hon. L. STEVENS: My advice is that these figures reflect delays in relation to the issues that I mentioned, such as market conditions. There was also an issue in relation to technical solutions for the Flinders Medical Centre's Margaret Tobin Centre. There were also some issues in relation to financial planning for the Millicent Aged Care Facility, but there certainly has not been a reduction in the total capital works program. In fact, the deputy leader will see this when he gets the list of the carryovers that I undertook to provide for him.

The Hon. DEAN BROWN: Time is limited, so I would like to run two questions together. The first is about the South Australian Ambulance Service, which established a communications room last financial year on Greenhill Road. I appreciate that the minister will not be able to give the answer here, because she will need to get a detailed figure, but I would appreciate knowing the cost of establishing that communications room at Greenhill Road and where the money for that came from. The other question relates to page 580. About two-thirds of the way down that page you will find a line under section 16 entitled, 'Grants from the South Australian government agency, Department of Treasury and Finance contingency funds'. I see the contingency fund of the Department of Treasury and Finance increased from $20 million to $113 million in the year. Could the minister please explain that? While you get that advice, can I ask when you—

The ACTING CHAIRMAN: Deputy leader, you were not called. The minister has the call; please resume your seat.

The Hon. DEAN BROWN: The minister is not getting up to answer.

The Hon. L. STEVENS: Madam Acting Chairman, I can only answer one question at a time. I am not going to be bothered with the interruptions that I am getting all the time; I will take the question on notice.

The ACTING CHAIRMAN: Order! The time allocated for this examination is completed.

I move now to matters related to the Minister for Administrative Services, Minister for Industrial Relations, Minister for Recreation, Sport and Racing, and the Minister for Gambling.

Mr WILLIAMS: I refer to the Auditor-General's Report, part B, Volume 1, page 10: the transfer of funds to another government agency. The minister for water resources has given the parliament a breakdown of the chronology of events that occurred from the point of view of his department. The parliament is yet to have an understanding of how this matter unfolded in the minister's department, and I will be seeking to gain that through a series of questions. I understand that an email to the General Manager of DAIS arrived at the minister's department on 26 June from the Chief Finance Officer seeking a $5 million loan. On 27 June, the Executive Director of CS&BS (that is, the Business Services Section) advised the Chief Finance Officer that this transaction was not appropriate and should not proceed. Was the Executive Director of CS&BS an officer in the minister's department or in the Department of Water, Land and Biodiversity Conservation?

The Hon. M.J. WRIGHT: Before I answer the question, can I ask the shadow minister to clarify the title to which he made reference?

Mr WILLIAMS: It was the Executive Director of the CS&BS; that is, the Business Services Section. I am quoting the minister for water resources in a statement he made in the house on 13 October.

The Hon. M.J. WRIGHT: I am not able to comment on this title. As the shadow minister has said, the Executive Director of CS&BS comes from water resources. I think he acknowledged that. But I can provide an answer, I think, to the second question that has been raised by the shadow minister. The advice I have received is that the Department for Administrative and Information Services was not aware of the transaction that the member has asked about until the Auditor-General raised it with the department. I think that clarifies the second part of the member's question.

Mr WILLIAMS: I again refer to the Auditor-General's Report, part B, Volume 1, page 10. The Auditor-General refers to documentation supporting the transaction under the heading, 'Documentation supporting the transaction was inadequate'. He said:

> The only documentation available to support the transaction was an Expenditure Authorisation form and a brief email requesting the loan.

Was the expenditure authorisation form generated in the minister's department, who generated it and what form of authorisation did it have?

The Hon. M.J. WRIGHT: There are three parts to the member's question. If I miss one of those three parts, I will

ask the member to repeat it. The member asked about the form, and the advice I have received is that the form was generated by the General Manager of Finance within the Department of DAIS. Another part of the member's question is picked up in my second answer, in that it was processed by a subordinate, and it was then transferred through to Water Resources. As I have said, if I miss any of the parts to his question, I will ask the member to come back to them.

I would like to make a couple of other points. The government did not suffer a loss as a result of the transaction, nor was there even a remote risk of a loss occurring, and no attempt was made to conceal the transaction. In my earlier points, I hope I picked up the three questions asked by the member.

Mr WILLIAMS: Minister, you say that it was authorised by the General Manager of Finance in DAIS. On page 10, the Auditor-General says that, under Treasurer's Instruction 8, expenditure for supply, operations and other goods and services required cabinet approval for expenditure greater than $4 million. How is it that, in the first instance, the General Manager of Finance authorised a payment of 20 per cent more than that figure ($5 million), and how is it that that transfer of funds occurred and was not picked up by your department?

The Hon. M.J. WRIGHT: The advice I have received is that the Crown Solicitor has advised that the transaction represents a failure to comply with the Public Finance and Audit Act 1987 and the Treasurer's Instructions. However, given the nature of the transaction and its execution, the Crown Solicitor also advises that there is no basis for the Chief Executive to conduct an inquiry under the Public Sector Management Act. I do not think the shadow minister and I are in dispute here. This transaction should not have occurred, and I think that has previously been acknowledged in this house. As I have said, the Crown Solicitor has advised that the transaction does represent a failure to comply with the Public Finance and Audit Act, and that has been acknowledged.

Mr WILLIAMS: The Auditor-General goes on on page 11 with regard to the same matter. He says, under the heading 'Departmental Response':

> On 30 August 2004 the Chief Executive of DAIS responded that 'The issue raised by your office is of great concern and I am treating the breakdown in the internal control environment very seriously.'

Then there is a comment by the Auditor-General to this effect:

> The response did not provide detail, however, it did articulate a range of actions being taken, including taking action to review procedures and processes to ensure DAIS instigates adequate internal control procedures and implements an appropriate risk management strategy.

We are talking about, to put it very kindly, the escape of $5 million. Can the minister assure the committee that, notwithstanding that the response from his department to the Auditor-General provided no detail, he has reined in such escapes and that there will be no further escapes of amounts of the order of $5 million—or, indeed, much smaller amounts, which I think is probably of more concern to everybody worried about the situation?

The Hon. M.J. WRIGHT: I thank the shadow minister for his question, and it is a good question that I think warrants a detailed answer. Obviously, this is an important issue and I acknowledge the concern, which I also share. The shadow minister made reference to 'further escapes', and obviously I think it is important that we learn from this. DAIS is taking it very seriously—as it should—and it has done a number of things, some of which I perhaps can bring immediately to the attention of the shadow minister.

Consultants have looked at the internal control environment to provide advice in regard to that, and that has been an important step. There is also a process in the department to ensure that all transactions of a significant amount are checked and properly authorised—obviously, that is important. When we talk about a significant amount, we are generally talking in the order of about $50 000 or more. Thirdly, there has also been a restructure to separate the general manager of finance from the payment function. Some steps have been put in place. This has been treated very seriously by DAIS. DAIS is a well-organised department, which runs a tight ship and, obviously, has a range of responsibilities in its whole of government responsibility; so it needs to be very well organised. They have taken this very seriously. Those activities that they have pursued as a result of this certainly give us confidence for the future.

Mr WILLIAMS: I will move on to the Auditor-General's Report Part A, page 71, which refers to SA Water Corporation. The report states:

> SA Water Corporation is also estimated to have an above budget profit in 2003-04 reflecting increases in connections/extensions as a result of high levels of property development activity, offset by a reduction in revenue from water sales caused by the introduction of water conservation measures and weather conditions.

What changes, if any, to connection fees have occurred over the life of this government?

The Hon. M.J. WRIGHT: I do not have that sort of detail, but I will be happy to get it for the shadow minister. I can do that quickly and I will get back to the honourable member in a day or two.

Mr WILLIAMS: I would be interested to have the decrease on revenues that are referred to in that statement, also. I am concerned about risk to SA Water, which is a statutory authority of the South Australian government, under the banner of the South Australian government, an organisation which provides substantial funds to the state annually. In recent times, indeed in the last couple of weeks, there has been quite a controversy over a relationship between SA Water and a private company Home Service Direct. Will the minister tell the committee whether SA Water has underwritten in any way the private company Home Service Direct and/or the services it was to provide in South Australia?

The Hon. M.J. WRIGHT: I do not believe there is any reference in the Auditor-General's Report to Home Service Direct. I am happy to be corrected by the honourable member if he is able to refer me to a particular page. It is not relevant to the Auditor-General's Report. Suffice to say I have been asked a series of questions in the parliament over the past couple of weeks—and fair questions in the main, might I say. I can only repeat what I have already said on a number of occasions, that is, as the minister I have also asked questions of SA Water.

SA Water is taking advice from the Crown in regard to some issues and I await that advice. As I have said to the house during question time, I am not really in a position to be able to shed any new light because I simply do not have the advice at this stage. But I have acknowledged that if, in fact, there are issues that are brought to my attention as a result of the advice that comes back from the Crown, as the minister I will take the appropriate action. For example, there have been some assertions in regard to the breaking of

privacy. That is a very serious issue and if, in fact, SA Water has breached government guidelines in regard to privacy, it should not have—and I am not saying that it has or that it has not. That is why questions have legitimately been raised by the opposition. I have raised questions with SA Water as well and, obviously, there have been questions in the public domain. These are important issues and that is why I await the advice from the Crown. As I say, if there is a breach I will act accordingly.

Mr WILLIAMS: I acknowledge that Home Service Direct, to my knowledge, is not reported on in the Auditor-General's Report but I presume that at the time of preparing his report the Auditor-General, like the rest of South Australia, was unaware of the arrangements—whatever they might be—between the government of South Australia and Home Service Direct. Notwithstanding that, I understand that the minister has said in the media in Adelaide in recent weeks that there is a contract between the government and Home Service Direct. My question is: will the minister table that contract in the interests of letting the public know exactly what risk they may or may not have been exposed to?

The Hon. M.J. WRIGHT: As I have said, and it has already been acknowledged by the shadow minister, there is no reference in the Auditor-General's Report to Home Service Direct and as such he should not be asking questions about it—which I think he has obliquely acknowledged. So, I do not have a lot more to say on Home Service Direct except what I have said previously.

I do correct what was said, in fairness probably inadvertently, because I do not think he would have done it deliberately, but it is not the government that has a contract with Home Service Direct, it would be SA Water. Now, you may want to make the point that if it is SA Water then it is the government, but you could also make the point, of course, that SA Water is a commercialised entity, a statutory authority, as has already been acknowledged by the shadow minister. Who outsourced SA Water? The former government. And as a part of—

Ms Chapman interjecting:

The Hon. M.J. WRIGHT: I do not deny that. But as a part of providing that statutory authority with the responsibility of becoming a commercialised entity it also, of course, has a charter it operates to and that is what it is doing. That does not absolve it from its responsibilities and that is why I am going to await the Crown's advice. As I said, privacy should not have been breached and if it has been breached I will act accordingly. But I want to get the advice.

Ms Chapman: Will it be here before Christmas?

The Hon. M.J. WRIGHT: I think so.

Mr WILLIAMS: While we are correcting things, the minister said that SA Water had been outsourced; that is not right. The maintenance on the SA Water infrastructure has been outsourced through a contract to United Water, but I do not know how you could outsource SA Water itself. As the minister pointed out, it is a statutory authority and, indeed, one that comes under his responsibility.

Dr McFETRIDGE: I have a question to the minister, and it is a reflection on the efficiency of his officers and the great job they are doing in sport and recreation. I refer to the Auditor-General's Report, Part B, Vol. 1, p.17—it is a favourite area of his, I understand. Given that cabinet gave approval on 11 June 2002 to transfer the responsibility for the Hindmarsh Stadium from the Office of Venue Management to the Office for Recreation and Sport, when will the minister finalise arrangements with the South Australian Soccer Federation regarding loan obligations over the Hindmarsh Soccer Stadium, so that the loan obligations can qualify as a contingent liability and be disposed in the notes to accounts as proposed by the Auditor-General for the years 2002-03 and 2003-04?

The Hon. M.J. WRIGHT: I thank the shadow minister for his question and also appreciate his acknowledgment of the Office for Recreation and Sport. I also acknowledge the role that he plays as shadow minister. We certainly share a lot of functions and, in fact, we had one just last weekend in the member's electorate, which was a great function to attend. I guess it would not be unfair to say that this government wants to resolve those issues that have been left by the previous government in regard to Hindmarsh Soccer Stadium, and we want to do it as quickly as possible. It may also be fair to say that we have not had the ultimate cooperation from the South Australian Soccer Federation. They may deny that, but I have met with them on a number of occasions and asked for financial information, which has not been forthcoming. Officers of the Office of Recreation and Sport have met with them on a regular basis.

The background to this is that in 1996 and 1997 the former government entered into formal arrangements with the South Australian Soccer Federation for the capital redevelopment and fit-out works associated with the stage 1 construction of the Hindmarsh Soccer Stadium. The arrangement resulted in the soccer federation securing two loans, $4.1 million for stage 1 construction and $2 million for stage 1 fit-out, to be applied with the government funding to the aforementioned works. As part of the arrangements the government guaranteed the soccer federation's loans. The soccer federation has made no contribution to the loan repayments since 31 December 1998 and, as a result, the loan guarantees have been exercised and the government has met these loan repayments.

Notwithstanding this, DAIS has only disclosed a contingent liability in relation to the outstanding loan balances at note 26 to its financial statements. At 30 June 2004 total loan repayments met by the government under the guarantees amounted to $4.6 million. These amounts have been included in receivables along with additional interest accruals, in accordance with the loan underwriting arrangements. To date no payments have been received from the soccer federation in relation to the loans receivable balance. In recognition of this, allowance for doubtful loans amounted to the entire loans receivable balance, including the interest accrual component. Last year, audit considered that it was prudent to assess whether a liability should be recognised in the statement of financial position.

Audit's assessment, based on an analysis of relevant accounting standards and concepts, was that a present obligation exists as a result of the government entering into the guarantee arrangements. Based on previous loan repayment experience by the soccer federation, it is probable that the government will continue to meet future loan repayment obligations. The liability under the arrangements can be reliably measured. On this basis it was considered that, unless sufficient evidence can be provided to indicate that the Soccer Federation will meet future loan repayments, the outstanding loans be recognised as a liability. At present there are ongoing negotiations involving the government, the newly created Australian Soccer Association and the Soccer Federation concerning the management and funding of soccer in the state. Central to the government's bargaining position is the primary liability for the two loans. DAIS is of the

opinion that, whilst the Soccer Federation has not paid the interest on the loan in 2003-04, it would be highly speculative to make assumptions regarding the future management and funding of soccer in the state at this time.

Due to this uncertainty and given the length of time remaining on the loan arrangements, which are in place until 2016 and 2017, DAIS is of the opinion that the same accounting treatment apply, therefore the loans be disclosed as contingent liabilities. Once the negotiations are finalised, DAIS will consider the appropriate accounting treatment to be applied in 2004-05.

The CHAIRMAN: This completes examination of the Auditor-General's Report in relation to the Minister for Administrative Services, Minister for Industrial Relations, Minister for Recreation, Sport and Racing and Minister for Gambling.

The committee will now address the Auditor-General's Report in relation to the Attorney-General, Minister for Justice and Minister for Multicultural Affairs.

Ms CHAPMAN: I will be referring principally to the Auditor-General's Report Part B, Volume 3, and I refer initially to the comprehensive report from page 687 to page 689, in which the Auditor-General summarises the findings and assessments that he has made in relation to the Attorney-General's Department's conduct in relation to a number of transactions that specifically related to payments to and from the Crown Solicitor's Trust Account. Did the Attorney provide sworn testimony to the Auditor-General that he did not know about the existence of the Crown Solicitor's Trust Account?

The Hon. M.J. ATKINSON: This is a matter I have previously been asked about in the parliament. I was examined by the Auditor-General about whether I was familiar with the device of understating the department's cash at hand by placing unapproved carryovers of cash into the Crown Solicitor's Trust Account, and the answer was that I was not familiar with that ruse or device. It had not been disclosed to me. Although, as Attorney-General, I was aware that the Crown Solicitor's office would of course have a trust account or something like it, given that it was a group of solicitors, I had not turned my mind directly to whether there was a trust account called the Crown Solicitor's Trust Account. So, it was not something I recollected.

Ms CHAPMAN: It is true that the Attorney has been asked a number of questions about this, but he still has not answered my question, which was not whether he had been examined as to his awareness of the inappropriateness or otherwise in relation to—

The Hon. M.J. Atkinson: I understand the question.

Ms CHAPMAN: My question was: did he give sworn testimony to the Auditor-General that he did not know about the existence of the Crown Solicitor's Trust Account?

The Hon. M.J. ATKINSON: The answer is as I gave it. The Auditor-General is continuing his inquiry into this matter, and he will report in due course. At that time, it may or may not be appropriate for my testimony to be released as part of the report.

Ms CHAPMAN: I appreciate that the Auditor-General is continuing his inquiry in relation to matters to which he has referred in his report. Is the Attorney saying that he is continuing an inquiry in relation to his evidence as to whether he stated to the Auditor-General, under oath, that he did not know of the existence of the Crown Solicitor's Trust Account?

The Hon. M.J. ATKINSON: The Auditor-General is completing the audit of my department and in due course he will report. As to whether my testimony to the Auditor-General ought to be released, that is a matter about which I am taking advice.

Ms CHAPMAN: To your knowledge, is the Auditor-General conducting any further inquiries in relation to the issue of whether you gave evidence to him that you were not aware of the existence of the trust account? Is he conducting any further inquiry in relation to that or in relation to the matters on which he has reported?

The Hon. M.J. ATKINSON: The member for Bragg is trying to change the subject with a red herring. The question is whether any minister of the government (including me) knew about the device employed by some officers of the Attorney-General's Department to avoid Treasurer's instruction 19 in the Public Finance and Audit Act. Only Liberal Party members are even slightly interested in whether I could have answered in August if asked whether there was an account with the name Crown Solicitor's Trust Account within my portfolio.

These questions have been asked before, and I have answered them honestly and straightforwardly. Indeed, on 28 October the Leader of the Opposition told the house that the Crown Solicitor's Trust Account was mentioned on pages 4, 5 and 6 of my 2002 briefing for incoming government. Of course, this statement from the opposition was meant to convey to the house that the Crown Solicitor's Trust Account was mentioned at least three times in the first 10 pages of the 2002 briefing for incoming government.

The briefing for incoming government is contained in three lever arch files: one of 458 pages, one of 159 pages, and one of 146 pages. The pages are not consecutively numbered. If they were consecutively numbered, the pages to which the Leader of the Opposition referred would be pages 71, 72 and 73 of one of the files. They are only pages 4, 5 and 6 of the 31st segment of one of the files. There is no mention of the Crown Solicitor's Trust Account on page 5 of the 31st segment, as the Leader of the Opposition claims.

The relevant words are (and I am sure the member for Bragg is interested in this; that is why she is paying close attention) 'Crown Solicitor's Trust Account used to record the receipts and disbursement of monies pertaining to the financial settlement of legal transactions between parties'. This is the 25th dot point of 29 dot points listing administered items of the Attorney-General's Department. I would appreciate it if the Leader of the Opposition had the good grace to apologise to the house for his attempt to mislead it, but I am not holding my breath about that. The member for Bragg is just trying to attribute to me knowledge of this ruse because the Crown Solicitor's Trust Account is mentioned at the 25th dot point of 29 on page 73 of my incoming government brief that runs to more than 700 pages. If the member for Bragg thinks she has got a smoking gun, well good luck to her.

Ms CHAPMAN: Why then did the Attorney tell the Auditor-General that he did not know of the existence of the Crown Solicitor's Trust Account?

The Hon. M.J. ATKINSON: That question has been asked and answered before.

Ms CHAPMAN: I would ask the Attorney then to identify when he answered the question why the Attorney-General told the Auditor-General that he did not know of the existence of the Crown Solicitor's Trust Account?

The Hon. M.J. ATKINSON: I am unaware of any inconsistency here. That question has been asked and answered. The fact is that in the 2002 incoming government briefing there was a passing reference to the Crown Solicitor's Trust Account as an administered item. As I said, it is the 25th dot point of 29 dot points at page 73 of a briefing exceeding 700 pages. Now if I could remember that with absolute clarity, I would be the rainman and members of the house would have serious doubts about my sanity on that ground alone.

Ms CHAPMAN: Has the Attorney received any correspondence from the Auditor-General on the subject of the 2003-04 accounts and, in particular, any invitation to comment upon the draft report or preliminary findings?

The Hon. M.J. ATKINSON: Could the member for Bragg repeat the question?

Ms CHAPMAN: Has the Attorney received any correspondence from the Auditor-General on the subject of the 2003-04 accounts and, in particular, any invitation to comment upon a draft report or preliminary findings?

The Hon. M.J. ATKINSON: I am advised that the Auditor-General gave the head of my department an opportunity to see the draft report and, if necessary, comment on it. The head of the department came to me and briefed me about what was in the report. Let me correct that. It was a late opportunity for the head of the department to look at the report. The report had already gone to print, but the head of the department did have an opportunity to look at the report before it was released publicly but not really an opportunity to comment on it. The head of the department briefed me as to what was in the report.

I gather that it is quite common for stakeholders to be asked to comment on the Auditor-General's findings before they are made public. I will take on notice the question of whether I was asked independently of the head of the department and I will get back to the member for Bragg about that.

Ms CHAPMAN: When he received the briefing, did the Attorney read the correspondence and the draft report?

The Hon. M.J. ATKINSON: I was provided with an oral briefing only.

Ms CHAPMAN: Did the Attorney request his head of department to provide the report?

The Hon. M.J. ATKINSON: The head of the department advises me that he briefed me orally on a Monday, but he is not sure what Monday that was. We will get the date upon which was I was orally briefed by him about the matter.

Ms CHAPMAN: Having received the oral briefing, did the Attorney ask to have a look at a copy of the draft report and the letter of invitation?

The Hon. M.J. ATKINSON: I would have been satisfied with the briefing because I had confidence in the head of the department to brief me correctly about all matters that were relevant.

Ms CHAPMAN: Notwithstanding that a number of issues of concern were raised in the draft report (and the Attorney indicates that it had gone off to the printers), did the Attorney not seek, at any time prior to its publication in the house, to view a copy of the draft report and the letter of invitation?

The Hon. M.J. ATKINSON: I have to take that question on notice. The member for Bragg is asking for quite minute detail.

Ms CHAPMAN: The financial accounts for the Attorney-General's Department have not been completed, according to the report of the Auditor-General. Indeed, he says that not only have the financial statements not been finalised but also that the audit has not been completed in time for inclusion in the report. Has the Auditor-General now been provided with a corrected or amended set of financial statements?

The Hon. M.J. ATKINSON: Yes; the Auditor-General has been provided with those.

Ms CHAPMAN: When was that?

The Hon. M.J. ATKINSON: We will take that question on notice.

Ms CHAPMAN: Has the Attorney-General received any advice from the Auditor-General, or his office, to indicate when the supplementary report will be available?

The Hon. M.J. ATKINSON: I am advised that the auditing of the department's accounts has now been completed, and we are due to receive the report on Friday.

Ms CHAPMAN: Upon receipt of the supplementary report, will the Attorney make himself available to the committee for questioning in relation to that report?

The Hon. M.J. ATKINSON: I understand that the opposition had the choice of delaying this examination until the supplementary report came in, in which case I would have made myself available for examination by the member for Bragg, and other members of the opposition, for 30 minutes on the supplementary report. However, the opposition chose not to do that because it prefers a bit of argy-bargy about whether or not I knew about the existence of, or could name, a trust account called the Crown Solicitor's Trust Account before August this year. It has made its election.

Ms CHAPMAN: Therefore, notwithstanding that there is no opportunity for this committee to ask questions in relation to these matters, a number of other matters are in this report. But, in relation to the financial accounts of this area of responsibility of the Attorney, he declines to make himself available.

The Hon. M.J. ATKINSON: I have not said that I have declined to make myself available. The opposition had an opportunity to examine me for half an hour about the Auditor-General's supplementary report, as the member for Bragg puts it, and it chose not to do so because it would rather best me about the much attenuated report in front of it, because it is politically sexier for its purposes. That is a choice that the Liberal opposition made, and it did so for reasons best known to itself. Whether we will have a special half-hour of parliament dedicated to the supplementary report I cannot say because I do not know.

Ms CHAPMAN: The Attorney is aware of the new policy of the government and in particular the Treasurer's direction in relation to the process that was to take place in the event of unspent funds in the departments, and indeed he was a member of the cabinet that approved this process. Did the Attorney receive any advice from Ms Kate Lennon or, indeed, anyone else of the likely effect on his department of this direction?

The Hon. M.J. ATKINSON: Mr Chairman, I cannot recall any minutes, that is to say written briefings, about this matter. That is not to say that there were not any, but I do not recall any. There is an exhaustive process going on in my department now to provide the opposition with anything to do with Treasurer's Instructions or carryovers or the Crown Solicitor's Trust Account under the freedom of information legislation. I would regard it as a near certainty that Kate Lennon or her deputy, who accompanied her to meetings with me twice a week, would have at some stage complained about Treasury. Of that I am certain. I do not have a recollection of

their complaining about the effect of Treasurer's Instruction 19, but it is quite possible that they did.

The point is that Treasurer's Instruction 19 was a decision of the cabinet of which I was a member, and I regarded it as going without saying that everyone who worked in my department, let alone the chief executive who was responsible for, and signed off on, financial matters, would comply with Treasurer's Instruction 19. That is how our departmental structure is set up in South Australia: the chief executive officer and the chief financial officer are the people responsible for the financial matters in the department; it is the chief executive officer who signs the financial statement, not the minister. So much is established under the act. I can well understand that the chief executive officer of my department would have found the change in policy on carryovers quite traumatic. There was a very good discussion of the merits of the Liberal government's carryover policy compared with the Labor government's carryover policy in the *Independent Weekly*, the new paper published on Sunday, and I read that analysis with interest.

People of goodwill can disagree about the merits of Treasurer's Instruction 19. I sympathise to some extent with Kate Lennon having to come to terms with the radically different and more rigorous budgetary policy of the new government. So, it is quite possible that during our conversations on a Monday afternoon after cabinet or on a Thursday afternoon, Kate Lennon or her deputy canvassed budgetary difficulties. Kate Lennon was a formidable foe of Treasury in the budget bilaterals. Just speaking as someone who is barracking for my department, I think she was outstanding in the budget bilaterals in arguing for the department's need. So I have no criticism of her in that respect.

The point remains that Treasurer's Instruction 19 was a policy of the government, and violating it was a breach of the Public Finance and Audit Act. The Auditor-General made a finding, and the government stands by that finding. Indeed, it wrote to Kate Lennon asking if she cared to respond to the Auditor-General's criticisms, and she chose to resign instead; and that is Kate Lennon's prerogative. In many respects it was a joy to work with Kate Lennon in the justice department during the period she was my chief executive, and I regret the way things have turned out. Nevertheless, it would appear that Kate Lennon and other officers have violated Treasurer's Instruction 19—the Auditor-General has so found—and Kate Lennon has resigned.

Mr Hamilton-Smith: Did you charge her?

The CHAIRMAN: Order!

Members interjecting:

The Hon. M.J. ATKINSON: No; I would actually like to answer that, if I may. Is that a question?

The CHAIRMAN: Order! It is an interjection, so it is out of order.

The Hon. M.J. ATKINSON: It is a summary offence; anyone can charge.

Ms CHAPMAN: The Attorney was aware and cognisant of the requirements in relation to the direction and, indeed, as the Treasurer reported to this house on 31 March 2003, the Attorney-General's Department had an underspend of nearly $18 million, and the only carryover was just over $10 million, so there was, in fact, a direct loss. I fully accept that the Attorney was very familiar with not only the requirement but, indeed, the consequence, if there had not been—

The Hon. M.J. Atkinson: You are asserting it.

Ms CHAPMAN: Well, does the Attorney-General agree that, indeed, he did have an underspend in 2001-02 of nearly $18 million, and that the only carryover was $10 million?

The Hon. M.J. ATKINSON: The examination of these accounts is the examination for the last financial year, which is what the Auditor-General was examining. The member for Bragg asks about the accounts for 2001-02, that is, ending on 30 June 2002. For most of that period, the attorney-general was the Hon. K.T. Griffin of blessed memory; for three months it was the current shadow attorney-general, and for three months it was me. I am not sure why I am the one who is asked about this when the member for Bragg could simply ask her colleagues. It is not that financial year we are dealing with now. I had been the Attorney-General for a very short period. I was aware that the Treasurer required cuts of between 2 and 3½ per cent in all departmental budgets. There was considerable stress on our department to meet its budgetary targets, and we had to make cuts at that time, the most notorious of which were cuts of $800 000 to the local government crime prevention program. So, yes; I was aware of budgetary stress at that time.

Ms CHAPMAN: Was the Attorney aware of that?

The CHAIRMAN: Order! Time has expired. That concludes the examination of the Auditor-General's Report in relation to the Attorney-General, Minister for Justice, and Minister for Multicultural Affairs.

Progress reported; committee to sit again.

SUMMARY OFFENCES (TATTOOING AND PIERCING) AMENDMENT BILL

The Legislative Council agreed to the bill with the amendments indicated by the following schedule, to which amendments the Legislative Council desires the concurrence of the House of Assembly:

No. 1. Page 4, lines 13 to 14 (clause 5)—Leave out '18 years' and insert:

16 or 18 years, as the case may require

No. 2. Page 4 (clause 5)—After line 15 insert new definition as follows:

'minor' means—

(a) in the case of a genital piercing—a person under the age of 18 years; or

(b) in all other cases—a person under the age of 16 years;;

No. 3. Page 5—After line 16 insert the following:

Code of practice

21D. (1) The Minister must, after consultation with at least one body that represents the interests of tattooists and body piercers in South Australia, establish a code of practice for tattooists and body piercers.

(2) The Minister must publish the code of practice in the *Gazette.*

(3) The Minister may vary or revoke the code of practice by notice in the *Gazette.*

(4) A tattooist or body piercer who contravenes the code of practice is guilty of an offence.

Maximum penalty: $1 250.

Disciplinary action

21E. (1) There is proper cause for disciplinary action against a person conducting, or formerly conducting, the business of tattooing or body piercing if—

(a) the person has acted contrary to an assurance accepted by the Commissioner under the *Fair Trading Act 1987*; or

(b) the person or any other person has acted contrary to section 21A, 21B, 21C or 21D or otherwise unlawfully, or improperly, negligently or unfairly, in the course of conducting, or being employed or otherwise engaged in, that business.

(2) Disciplinary action may be taken against each director of a body corporate that is conducting, or formerly conducted, the

business of tattooing or body piercing if there is proper cause for disciplinary action against the body corporate.

(3) Disciplinary action may not be taken against a person in relation to the act or default of another if that person could not reasonably be expected to have prevented that act or default.

(4) The Commissioner or any other person may lodge with the Court a complaint setting out matters that are alleged to constitute grounds for disciplinary action under this section.

(5) On the lodging of a complaint, the Court may conduct a hearing for the purpose of determining whether the matters alleged in the complaint constitute grounds for disciplinary action under this section.

(6) Without limiting the usual powers of the Court, the Court may during the hearing—

(a) allow an adjournment to enable the Commissioner to investigate or further investigate matters to which the complaint relates; and

(b) allow the modification of the complaint or additional allegations to be included in the complaint subject to any conditions as to adjournment and notice to parties and other conditions that the Court may think fit to impose.

(7) On the hearing of a complaint, the Court may, if it is satisfied on the balance of probabilities that there is proper cause for taking disciplinary action against the person to whom the complaint relates, by an order or orders do one or more of the following:

(a) reprimand the person;

(b) impose a fine not exceeding $2 500 on the person;

(c) prohibit the person from conducting, or being employed or otherwise engaged in, the business of tattooing or body piercing;

(d) prohibit the person from being a director of a body corporate that conducts the business of tattooing or body piercing.

(8) The Court may—

(a) stipulate that a prohibition is to apply—

(i) for a specified period (not exceeding 7 years); or

(ii) until the fulfilment of stipulated conditions; and

(b) stipulate that an order relating to a person is to have effect at a specified future time and impose conditions as to the conduct of the person or the person's business until that time.

(9) If—

(a) a person has been found guilty of an offence; and

(b) the circumstances of the offence form, in whole or in part, the subject matter of the complaint,

the person is not liable to a fine under subsection (7) in respect of conduct giving rise to the offence.

(10) If a person contravenes or fails to comply with a condition imposed by the Court as to the conduct of the person or the person's business, the person is guilty of an offence.

Maximum penalty: $35 000 or imprisonment for 6 months.

(11) If a person—

(a) conducts, or is employed or otherwise engaged in, the business of tattooing or body piercing; or

(b) becomes a director of a body corporate that conducts the business of tattooing or body piercing,

in contravention of an order of the Court, the person is guilty of an offence.

Maximum penalty: $35 000 or imprisonment for 6 months.

(12) In this section—

'Court' means the Administrative and Disciplinary Division of the District Court;

'Director' of a body corporate includes—

(a) a person occupying or acting in the position of director or member of the governing body of the body corporate, by whatever name called and whether or not validly appointed to occupy or duly authorised to act in the position; and

(b) any person in accordance with whose directions or instructions the directors or members of the governing body of the body corporate are accustomed to act.

MATTER OF PRIVILEGE

The SPEAKER: The house will be aware that the chair has been asked by the member for Waite to deliberate upon and determine whether or not there is a matter of privilege. The chair has that matter under active consideration. The remarks the chair needs to make to the house now do not go to the substance of that matter. It has not been possible for the chair to give adequate time and objective consideration, in company with sound counsel, to come to any reasonable conclusion about it.

Notwithstanding that, earlier today, the member for Waite raised a matter regarding the decision of the chair of the Economic and Finance Committee to direct the secretary of that committee to call a meeting of the Economic and Finance Committee for 9 a.m. tomorrow. The secretary of that committee has today written the following letter to the Auditor-General:

Re Economic and Finance Committee.

The Economic and Finance Committee will meet on Thursday, November 11 at 9 a.m. at which you are invited to attend to give evidence. The Presiding Member has convened this meeting for the purpose of your giving evidence to the Committee which will be confined to providing further information with respect to the evidence provided by you at the hearing of 20 October 2004 concerning the Crown Solicitor's Trust Account.

From your phone call I understand that you wish to provide information regarding your attendance on that date when you wished to provide information to clarify comments made in the Auditor-General's Report regarding the Crown Solicitor's Trust Account. I understand you have made yourself available to appear at the nominated time. Please present yourself at Centre Hall for direction to the Committee meeting room. Paul Lobban, Committee Secretary.

Kindly, a copy of that letter has been furnished to the chair. Some observations need to be made about that matter—or, more particularly, the proceedings of the committee.

In the first instance, it flies in the face of the committee's own determination earlier today that it would invite the Auditor-General to give evidence at its next meeting on 24 November. Whilst the chair acknowledges that that is the case, the chair has to take into consideration the fact that it is possible for the committee, should there be something of an urgent nature arising, to call together a meeting of its members to determine that matter. Whilst I had suggested an earlier time this year, the chair of the committee—the Presiding Member—ought to have done that in order to get the committee's endorsement of decisions she was making to go to other parts to get information; that was not possible at that time. However, in response to remarks made by the Auditor-General, one assumes that the decision was made by the chair, subsequent to the meeting today, to accede to his request that a committee meeting be held so that he can further deal with the evidence which he gave about those matters which were the subject of his remarks on 20 October.

If the Auditor-General considers that there are things the house ought to know about, there is no reason on this earth or in our constitution, his act, our standing orders or the committee itself that would prevent him from writing a letter providing that information to the chamber. That would be the simple and civil thing to do and a thing that is properly contemplated in the conventions and procedures of this house throughout its life. If the Auditor-General wished to write to the other place for reasons related to matters on foot in that place, he can do likewise and write to the presiding member there, because the presiding member is not a person but merely charged with the responsibilities and duties of the chair in acting, in this instance, as a conduit of information, the point of contact in law—an elected representative from amongst all elected representatives to be the person to take the role of the chair in the parliament as it is constituted. Why on earth the Auditor-General chooses not to do that beggars

my imagination; I cannot find a reason. I say that as a human being; I say it also as the chair in this chamber.

Let me go on and further explain. If it is the determination of the committee that it should meet at 9 o'clock in the morning to do this, there is nothing the chair can do to stop it. However, it is the chair's view that, should that occur, two things need to be borne in mind of the three things that can be presented to the committee by the Auditor-General. Two of them will be highly disorderly and in contempt of the parliament. The first, of course, is the category of information into which the Auditor-General went as a frolic of his own accord during the proceedings of the last committee but one; indeed, on the day of 20 October.

The proceedings of the Economic and Finance Committee and, indeed, its meeting place are not a forum for anyone—the Auditor-General or anyone else—to make any remarks about any other member of the parliament or, more especially, either the President or the chair in this chamber, or both of us. I will not go further on that, other than to say that it seems that the Auditor-General cannot read. He cannot read the correspondence which was sent to him by the joint presiding officers or the act which authorises him and appoints him, or the standing orders that govern the conduct of business in committees.

The second matter which the committee must not entertain if the Auditor-General appears before it is the circumstances of his appearance on 20 October. Such information must go straight to the house. If it is the purpose of the meeting to hear evidence about the transfer of funds that is relevant to a clearer understanding, then, as I have said before, that could have been the subject of a letter. But, in the event that the committee meeting is to proceed (against what I would say in my political judgment is a desirable course of action), then it can only be about those matters—and I will say this so that it is clear to everybody—to give further evidence about the transfer of funds from one government department or agency, or more, into the Crown Solicitor's Trust Account.

The chair has made remarks about that on a previous occasion and it is not germane or appropriate for me to go there now because they are the areas under contemplation of the privilege matter. The simple fact is that such evidence can be useful to that committee in coming to conclusions about what happened in the formation of an opinion and the collection of data for presentation to this chamber. As I have said, in the circumstances and the atmosphere of the chamber at the moment where adversarial advocacy has taken over the agenda of too many parliamentary committees (indeed, one would be too many, and this one in particular), the sooner the committee gets back to the job of collecting data for the house, analysing that information and providing it in a detailed report to the house (even if in the circumstances a minority report accompanies it), the better. That is the role and function of the committee. It is not to try to second guess what is going on in the chamber and to continue to play the game of adversarial advocacy in the day's proceedings of debate on polity through the committee process. That is not what parliament establishes its committees to do.

There is one other matter of grave concern to me. During the course of the afternoon, after having gone to the committee this morning as part of what I am required to do in law to consult with the committee, either with the committee directly or through its presiding member, I put before the committee my concerns about the conduct of some of its business. A fairly detailed statement of that has been provided by a member of the committee who is present (I certainly did not provide it to anyone and refused to do so because it was provided to the committee in camera) and circulated widely. When I say 'widely', what I mean is I have been contacted by journalists from as far away as Cairns and Hobart, from agencies such as Australian Associated Press and Reuters, as well as state current affairs and national current affairs articles writers, and radio and television journalists.

It can only mean that there has been a deliberate campaign to try to embarrass the chair in consequence of the remarks which it made to the committee in camera. That is highly disorderly. Whomever it was on that committee who did that should be ashamed of themselves. It brings the parliament into disrepute. It certainly does not help the committee's standing, nor does it help public understanding of the role of a committee in the parliament. I will not engage in a witch-hunt and the matter ought to rest at that point, but let it be a lesson to all of us that it will not help the better understanding by the public of the issues that we investigate in their interests and on their behalf for us to play such silly games.

Accordingly, I leave the matter at that, with the reminder that standing order 385 is the standing order that is more operational perhaps than any other, should the committee decide to proceed with the matter; and it may do so, either on a motion from this house directing that it be undertaken now, in which the case the committee is obliged, or in consequence of the committee deciding to proceed in its own time in its own right, but not in so far as the circumstances of the appearance of the Auditor-General before the committee on 20 October is canvassed. That is out of bounds. I thank the house for its attention.

The Hon. M.J. ATKINSON (Attorney-General): Is there an opportunity to comment on your remarks?

The SPEAKER: No, not to debate, other than by substantive motion. That motion can take any form, but it is up to the house.

The Hon. M.J. ATKINSON: I simply, respectfully, disagree with your interpretation.

The SPEAKER: Whatever the case. Is it the house's wish to adjourn or to proceed to another matter on the *Notice Paper*?

The Hon. M.J. ATKINSON: I take the opportunity to move:

That the house gives the Economic and Finance Committee full scope to examine the Auditor-General as to the circumstances of his appearance before the committee on 20 October.

The SPEAKER: It is not competent to accept such a motion.

Mr BRINDAL: I rise on a point of order, sir. My point of order is that to entertain such a motion would, I believe, be entirely disorderly without at least a suspension of standing orders, since it flies in the face of those very orders you, sir, have just talked about.

The SPEAKER: I have said the motion in the form in which it has been presented is out of order. I think the most sensible way for us to proceed now is to adjourn, go home and sleep on it.

The Hon. M.J. ATKINSON: Sir, are you directing the Economic and Finance Committee? If you are, your direction is contrary to standing orders and, respectfully, I disagree with it.

Members interjecting:

The SPEAKER: Order! The chair in any circumstances does not answer questions, but, in order to disabuse the mistaken impression the Attorney-General may have, the

chair has not directed the Economic and Finance Committee that it may not meet. It has its choice to do so when it gets together tomorrow morning. One of the things it cannot do is go to the substance of the circumstances surrounding the appearance. It may obtain further information about the transfer of funds, but it cannot pre-empt the matter of privilege before the house.

The Hon. M.J. ATKINSON: If that is your ruling I wish to dissent from it.

The SPEAKER: It is not a matter of dissenting from my ruling. It is a matter of just ripping up the rule book—

The Hon. M.J. ATKINSON: I can read standing order 385, too, and it simply does not say what you, sir, say it does.

The SPEAKER: I have not said that that is what it says. I have said that, on the wise council I have been given, if at its hearing tomorrow by chance the committee decides to proceed and hear the Auditor-General it can do so if it is to give further evidence about the transfer of funds. But the committee may not go to the question or questions surrounding the circumstances of the appearance of the Auditor-General before the committee. At best, that is indirectly critical of both the member for Waite—the member for Waite having exercised the right to raise that matter—and the chair itself in the chair's desire to contemplate the issues, such as they may be, put by the member for Waite. And, the house cannot have two inquiries contemplated on the same matter on foot at the same time.

The Hon. M.J. ATKINSON: Mr Speaker, we are having two inquiries now—a select committee and an Economic and Finance Committee inquiry—into the same matters. Sir, your interpretation is, respectfully, completely wrong, and I want to signal to you that the Economic and Finance Committee should and will look at that very matter tomorrow.

The SPEAKER: If it does, the committee is deliberately second guessing what the chamber may choose to do in a deliberate attempt to subvert what the chamber's intent may be after the chair has contemplated it. One of the rules in law is that you cannot try the same matter in two courts at the same time. Indeed, you cannot even decide whether there is a matter to be tried—and in this case the honourable—

The Hon. M.J. ATKINSON: Mr Speaker, we do not have a privileges committee yet.

The SPEAKER: I know that we do not, but we do have a request to contemplate whether there ought to be one. The chair will not engage in further debate on that matter.

Mr BRINDAL (Unley): Mr Speaker, could I ask you—at your leisure—to consider the remarks made by the Attorney-General. The Attorney-General is not a member of the Economic and Finance Committee, yet he has said, in the face of this house, what the intention is of a committee of which he is not a member. I ask you at your leisure, sir, to consider that statement.

The SPEAKER: What on earth the honourable member for Unley would otherwise have expected me to do I have no idea. Naturally, what else can the chair do?

Unless there is a motion to adjourn the chamber or some other thing, I am going to call on the business of the day on the *Notice Paper*.

Ms THOMPSON (Reynell): Sir, I have listened carefully to your comments and you—

The SPEAKER: Notwithstanding the honourable member for Reynell's desire to respond, the chair has already said that it will not further debate the matter. I have explained the position.

Ms THOMPSON: Sir, as the chair of the committee concerned I seek to be absolutely clear about your ruling.

Members interjecting:

The SPEAKER: Order!

Ms THOMPSON: Sir, you read to the house the letter provided by the Secretary of the committee to the Auditor-General concerning his appearance tomorrow. That sets out the matters that, I, as chair, indicated were to be the business of the meeting tomorrow.

Members interjecting:

The SPEAKER: Order!

Ms THOMPSON: Can I please have a clear ruling from you in relation to matters raised in that letter, and I think it was the third paragraph, where matters were set out indicating that we wished to discuss matters relating to his attendance at the committee previously. Can you please rule on your view as to whether or not those matters can be discussed by the committee?

The SPEAKER: Firstly, the simple solution to the matter is for the Auditor-General to write a letter to the chamber through the chair. If that is considered to be beneath the dignity of the Auditor-General then the Auditor-General may appear before a meeting of the committee and proceed to give further evidence about the transfer of funds, which were countenanced in the broad set of ideas in the paragraph, and I quote:

> From your phone call I understand that you wish to provide information regarding your attendance on that date.

Well, what information, and what type of information? Clearly, the secretary of the committee has learnt nothing and has not examined either the enabling act, the Auditor-General's act, and the standing orders, and the fact that, as part of the process, there is, whether I would want it to be so or not, a request for a prima facie case determined as to whether a privileges committee ought to be established. I, on taking advice about that, have been counselled to the extent that the circumstances surrounding the appearance of the Auditor-General at the meeting of 20 October may not be part of the proceedings of the Economic and Finance Committee. What may be part of the proceedings is to give further evidence about the transfer of funds, the processes that were involved in it, that were discovered by the Auditor-General, which may need clarification and which would, therefore, justify in some measure the express desire of the Auditor-General to appear before the committee. One also needs to make the remark now, as an aside yet again, that that committee is not the plaything and the forum and the stage for the Auditor-General.

There is no such thing as a special relationship such as was invented as a term by, I believe, this Auditor-General in recent years. The law as we have it appointing the Auditor-General, and the law as we have it appointing the committee, determines the nature of the relationship between the Auditor-General and that committee, and equally the same law in general, and our standing orders, determine how the Auditor-General ought to communicate with the parliament. Just because he has some fancy does not mean that it is factually realistic. What we now therefore must do is either get on with the business of the day or adjourn and come back and make a day of it tomorrow.

ADJOURNMENT

At 11.56 p.m. the house adjourned until Thursday 11 November at 10.30 a.m.