HOUSE OF ASSEMBLY

Monday 14 February 2005

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

TAXES, INCREASES

A petition signed by 573 residents of South Australia, requesting the house to urge the government to legislate to remove the relationship between property value increases and increases in land, council and water/sewer taxes and tie future increases to these taxes to CPI or minimum wage increases, was presented by Mr Hanna.

Petition received.

INFANT HEARING SCREENING

A petition signed by 134 residents of South Australia, requesting the house to urge the government to implement a screening program to detect permanent hearing impairment in infants by the age of two months and adopt the recommendations of the evaluation report into the newborn screening and assessment pilot program conducted in 2003-04, was presented by the Hon. D.C. Kotz.

Petition received.

AIR-WARFARE DESTROYERS

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

Leave granted.

The Hon. M.D. RANN: Yesterday, in Melbourne, Victoria's Premier, Steve Bracks, was reported in the media as saying that Adelaide could not be trusted to build the Royal Australian Navy's new $6 billion air-warfare destroyers. The report claimed—

Members interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN: The report claimed that South Australia had 'botched' the Collins Class submarines and therefore we did not deserve to win the air-warfare destroyer contract. False claims like this do nothing to help Victoria's case. These and similar claims reported last year in Melbourne's *Age* that somehow South Australia had the deal fixed because of political favouritism by the Howard government demonstrate a growing panic in Melbourne that Victoria may be about to lose one of the largest defence contracts ever awarded in this nation's history.

The Victorians are having a panic attack over this contract. Mr Bracks, who is a decent man, a great Premier and a friend of mine, unfortunately has it wrong on this one. As this parliament would be aware, South Australia and Victoria are competing for this very important and lucrative contract. Four bids were lodged late last year with the commonwealth government's Defence Materiel Organisation, which are currently being assessed for a final recommendation to federal cabinet within the next few months. One bid is from the Tenix group who own the Williamstown dockyards in Melbourne. Two bids proposing South Australia as the construction site are from the Australian Submarine Corporation and the same Tenix group which has its second bid based on also using the Osborne site in South Australia.

There is a fourth bid, which came in late from the US firm Northrop Grumman, although where it proposes to carry out the contract in Australia is yet unclear. The Victorians know that South Australia has by far all the natural advantages that come with delivering such a large and challenging defence capability. We have the best work force—

Members interjecting:

The Hon. M.D. RANN: It seems that some members opposite seem to be cheering on the enemy. We have the best—

Members interjecting:

The Hon. M.D. RANN: Okay, here is a message for the Victorians. I hope that all members of parliament will support this message. We in South Australia have the best work force, the best industrial relations record, the most effective cluster of defence groups anywhere in Australia and therefore the best capability of any state.

The bipartisan support from this government, and certainly the Leader of the Opposition, in backing the bid to win the contract for South Australia, is second to none. The obvious vulnerabilities of Victoria are there for all to see. Let us give them a real message today. Over the decades Victoria has endured an appalling industrial relations record, compared to South Australia. On industrial relations Victoria has the worst record of days lost due to industrial strike action of any state in Australia. So on industrial relations, the worst strike record in this nation is in Victoria. In the five years to June 2004 Victoria has lost, on average, 368 working days per thousand employees. South Australia's record of days lost is 67 per cent lower than that of Victoria and 59 per cent lower than the national average. In other words, we have the best industrial relations record of any mainland state in Australia, and Victoria has the worst industrial relations record in this nation. So why would the federal government choose to award Victoria's poor industrial relations record? This is one of our great advantages.

In addition to a superior work force that has worked on the high-tech submarines, we also have a very large grouping of defence, electronics and weapons systems companies in Australia. That is why Western Australia is backing our bid for the air-warfare destroyers contract, which was a great coup and a great example of collaboration. We are backing Western Australia on some of their bids and they are backing ours on others.

Under the deft handling and leadership of the Chief Executive of the South Australian Government Defence Unit, Rear Admiral Kevin Scarce, South Australia's bid has been based on its skills, innovation, collaboration and the whole of industry approach to winning the contract. An outstanding board is working on this project for South Australia, including former federal Liberal defence minister Ian McLachlan, and presumably members opposite would welcome his involvement.

Victoria has a small 19th century shipbuilding site that is surrounded by affluent suburbia. South Australia's site at Osborne will have a brand-new maritime ship-building facility with a multi-million dollar ship lift, and other infrastructure, funded by the South Australian government, with plenty of room for expansion in the future. The site, combined with a highly skilled and dedicated work force, will be capable of delivering this and the next generation of naval warships. The Australian government has assured all bidders that the contract will be won on merit and that is why this government is confident, but by no means complacent. I also thank the board, and particularly people like Robert de

Crespigny and Ian McLachlan for their outstanding work. Unlike Victoria, we are not having a panic attack. I can assure the house that as a government we will be doing all we can between now and when the contract is announced to help South Australia win this contract. We expect the federal government to announce the winning bid in May or June of this year.

COMMITTEE PROCEEDINGS

The SPEAKER: During the course of proceedings last week the question of evidence obtained by committees acting either on motions from either or both of their appointing houses or on their own motions came under consideration in this chamber and elsewhere. Whilst some of the public remarks made by honourable members about that were unfortunate, nonetheless an undertaking given by the chair at the time in the house itself to convene a meeting of the Standing Orders Committee as quickly as possible has been observed. The Standing Orders Committee met this morning. It considered the issues the chair undertook to place before it last Thursday. The committee endorses the ruling given by Speaker Gunn on 9 August 1994 in so far as it relates to unauthorised disclosure of evidence. That remains an offence which no member should commit.

Regardless of whether or not evidence is public, standing order 259 remains in force by virtue of the fact that it is not within the power of the Standing Orders Committee to change that standing order. It provides:

> No debate may take place on any proceeding of a committee of the whole house or a select committee on a bill until the proceedings have been reported.

It applies equally to standing committees. Whilst the Standing Orders Committee may wish to further exercise its mind as to the desirability of retaining standing order 259, I repeat that it remains in force. I quote from the recently published *House of Representatives Practice*, 4th Edition as follows:

> It has been held to be out of order to ask a question. . . which refers to proceedings in committee, including standing and select committees, not reported to the house. In relation to the proceedings of a committee not reported to the house, no exception has been taken to questions merely coinciding in subject matter with current committee inquiries.

The following private ruling of President Cormack (of the Australian Senate) has equal relevance to the house, and I am still quoting from *House of Representatives Practice*, 4th Edition, even though that in turn quotes Senator Cormack; and I do so accordingly:

> . . . if I were to rule that questions should not be allowed on any matters which may be under examination by committees, such a rule strictly applied would operate to block questions on a very wide variety of subjects. The practice which I follow, and which I shall continue to follow, unless otherwise directed by the Senate, is to allow questions seeking information on public affairs for which there is ministerial responsibility, provided that such questions are not of a nature which may attempt to interfere with a committee's work or anticipate its report.

May I emphasise, as chair, for the benefit of the house, the importance of the two words in President Cormack's remarks 'interfere' and 'anticipate'. Determining what might interfere with a committee's work or may anticipate its report is a matter of judgment for the Speaker and one which relies on the good sense of members and their commitment to the underlying principles. Committees should be able to conclude their deliberations and report their findings without ongoing discussion of the same issue in the Assembly, or the other place, or elsewhere, in ways which prejudice the capacity of the committee to do its work objectively in the interests of the public and its responsibilities to the Assembly. This will avoid duplication and the potential for less than fully informed debate.

I go on from that and point out for the benefit of members that the act establishing parliamentary committees, being the Parliamentary Committees Act, in section 17(4)(b) provides:

> A committee may, if it thinks fit, at any time prior to making a final report on a matter referred to it publish a document relating to that matter.

That needs to be read in conjunction with standing order 259 and standing order 339 in relation to questions of non-disclosure in the case of the latter. Furthermore, I point out to the house as a whole, here and now, that the implications of a salutary and sudden change, how ever it may have appeared to have changed in the minds of members to this point, has serious implications as they relate to the Penny Easton petition (and the sad and terrible consequences of that) and parliamentary privilege at its roots.

I refer honourable members not only to the judgment of the Supreme Court in New Zealand in recent times about privilege but also to what the parliamentary practice in New Zealand is. That is:

> When a house refers a matter to a committee (whether a select committee or a committee of the whole house), the proper time for a discussion of the proceedings before that committee is when it reports back to the house. Discussion before that time is premature and consequently the house does not permit members to refer to such proceedings until the report has been made. This prohibition on references to matters before a committee does not depend upon the proceedings being private. It applies even where the committee is open to the public. The intent is to keep the debate off the floor of the house until the committee has reported on the matter.

Bearing all the foregoing in mind, the chair will continue to exercise discretion, especially as it relates to the views expressed during the course of discussions in the Standing Orders Committee this morning.

QUESTION TIME

DARLEY, Mr J.

Ms CHAPMAN (Bragg): My question is to the Treasurer. Is Mr John Darley's position as Chairman of the Commissioners of Charitable Funds in jeopardy because of his outspoken stance on land tax?

The Hon. K.O. FOLEY (Treasurer): I am not sure that that committee reports to me, but if the inference from the honourable member's question is that we would somehow not reappoint a person because of a position they have taken then that is an extraordinary comment to make. Certainly, I can say that I am of a mind that John Darley should do nothing more than continue to serve on that committee. I am not even certain of the selection process—whether that is the responsibility of the Minister for Health or the Attorney-General. It is not me. I think that John Darley should continue in that job. He is doing a very good job. I have met with him on a number of occasions about matters relating to that committee. It is a nonsense question.

Ms CHAPMAN: As a supplementary question: what does the Treasurer mean, then, by 'consequences', given his statement to Mr Darley on 11 March 2004: 'There will be further consequences for you.'

The Hon. K.O. FOLEY: I have no idea what the honourable member is referring to. It certainly has nothing to do with the matter that she raised. I do not know what context that was made in, where it was made—the details of it.

CANCER THERAPY

Mrs GERAGHTY (Torrens): My question is to the Minister for Health. What is the government doing to improve the treatment options for people with cancer in this state?

The Hon. L. STEVENS (Minister for Health): I thank the member for Torrens for this very important question. The state government has committed to spending $8 million to purchase three new state-of-the art cancer treatment machines at the Royal Adelaide Hospital. The $8 million will purchase three new advanced technology linear accelerators for the Royal Adelaide Hospital's Cancer Centre. Linear accelerators use radiotherapy beams to target cancerous tumours. These new machines allow for better accuracy and tailoring of radiotherapy doses and feature other enhanced imaging and treatment capabilities.

The equipment being purchased will provide the Royal Adelaide Hospital with the most advanced radiotherapy treatment technology in the nation, and this is great news for South Australians. It will also allow more effective treatment of patients with cancer with fewer side effects. The first of the new multimillion dollar machines is due to arrive by August this year and begin use in October, with the other two machines scheduled to be installed in June 2006 and April 2007.

The Royal Adelaide Hospital's Radiation Oncology Department is the third largest publicly-funded department of its type in Australia, with more than 52 000 patient attendances each year and more than 2 000 patient courses of treatment carried out. This latest investment in cancer treatment is part of this government's commitment to improving health services in this state, and we are continuing to deliver on that commitment.

FUND TRANSFERS

The Hon. R.G. KERIN (Leader of the Opposition): Will the Treasurer inform the house whether he has now been made aware of any other inappropriate transfers of money between or within departments that have not yet been reported to the house?

The Hon. K.O. FOLEY (Treasurer): As Treasurer, from time to time I get all sorts of reports on financial transactions within government. I will take that question on notice and come back to the house.

SUPPORTED ACCOMMODATION ASSISTANCE PROGRAM

Mr SNELLING (Playford): My question is to the Minister for Families and Communities. What is the progress of the negotiations between the states and the federal government on the latest Supported Accommodation Assistance Program agreement?

The Hon. J.W. WEATHERILL (Minister for Families and Communities): In a word, slow, not assisted by the fact that on 17 December, in the lead up to Christmas when perhaps people were hoping that nobody was watching, we received an offer that can only be described as outrageous for the new SAAP agreement. SAAP, for those members of the house who may not be aware, is the Supported Accommodation Assistance Program. It is a joint commonwealth-state program that places substantial government funds contributed by the state, with the commonwealth having a further matching arrangement.

The outrage is that the offer involves a $3 million reduction, which means a $15 million reduction over the five years of the agreement. This is at a time when we have had an evaluation of the project for all state and federal ministers who were at the housing ministers' meeting. We had an evaluation that said this is a program that is meeting all its objectives; a fantastic program making a fantastic contribution to grappling with homelessness; and the federal government decides that it is going to rip $15 million out of this state over five years. It also proposes that a series of pilot programs be put in place and that we have to bid back for some of this money.

For those in the sector who actually understand what they are talking about, the idea of further pilot programs and all the time, expense and waste and, indeed, the uncertainty about whether you get continuing funding, is maddening. The SAAP program fundamentally is directed at the domestic violence sector. We have had two recent reports about domestic violence, the first being that SAAP provides a massively important contribution to grappling with that. The second thing is that we have an important report that links crucial child protection concerns in relation to domestic violence. So, we have this massively important program and, at this time in our history when we are seeking to provide more attention to the protection of children, this crucial program is having a reduction in funding.

We hope that the offer is a bit of a testing of the waters in that we will get a revised offer, but we cannot be certain of that at the moment. In fact, we were expecting an increased offer to meet the massively important needs. The Director of Lutheran Community Care described the offer's focus on pilot programs as insulting. He said:

> We're really struggling to make ends meet with the funding we receive, particularly in the family sector where the level of funding is less than that in the youth and women's sector. For services like the Lutheran Community Service, the diminished funding will mean fewer families will be able to gain access to this crucial service.

We will continue to serve up the fight to the commonwealth on this issue. It looks like another example of the clawback we are seeing in so many areas after the federal election: no mention of this in the run up to the election, then the clawing back of dollars from the states in what can only be described as a disgraceful way. In this area the state government can rest proudly on its credentials. We have put an extra $20 million over five years into the homelessness sector, yet the finger is being pointed at the states to do more.

That involves a complete misunderstanding by the federal minister of the efforts going on not only in South Australia but in other states in the homelessness area. We have put in far more than the matching funding we committed to when this agreement was first put in place five years ago, and we will be calling on the commonwealth to change its offer. I am convinced that they will change their offer because I am meeting with SAAP agencies. There are hundreds of them around the nation, and we will run a campaign against this offer and it will be increased.

CROWN SOLICITOR'S TRUST ACCOUNT

The Hon. DEAN BROWN (Deputy Leader of the Opposition): Why has the Treasurer failed to come back to the parliament with answers to five questions in relation to the transfer of funds, which were asked three months ago: three on 12 October, one on 26 October and one on 27 October? Four questions were taken by the Treasurer and one by the Attorney-General, where they took the question on notice and agreed to report back to the house.

The Hon. K.O. FOLEY (Treasurer): I will seek an urgent response on that.

AUSTRALIAN TOURISM AWARDS

Ms CICCARELLO (Norwood): My question is to the Minister for Tourism. What were the outcomes for South Australia's tourism operators in this year's Australian Tourism Awards which were recently held in Alice Springs?

The Hon. J.D. LOMAX-SMITH (Minister for Tourism): I thank the member for Norwood for her question, again showing her interest in tourism in this state. The Australian Tourism Awards were held in Alice Springs this year, and we won two awards demonstrating nationally acclaimed excellence. One of the awards was for destination marketing, won by the Murraylands Tourism Marketing group. This group works for local, national and international marketing, marketing the Murraylands, not as one product or one activity, but the sense of place, the river's history, the heritage, the wineries, the vineyards, visiting restaurants and local golf courses—a whole range of activities—as well as museums, which makes the Murraylands one of our premier regions. The particular efforts of this marketing group were special because of the youth and vitality of their marketing profile with innovative marketing, always cost effective, but incredibly original. This is the second time in a row that they have won this national award and we should congratulate them.

The other winner was the Adelaide Hills Country Cottages. This family-run business has operated for 24 years and was one of the first bed and breakfast operations in South Australia. They operate around 80 hectares of idyllic hillside country with five self-contained luxury units, all in secluded parts of their property with panoramic, 360-degree views of the hills, in one of our premier wine areas. The family-run business has a very strong customer service mandate and works hard to give a special experience. They have won this award before and we should definitely congratulate them.

The government has made a demonstrated commitment to the bed and breakfast industry recently with our significant removal of bed and breakfast operators from land tax levies, by removing those who operate with less than 25 per cent of their floor area in their principal place of residence, as well as reducing the overall burden of land tax on all private businesses. This is a thriving industry and having received the government's support recently in the land tax reshaping manoeuvres, our South Australian bed and breakfast operators are in good shape, and are well positioned to take up extra incomes through the marketing of this premier sector across Australia.

FLOOD ZONES

Mr HAMILTON-SMITH (Waite): My question is to the Minister for Urban Development and Planning. Given the government's announcement last Friday to 'not approve' and to, in effect, rescind its own Brownhill and Keswick Creek Flood Management Planning Amendment Report, will the government be compensating home owners who have suffered financial loss as a consequence of being forced to comply with their flawed PAR or as a result of having sold land at a substantially reduced value?

Members interjecting:

The SPEAKER: Order! The Minister for Urban Planning has the call.

The Hon. P.L. WHITE (Minister for Urban Development and Planning): The short answer to the honourable member's question is that it is a bit of a try-on from the honourable member, and I would like to know what his policy is. The situation, as I have made clear in my statement on Friday and my statement to the house on Wednesday and earlier in the week when I talked publicly on radio, is that I did not intend to approve the PAR. That was following the consultation process—that goes through a statutory consultation process—and feedback from residents, because the residents raised some legitimate concerns. The long and short of it was the councils and the catchment water management board requested government to try and find a whole-of-catchment solution to this. The councils, in the last two years, over that period of two years, could not agree with one another or the catchment board, and it became obvious after the consultation that that would not happen at this stage. So, the sensible thing to do in that case is the action that I, as minister, have taken and that is for each council to amend the development plan for their individual area.

NATIONAL T-RAY FACILITY

Mr O'BRIEN (Napier): My question is to the Minister for Science and Information Economy. Can the minister inform the house of South Australia's engagement with T-ray technology in medical diagnosis?

The Hon. P.L. WHITE (Minister for Science and Information Economy): I am pleased to inform the house that researchers at the University of Adelaide in conjunction with other local and interstate partners, including our own Flinders University and University of South Australia, have secured a $2.4 million grant from the Australian Research Council to establish a national T-ray facility here in this state. For the information of members T-ray refers to the terahertz section of the electromagnetic spectrum, and it is a technology that offers a more efficient and effective way of diagnosis in nano and bio materials. It is particularly non-invasive; it allows for non-invasive detection of skin cancers and other genetic disorders, though the potential of the technology is not only applicable to medical applications but also to applications in the defence, security, aviation and food safety industries. It is because T-rays can penetrate things like plastic and cardboard for tests in a fairly non-invasive way; for example, contaminated food in a security context, anthrax in envelopes, and all those sorts of things. So it is a potentially more effective system for dealing with a lot of very practical problems.

Why are you only hearing about it now? Basically, because the necessary advances to access this particular part of the spectrum have only become available in recent times through femtosecond lasers and those sorts of developments. I was fortunate recently to open a workshop for the first international meeting here in Adelaide of T-ray technology which was hosted by the Defence Science and Technology

Organisation. This national T-ray facility will be based at the Thebarton Bioscience Precinct. It will be the first of its kind in Australia. It will create a wonderful opportunity for collaboration and innovation amongst researchers. The South Australian government has been particularly pleased to be one of the 18 partner organisations that helped secure that facility to Adelaide and South Australia. It is a prime example of the government's science, technology and innovation vision to build the infrastructure, capability and momentum in this state through collaborations. I especially congratulate Dr Derek Abbott and Dr Sam Mickan from the University of Adelaide for leading the successful bid and I wish them well in their efforts to explore what I think is the next frontier in T-ray imaging technology.

POLICE RECRUITMENT

Mr BROKENSHIRE (Mawson): My question is to the Minister for Police. The government has stated in this place its objective of having an additional 200 police on the ground by September 2005. What are the government's targets for overseas and local recruitment this year? Sir, with your leave and by concurrence of the house I wish to explain the question.

The SPEAKER: The explanation has already been made redundant by the disorderly initial remark, quite apart from the fact that I understand what the question means. The honourable Minister for Police.

The Hon. K.O. FOLEY (Minister for Police): As the government has repeated, we are committed to funding 200 extra positions in our police force, which will take our police force from its lowest ebb, which was 30 June 1997, at a level of 3 410, I am advised, to an estimated level by 30 June 2006 of around the 4 000 mark. That is nearly 600 more officers in uniform scheduled by 30 June 2006 than appears today.

An honourable member interjecting:

The Hon. K.O. FOLEY: The member opposite says, 'Who put most there?' Depending on what date you take, on 30 June 2002, the standing force of SA Police was about 3 761. As of 30 June 2004—

Mr BROKENSHIRE: Sir, I have a point of order with respect to relevance, and I refer to standing order No. 98. The question was specific: what are the government's targets for overseas and local recruitment this year? It was a specific question.

The SPEAKER: The minister, I think, understood the specific nature of the question. Whether or not he has the information—

The Hon. K.O. FOLEY: Sir, what I can say to the house is that the recruitment policy and targets, in terms of how many will come from the United Kingdom (and we already know the member opposite's view on those fine officers; he has been quite vicious in his criticism), is a matter for the Police Commissioner. I have today written to the shadow minister, the member for Mawson, and I have urged and asked him to visit the Police Commissioner and receive a full and frank briefing on our recruitment policies. Then we will see the level of debate that the member for Mawson chooses to entertain. I would be interested to know whether he will be as critical in a face-to-face meeting with the Police Commissioner as he is prepared to be in this chamber and in terms of media releases.

The government's policy is clear: we have been recruiting to attrition since coming to office. We are now funding an extra 200 officers. But, as I have repeatedly told the house, in an extremely tight labour market, which national economic commentators say is now becoming a constraint on economic activity in Australia—there is a massive skills shortage—the recruitment of those 200 is becoming more difficult, which has necessitated the policy of the commissioner to recruit from the United Kingdom. Those targets are proving difficult to meet, and it may be that there will be slippage. But it will not be through our endeavour to recruit. The member opposite has been saying that we should lower our standards.

Mr Brokenshire: No.

The Hon. K.O. FOLEY: Oh, sorry, so he is not saying that. It sounds to me that they have been saying that we should lower our standards. But the Police Commissioner will not do that, nor should he.

Mr BROKENSHIRE: Sir, I appreciate your advice, and I again ask for a ruling on standing order No. 98 regarding relevance. It has nothing to do with what the minister tried to say about quality and standards; that is the minister's comment. It has nothing to do with the question.

The SPEAKER: I listened carefully to what the minister said. The subject matter is relevant to recruitment levels to the force from sources local and overseas.

The Hon. K.O. FOLEY: Thank you, sir. We have made no secret, nor has the Commissioner, that it is proving very difficult to recruit. If there is to be slippage in timetables, that will obviously be identified at that particular point. One thing I have learnt, which I think the house needs to bear in mind, is that recruiting police in terms of the expected retirement of officers is extremely difficult. It is a fact that, following enterprise bargaining negotiations with the government and the union (and I assume this is often an occurrence across other sections of government), there is a higher level of retirements shortly thereafter and that then puts added pressures. It is very difficult for the Police Commissioner and his officers to properly and exactly forecast the rate of attrition; and so, at any one time to suit any particular argument, you can pick numbers that present a case that may not be as good as what the true case is.

That is the nature of attempting to recruit against attrition. But I make this clear: we are committed to funding 200 extra positions. I simply say—and I will conclude on this because again it is extremely important—that our task of recruiting officers is being, in my view, made harder—and certainly will be if it continues—by the campaign by the shadow minister and the opposition, because if the shadow minister and the opposition leader continue to criticise the recruitment policies of our police and to do the disgraceful things that were done last week in attacking the quality of British officers coming to live with their families, what British officers—

Mr BROKENSHIRE: Mr Speaker, I rise on a point of order. I have two points: first, I refer to standing order 98, this is clearly nothing to do with the question; and, secondly, we never ever attacked the officers at all from the United kingdom, and you know that, sir.

The SPEAKER: Order! The minister has addressed the matter.

BELAIR NATIONAL PARK

Mr CAICA (Colton): My question is to the Minister for Environment and Conservation. What changes can the community expect to see at Belair National Park following the government's announcement that it will upgrade the park?

The Hon. J.D. HILL (Minister for Environment and Conservation): I thank the member for being interested in the national park.

The Hon. W.A. Matthew interjecting:

The Hon. J.D. HILL: There was some information on television last night but not all the facts, and I would not want the house to be deprived of all the facts about the great work the government is doing in Belair National Park. Belair National Park is one of South Australia's icon parks, as members would know, and the member for Heysen, in particular, would appreciate that. She would be pleased to know that the government will spend some $5 million over the next few years transforming that particular park for 300 000 people who visit it every year. The park is the birth place of the park system in South Australia and, in fact, the second oldest national park in Australia. It was first proclaimed in 1891, when I think it was known as a 'pleasure resort', and many people from the member for Heysen's electorate would go there to pleasure themselves. It is home to one of Australia's great heritage treasures—

The Hon. S.W. Key interjecting:

The Hon. J.D. HILL: I may wish to reword that. A lot of people used to go their to enjoy themselves, I should have said. It is home to one of Australia's great heritage treasures, Old Government House—

Members interjecting:

The Hon. J.D. HILL: A summerhouse for our Governor—and he went there for pleasure as well. The park contains 840 hectares of valuable remnant bushland, as well as a range of recreational facilities including picnic areas, free barbecues, walking and horse-riding trails, sporting grounds and tennis courts. It is home to red gums, grey box gums and a range of native animals including the short-beaked echidna and the southern brown bandicoot. The facelift will include restoration of heritage buildings in the park, new picnic shelters (a couple which I inspected yesterday) with excellent—

The Hon. M.D. Rann interjecting:

The Hon. J.D. HILL: I believe this is one of the few parks in South Australia where you cannot find the rare hairy dunnart. It will have improved car parking and better paths and drainage works to assist visitors. The aim is to have a very clearly defined area for visitors to go which is separated from areas we want to protect, the natural environment. This has been after extensive community consultation—

The Hon. W.A. Matthew interjecting:

The SPEAKER: Order!

The Hon. J.D. HILL: Much community consultation, and I understand visitors are very happy with the proposals that are under way at the moment. As I say, the government has allocated $5 million over the next five years and work has already started on the redevelopment.

POLICE RECRUITMENT

Mr BROKENSHIRE (Mawson): My question is to the Minister for Police. Given the government's commitment in December 2003 to provide an additional 200 police over and above attrition by September 2005, why were two police recruitment courses cancelled last year?

The Hon. K.O. FOLEY (Minister for Police): The shadow minister says that he is not somehow negatively impacting on police efforts to recruit. My belief is that this line of questioning by the opposition is very much putting at risk the proper process of recruitment. Two courses were cancelled last year and the Commissioner of Police I am sure has cancelled courses throughout the period in which he has been commissioner and I suspect it may well have occurred when the member opposite was the minister.

The Hon. P.F. Conlon interjecting:

The Hon. K.O. FOLEY: That is right: the opposition never had recruitment courses. Under former ministers they nearly closed the Police Academy at one stage. I think for a whole year, from memory—I could be wrong—they did not recruit any police. It is very difficult to recruit at the moment. Unless there is a decent complement of recruits, you do not run a course. Or it may be that recruitment was ahead of the attrition rate at that point.

The Hon. D.C. Kotz: Wishful thinking.

The Hon. K.O. FOLEY: The member for Newland says 'Wishful thinking'. What I say to the member for Mawson is: put these questions to the Police Commissioner.

Mr Brokenshire interjecting:

The Hon. K.O. FOLEY: You will—that is good. I will ensure this question is properly answered. I am happy to repeatedly defend the recruitment policies of our commissioner and senior police management. They do an excellent job in a very tight labour market. If the opposition thinks it is on a winner, let it run with it, but understand this: its damaging comments will make it harder, in my opinion, to fairly and properly debate police policy in terms of recruitment.

The Hon. D.C. Kotz: Nonsense.

The Hon. K.O. FOLEY: The member for Newland says 'Nonsense.' I do not know how much more damaging it could be to say that police officers from the United Kingdom are incompetent. That is the inference of what was said last week and it is my interpretation and that is exactly what others would have said. He talked about incompetent police in the United Kingdom. I would have thought that the member for Newland would welcome UK immigration, for obvious reasons. If people can stand in this parliament, having come from the United Kingdom, and serve the people of South Australia, why cannot police officers from the United Kingdom serve the people of South Australia?

Mr BROKENSHIRE: By way of supplementary question: given the minister's answer and the fact that the minister also stated to the house that attrition increases after an enterprise agreement, were two courses cancelled, given that additional police were to be recruited last year, because of budget constraints?

The Hon. K.O. FOLEY: Absolutely not. The police budget has been growing under this government and we are adding 200 extra police.

The Hon. P.F. Conlon interjecting:

The Hon. K.O. FOLEY: And building three new police stations. The Police Commissioner is funded to maintain his force and to cover for attrition.

Members interjecting:

The Hon. K.O. FOLEY: And the 200 extra. I will ask the commissioner why those two courses were cancelled, but I assume it is part of work force and recruitment management. The commissioner has funding against attrition for 200 extra police in any given year. Whatever the management issue—whether it is budget, recruitment or attrition numbers—of course he will vary his courses. It is lazy and easy politics to attack those UK officers yet to settle in this state. It is pretty cheap, nasty and damaging politics. I say to the member opposite: attack the government for whatever you wish, but

for goodness sake do not attack the Police Commissioner, the recruitment policies of the police department or the 60 families coming to this state to settle. We should welcome them with open arms and ensure that we send the right signals that people from the United Kingdom can not only serve in this parliament and serve well the people of this state but also can walk the beat and keep us safe and protected.

DAME ROMA MITCHELL TRUST FUND

Ms RANKINE (Wright): My question is to the Minister for Youth. What is the Dame Roma Mitchell Trust Fund doing to assist children and young people who have been in care in this state?

The Hon. S.W. KEY (Minister for Youth): I thank the member for her question and her advocacy in the area of young people, particularly in her electorate. The Dame Roma Mitchell Trust Fund is assisting children who have been under the guardianship of the minister. In this financial year, the fund has distributed $72 708 to 29 children and young people who have been in the care of the state. Research has consistently found that children who need to be placed in government care and protection systems have fewer opportunities in education, employment and health outcomes compared with their peers. Grants are provided through the Dame Roma Mitchell Trust Fund to assist children and young people under the age of 30 who have had experience in the South Australian care system. It is aimed at achieving independent living opportunities and personal development. This includes attending training courses, university and other study.

I am very proud of this trust fund because this is the only one of its type in Australia. I think it is one of those funds that actually does make a real difference for young people who have been in the care of the state. In the most recent round of trust fund money, grants were given to diverse areas such as TAFE fees, household goods and furniture, textbooks, clothing to attend job interviews, trade tools, computers, business start-up costs and even a second-hand motor vehicle. This fund started with a partnership with the South Australian Council of Social Services and it was named after the former Governor, Dame Roma Mitchell, in recognition of her interest in assisting young people to reach their full potential; also a very generous grant that was made to enable us to set up the fund.

Practical grants are provided to young people, and the feedback I have had from young people who have been in care is that this is a very useful and supportive fund. We hope to continue to attract more funds to the fund and to ensure that young people and children have some say over the sorts of assistance and support they need.

POLICE RECRUITMENT

Mr BROKENSHIRE (Mawson): Is the Minister for Police familiar with the selection criteria for new police recruits; and does it include a preference for older applicants?

The Hon. K.O. FOLEY (Minister for Police): I had a discussion with the Police Commissioner about a couple of issues this morning. I am happy to come back to the house with more detail on this, but the commissioner did indicate to me that there had been two reviews—I think that is correct—in his time as Police Commissioner. I think the words were 'there had been a tightening of criteria' in order to ensure that we have a very high bar or high level in terms of our applicants. I just asked when it was because I did not think it was necessarily when minister Conlon (the Leader of Government Business) was minister. My recollection is that the Commissioner indicated that the tightening of criteria under his review occurred under the former government. That is a good thing, but it is pretty disingenuous politics to come in here and criticise this government for making it harder for people to be recruited into the police force when my advice is that at least two reviews, which led to some changes or some improvement—and that is a good thing—occurred under the last government.

I am not aware of the specifics and the individual criteria—nor should I be—because that is not my role as police minister. I will take the question on notice and again I will ask the Police Commissioner to respond. But again I say to the member for Mawson—a former minister; perhaps he knows the answer—I look forward to the member putting that question to the Police Commissioner to see whether he is critical in a face to face meeting with the Police Commissioner.

DIRECTOR OF PUBLIC PROSECUTIONS

Ms BEDFORD (Florey): Will the Attorney-General inform the house where members of the public can access information on the Office of the Director of Public Prosecutions?

The Hon. M.J. ATKINSON (Attorney-General): I thank the house for a question; I was beginning to feel unloved. The Office of the Director of Public Prosecutions has developed a web site that members of the public can access to help them better understand the role of the public prosecutor and the work of the DPP in the justice system. The DPP web site features a glossary of terms commonly used in the judicial process, a Frequently Asked Questions page, prosecution policy and guidelines and resources such as victim and witness assistance publications. These features make the DPP web site particularly useful for victims of crime, people who are called to be witnesses in criminal cases and others involved in the criminal justice system. By increasing public awareness, an understanding of the criminal justice system and the role of public prosecutions the DPP has gone some way towards demystifying the criminal justice system, and I commend the Office of the Director of Public Prosecutions for this.

EYRE PENINSULA BUSHFIRES

The Hon. W.A. MATTHEW (Bright): Will the Minister for Emergency Services make public the details and findings of internal investigations into the recent Eyre Peninsula bushfires; or, if there are valid reasons for non-public disclosure, will the minister agree to make the information available to the opposition in confidential briefing?

The Hon. P.F. CONLON (Minister for Emergency Services): I am not sure what information the honourable member is referring to, because as yet I have not seen a report on the fires. I understand that Euan Ferguson, for whom I have enormous respect, has been working through the process of debriefing everyone involved in the fire. A Coroner's inquiry is afoot and, of course, the police inquiry was undertaken speedily. The Coroner's inquiry, as I understand it, will make public its findings. I have not turned my mind to the question of an internal inquiry, but I can say that I am quite happy to share any information that does not unfairly

damage any individual with the parliament and with the opposition. The first priority for us was not to give us the inquiry but to make sure that we got the recovery afoot. I have been far more interested in getting regular reports from Vince Monterola, who is running the recovery process. I have every faith in the CFS properly to debrief its people. I put on the record that there is absolutely no doubt that, as with every major fire, with this fire we will all learn something.

SKYSHOW 21

Mr KOUTSANTONIS (West Torrens): Will the Minister for Transport advise the house whether the recent public transport initiative for Skyshow 21 was successful?

The Hon. P.L. WHITE (Minister for Transport): Yes. Skyshow was held on 29 January, and I am sure that everyone will agree that it was a spectacular night. It attracted a huge participation—in fact, a crowd of approximately 250 000 attended. Organisers were pleased and, I think, most people who attended had a very good time. A significant effort was made to make sure that people had a good time, and extra security was put on. Of course, free public transport was available for South Australians attending the event which, I think, was a bit of a morale boost. Approximately 25 per cent of all people who attended Skyshow relied on that free public transport, which was supplied courtesy of the state government and Metro Adelaide ticketing. Patronage across all modes of transport—that is, trams, bus and rail—was, of course, significantly increased.

The free public transport kicked in at around 3 p.m. and went to the end of services, and patronage surpassed the results for the past eight years. So, it was a big success for South Australians. Events like that cannot be run effectively without the public transport system, and I pay credit to all those drivers and operators of buses, trains and trams who did a lot to make sure that the event was a success. There was extra security on board, people behaved themselves, and the outcome was a good one.

KANGAROO ISLAND KOALAS

The Hon. DEAN BROWN (Deputy Leader of the Opposition): Will the Minister for Environment and Conservation confirm that koalas are being flown off Kangaroo Island in chartered aircraft, and can the minister confirm that about—

Members interjecting:

The SPEAKER: Order! When the house has come to order, we can proceed.

The Hon. DEAN BROWN: I repeat the question. Will the minister confirm that koalas are being flown off Kangaroo Island in chartered aircraft and can the minister confirm that about 20 koalas are being flown in each aircraft at a cost of about $2 000 per flight?

Members interjecting:

The SPEAKER: Order! I could not hear the question. Ministers on the front bench and others behind them made it impossible for the chair to hear. I invite the deputy leader to repeat the question.

The Hon. DEAN BROWN: I am only too happy to repeat it. Will the minister confirm that koalas are being flown off Kangaroo Island in chartered aircraft and can the minister confirm that about 20 koalas are being flown in each aircraft at a cost of about $2 000 per flight?

Members interjecting:

The SPEAKER: The Minister for Environment and Conservation, not the Minister for Emergency Services.

The Hon. J.D. HILL (Minister for Environment and Conservation): This is the first question on koalas I have had in this chamber in my time as minister.

The Hon. Dean Brown interjecting:

The Hon. J.D. HILL: No, you asked me a question in estimates but not during question time. This is the first time in question time I have had a question on this issue. I understand that there is a bipartisan position in South Australia about how to deal with the issue of koalas on Kangaroo Island. There are certain elements in the community that would have the government shoot the koalas, but that is something that the Premier and I have ruled out absolutely. I understand that it is an issue that those on the other side have also ruled out. I understand that the Mayor of Kangaroo Island would prefer that we went down that track, and maybe that is the basis of the question the deputy leader is asking.

I would like to know what the Deputy Leader of the Opposition, who represents Kangaroo Island, is advocating. Is he saying to us that we should be shooting koalas on Kangaroo Island rather than sterilising them and translocating them? That is the bipartisan position we have had in South Australia now for almost 10 years. The government recently announced an expansion of the sterilisation program so that we can sterilise four times as many as have been sterilised over the past 12 months.

The point that I make to the deputy leader is that the sterilisation and translocation program is one that was established in his government's term of office, and we have continued that program but at an expanded rate this twelve months. I assume that the koalas are being flown off in a chartered aeroplane because I do not imagine that they are sitting in the passenger seats of the regular aircraft that flies from Kangaroo Island to the mainland. As to the cost of that, I am not sure, but I will happily get an answer for the member.

Members interjecting:

The SPEAKER: Order!

HOSPITALS, WAITING LISTS

The Hon. DEAN BROWN (Deputy Leader of the Opposition): My question is to the Minister for Health. Why is the government claiming that all surgery will be done within 12 months of being assessed by a specialist doctor that such surgery is required, when it can take two years of waiting to see the specialist and to get on the waiting list? Kaiden Hobby, with severe tonsillitis, has waited 18 months already to see a specialist at the Women's and Children's Hospital, and has been told to wait a further six to eight months. The hospital responded that no-one has been on the waiting list for more than 12 months but did not consider the wait to get on to the surgery list.

The Hon. L. STEVENS (Minister for Health): I am very pleased to answer this question, because I was quite surprised to see some of the comments made by the deputy leader yesterday in his media release.

Members interjecting:

The Hon. L. STEVENS: It would be good if people would just quieten down and listen to the answer to this question.

Members interjecting:

The SPEAKER: Order!

The Hon. L. STEVENS: In relation to the time that a person might wait before a doctor says that they need to have surgery, my preliminary advice from doctors is that these days they do not necessarily agree that the best remedy for tonsillitis is surgery. In fact—

Members interjecting:

The Hon. L. STEVENS: I know that the deputy leader thinks that he knows better than doctors, and yesterday in his press release even suggested that this surgery was necessary—I did not know that the deputy leader had qualified as a doctor—and he continues to offer medical opinions with no qualification for this at all. Compared with the record of the deputy leader when he was the minister for health things have changed in terms of elective surgery and, in particular, surgery for ear, nose and throat, which is the branch of surgery we are talking about. To back that up: in December 2000 the number of people waiting greater than 12 months was 95; in December 2001 the number was 30; in December 2004 the number was 28; and in February 2005 the current number of people waiting for more than 12 months is a handful, very close to zero, and targeted to be zero by mid-year.

The Hon. DEAN BROWN: Point of order, Mr Speaker: my question was about the two-year wait to get on to the waiting lists. The minister has ignored that issue completely and, therefore, is debating the issue, under standing order 98.

The Hon. L. STEVENS: I answered that question; the deputy leader needs to listen to the answer.

The Hon. DEAN BROWN: By way of supplementary question to the Minister for Health: of the 1 956 people who waited more than 12 months for surgery, as in the government's most recent bulletin of December, were any of those people patients of the Women's and Children's Hospital and, if so, how many?

The Hon. L. STEVENS: I do not have the list at my fingertips in question time today nor the names of all the people who the Deputy Leader of the Opposition is referring to. The number of people who are on the list for long waits over 12 months are only about five per cent of the total number of people getting elective surgery in our system. This government's record on elective surgery far surpasses that of the previous government. I think people would do well to remember these two simple things: over the years that the member for Finniss was minister for health, elective surgery—

The Hon. DEAN BROWN: I rise on a point of order. I point out that, under standing order 98, the minister is now debating. I also point out that I asked the minister to check that information that she has given to the house because it is different from her own bulletin as of December.

The SPEAKER: I uphold the point of order. The honourable member for Stuart.

REGIONAL SPORTING STADIUM

The Hon. G.M. GUNN (Stuart): Thank you, Mr Speaker.

An honourable member: Tell us what you do to the koalas, Gunny.

The Hon. G.M. GUNN: At a later stage.

Members interjecting:

The SPEAKER: Order!

Members interjecting:

The Hon. G.M. GUNN: It is probably the same view as the minister. Mr Speaker, I direct my question to the Minister for Recreation, Sport and Racing. Will the state government match the $300 000 that the federal government has provided to construct a regional sporting stadium at Jamestown. The federal member for Grey, Barry Wakelin, announced last week that the commonwealth government would provide $300 000 towards that particular project. However, it is dependent upon the state government providing funds. I understand that groups within the local community have pledged $100 000; therefore, it is incumbent upon the minister to tell us whether they are going to provide the money.

The SPEAKER: Order! The honourable the member for Stuart is clearly debating.

The Hon. M.J. WRIGHT (Minister for Recreation, Sport and Racing): I thank the member for his ambit claim. The member is well aware that the Office for Recreation and Sport runs a number of different programs. I am not familiar with this one that he talks about, but it sounds like it would perhaps be most suited to the community recreation and facilities program. As the member would be well aware—he has been here longer than the rest of us—the process is that applicants put in for a grant. Whether or not this particular organisation has done that, I am not sure; I am happy to check that. The status of their grant and its success will depend on the quality of the project not on a stunt by the federal government.

STATE SWIMMING CENTRE

The Hon. W.A. MATTHEW (Bright): My question is to the Minister for Infrastructure. Now that the government has been considering its options for three years, and it is almost one year since tenders were called, when will the government make a decision on the future of the state swimming centre project at Marion?

The Hon. P.F. CONLON (Minister for Infrastructure): I am very happy to answer this question. It is important in answering it to explain what has happened with the swim centre. You see, the swim centre was rather like the fully funded bridges over the Port that the previous government committed to. They went out and told the community that they would build these pieces of infrastructure—the bridges and the swimming centre—and that the private sector would pay for it, and it will be hunky-dory. But, of course, that did not work. The only pieces of infrastructure they ever did deliver seem to be the Wine Centre and the Hindmarsh Stadium, but these ones simply did not add up. I have to say that I saw a press release for the member for Bright which claims that his government built the airport, too, which I thought was remarkably funny.

The Hon. W.A. MATTHEW: I rise on a point of order. My point of order is under standing order 98. I asked the minister a very specific question about a very specific project—in this case, the state swimming centre. I simply asked: when will the government make a decision on its future?

The SPEAKER: I uphold the point of order. Does the minister have any information about that?

The Hon. P.F. CONLON: Yes, I do, sir. The reason why a decision has not been made (and to explain when one will be made) is that the project as proposed by the former government simply did not add up. When going to the private sector, there was a very significant difference in the level of

support that would need to be given by the council, the government and the private sector. That is a subject matter that we have dealt with in public. If the member for Bright had bothered to attend the meeting near his area, where we brought the cabinet and made ourselves available to the public to answer those questions, he would have understood the full circumstances of it.

The truth is that the project simply did not add up as the Liberals put it together. Given that the state government is willing to make a contribution, the council is willing to make a contribution and there is something there from the private sector, we are now asking the commonwealth government to make a contribution to cover the shortfall. But they will not do that; they will not go to their Liberal colleagues and ask, 'What will you do for Marion?' because they prefer it to fail. They would prefer that it not happen and blame us for it. They will not assist us and go to their federal colleagues to fill the gap in funding. If the member for Bright is serious about the people in his area, he should go and ask his federal colleagues for some of their money.

STANDING ORDERS SUSPENSION

Mr BRINDAL (Unley): Sir, I seek that standing orders be suspended so far as to enable me to table a document forthwith.

The SPEAKER: It is not open to the honourable member to seek leave. He may move the suspension of standing orders.

Mr BRINDAL: I am guided by you, sir. I therefore move:

That standing orders be suspended in such a manner as would enable me to table a document.

The SPEAKER: Is the motion seconded?

An honourable member: Yes, sir.

The SPEAKER: Does the honourable member wish to speak to his motion?

Mr BRINDAL: I will, if there is no dissent in the house.

The Hon. M.J. Atkinson: Well, we would like to know what it is.

Mr BRINDAL: All right. On 31 May 2004 the Premier, on behalf of the Anglican Archdiocese of South Australia, tabled in this place a report of the board of inquiry into the handling of claims of sexual abuse and misconduct within the Anglican Archdiocese of Adelaide. Subsequent to that, a noted barrister and solicitor, Ian J. Nicol AM, a practitioner in the Supreme Court of the Australian Capital Territory, partner at Williams Love and Nicol, provided to the Primate of the Anglican Church of Australia, Dr Carnley, who then released it to all the bishops of Australia, a report analysing that which was tabled in this house. In the interests of natural justice, and so this house is fairly informed, I now seek to table that report in this house so all the people of South Australia may examine another side of the issue for which the Anglican Archbishop was hung by the Deputy Premier.

The Hon. M.J. ATKINSON (Attorney-General): I rise to oppose the proposition. I obtained a copy of Mr Nicol's report on Friday, and I have read the report most carefully. I think the gravamen of it is point 16, where it states:

...the board makes a thinly veiled [this is the diocesan board] erroneous suggestion (based on hearsay) that the Archbishop told a particular priest that 'if he did not leave the country' his offence would be reported to the police. Without the protection of parliamentary privilege, this would certainly have entitled the Archbishop to sue for defamation.

At page 5 of the report, Mr Nicol states—

Mr BRINDAL: Sir, I rise on a point of order.

The SPEAKER: Order! The debate of this is the merits of suspension. I have no idea what the subject matter is all about. The house is now going into new territory: it has never been on these waters before. If it chooses to agree to the proposition, the consequent precedent will be that members may choose to table the entire *Encyclopaedia Britannica* and everything that pretends to be a rebuttal of what *The Britannica* says is fact, etcetera, so forth, so on, ad infinitum, ad nauseam. However, that is a matter for the house and the argument should be about the merits of that course of action not the substance of a particular document.

The Hon. M.J. ATKINSON: I was merely trying to alert the house to the content of the document, the purport of the document—

Members interjecting:

The Hon. M.J. ATKINSON: Anyone can see it. I obtained it on Friday and I have read it, and I am sure those who are promoting the document would cheerfully give it to any member of the house and any member of the public. The question here is: should we treat this document in a very special way; namely, give it—

The Hon. I.F. Evans interjecting:

The Hon. M.J. ATKINSON: That's right; give it parliamentary privilege; give it immunity from the law of defamation. The second question is: should we do it now by suspending standing orders? I rise to persuade the house that we should not do it now: we should do it in a considered manner after members have read the document and see whether it should be given this special immunity, otherwise, Mr Speaker, as you say, any document could be tabled in here, given complete immunity from all the law, including the law of defamation, without members having familiarised themselves with the documents and whether—

An honourable member interjecting:

The Hon. M.J. ATKINSON: With respect, the house gave the Olsson-Chung report immunity, not the government. Only the house under section 12 of the Wrongs Act can give it that immunity. If any member of the house were opposed to the Olsson-Chung report receiving immunity, then they should have said so at the time. I am not here to recanvass the merits of that report getting immunity, but what I can say is that I do not think this report should be given immunity until such time as members of the house have familiarised themselves with it, its content and its purpose and then, when they are fully informed, they can vote upon it.

The SPEAKER: The question is that the motion be agreed to. Does the member for Unley have a point of order?

Mr BRINDAL: No, I wish to know whether I can speak to close the debate. I will not detain the house long. I want to make two points. In acknowledging what you said, sir, I would say that this house trespassed on new ground in itself deciding to publish the Olsson report in the first place. It was not the province of this house. It was published. Secondly, that was published without the government, or any member of the government, giving the house prior cogitation of that document. Five days after the document was presented to the Anglican Archbishop, it was tabled here, presumably with the

sole knowledge of those who read it, none of them members of this house.

In my asking to publish a document which is about this very matter, I am not asking that we publish *The Britannica*, simply that we publish a counter-balancing argument for a matter which has been before this house. But now the Attorney, rather than wanting us to do that, wants us all to read it so that we can then decide whether to publish it. This house made a decision on A. As a result of the decision it made on the Olsson report, an archbishop lost his job. This house, if it is about anything, is about freedom of speech and justice for the people of South Australia.

This document deserves to be published so that the people of South Australia can get the same protection in reading and reporting this document as the Premier and Deputy Premier chose to give the original accusatory document. This is about this house exercising its right almost as a court of parliament and delivering natural justice to one of its citizens. If this house does not allow this document to be published, then when the same sort of axe falls on any member of this house, let them not come in here bleating that somehow our system is not fair. If we do not publish this we make it unfair today by our action.

The SPEAKER: The question is that standing orders be suspended so far as would otherwise prevent the member for Unley from tabling a document. Those of that opinion say 'Aye'; the contrary 'No'.

Mr Brindal: Divide!

The SPEAKER: I think the noes have it. Again, in less than a week, I point out that all members should wait for the chair to decide on the voices what the chair thinks is the result. Were I to have decided that the ayes have it, the member for Unley, who seeks to table the document, would be compelled to vote with the noes.

Mr BRINDAL: I acknowledge that, sir, and apologise for my abundance of exuberance; could I now call for a division?

The SPEAKER: You do not have to. A division has been called for previously. The member for Unley now has neither feet nor hands—he has shot the lot off. The member for Unley has called for a division: ring the bells.

The house divided on the motion:

AYES (23)

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

NOES (23)

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

NOES (cont.)

Weatherill, J. W.	White, P. L.
Wright, M. J.	

The SPEAKER: Order! It is perhaps noteworthy that it is exactly three years and one day since I made a decision which enabled the Labor Party to form government in this state. Against that background, it is the first occasion upon which, in that three years and one day, the member for Hammond, albeit as Speaker in this instance, has exercised a vote which will determine the outcome of a decision in this chamber. Not on any one previous occasion has the vote of the member for Hammond mattered one tittle, jot or fig. In every instance, almost without exception, it would not have mattered if the member for Hammond had voted the opposite way to what he did. Having made that observation, and there being an equality of 23 votes, for and against, the decision I make will determine whether or not to apply a principle that there ought not to be the means by which private members can table documents in the chamber, or whether natural justice be denied to certain members of an organisation, in this case the Anglican church (my church).

In making the decision, I am mindful of the fact that I thought it unwise at the time to have gone about vilifying the Anglican Church in the manner in which the government did without itself attempting to remove, or even acknowledge, that there was a sty in its own eye, and in spite of my counsel to the government that it ought not to allow itself to be tainted by the sexual abuse there had been of children who were wards of the state over many governments for decades, if not centuries, and that it ought to have done what it has now done and done it on a wider front than it has now done it, to have an inquiry into what happened to children who were wards of the state in terms of the abuse that they suffered, sexual or otherwise. That is on foot. And in spite of my desire to see those things addressed and my belief that natural justice should prevail in all circumstances, I leave it to the government to address the scales in that respect, and cast my vote in retention of the convention that private members should not table documents in this place.

I cast my vote for the noes, and lament the fact that, at this point, natural justice to the Anglican Church and the people in it has been denied.

Motion thus negatived.

GRIEVANCE DEBATE

BROWNHILL AND KESWICK CREEKS PLAN AMENDMENT REPORT

Mr HAMILTON-SMITH (Waite): I rise on the issue of the Brownhill/Keswick creeks amendment plan (PAR), which has recently been not approved by the minister. I want to recap events to the house so that everyone is perfectly clear on what has happened. During debate on Thursday, the government made it very clear that it was opposed to recision of the PAR. In fact, in a ministerial statement made in the house on Wednesday the minister said that she intended to review the plan and, in effect, not approve it in its current form. She gave a very clear message in that ministerial statement that she planned to make some changes, but no indication that the plan itself would not be approved in its entirety. She also undertook to make further statements this week. On Thursday the minister made a number of statements that clearly indicated that she intended to go back to the

drawing board and reconsider the PAR, improve it and come back with a better PAR. The minister said:

> The whole driving concern about why the councils and catchment boards were interested in this in the first place and why they wanted to deal with it in a consistent way is that the development which occurs in one council area has an impact on the flooding risk in another council area. Clearly, at that point in time, the councils, the catchment boards and government believed that it would be a sensible thing to try to deal with the development and subsequent flooding issue in a consistent way.

The minister further said:

> While I appreciate the inventiveness in the honourable member's moving a motion and wishing to make this an issue, the government wants to see something sensible happen.

The minister was clearly implying that she was intending to review the existing PAR. The member for West Torrens went on to say:

> She assured me and the house yesterday she will not accept the PAR in its current form. That does not mean to say there will not be a PAR. I do not think anyone is saying there should not be a PAR but that the PAR should be reflective of community concerns and floodwater management.

The member for Colton made similar remarks, as follows:

> In her ministerial statement the minister made it clear that she will not proceed at this time but will revisit the issue. The fact is that we will not step away from making sure that we as a government do what needs to be done to ensure that over time we address the problem and, hopefully, over a short period of time.

Clearly, on Thursday the government's position was that it would go back and review the PAR it had developed and come back with something better. There was an absolute fracas on Thursday. The gallery was full: there were unpleasant scenes outside between home owners and members of the government; and something happened on Thursday night to change the government's position, because what we had on Friday was a complete and total turnaround.

Suddenly, the minister puts out a media release saying she has gone up the mountain, hand in hand, probably with the member for West Torrens, and come down born again, and she has suddenly decided that she is not going to approve the PAR in its entirety and will throw the whole thing back on to local councils. Presumably, that now means we will have five separate PARs. We are back to where we were.

A number of questions need to be answered. How are the councils going to be coordinated? What about compensation for home owners who have suffered loss? What about support to the councils and the catchment board to help them develop five different PARs? And what about the policy development process? What went wrong? I simply ask: will the minister take responsibility for this process, which clearly has been wrong and which has now needed to be totally reversed? Will she tell the house what went wrong and ensure that it does not happen again? What we have seen is an unnecessary fracas and unnecessary series of events that all could have been avoided.

There are more questions raised now by the events of last week than have been answered. We now have an uncoordinated mess on our hands, and the government has run away from the problem. There has been a total reversal from Thursday to Friday.

Time expired.

JEFFRIES, Mr D.

Ms BEDFORD (Florey): Music holds a special place in many people's lives, and I have said before in this place that I believe that children should be offered an option to learn an instrument as well as a language at school. Today I would like to put on record a vote of thanks to Mr Dean Jeffries for his work in music, most recently as the coordinator for the St Peter's Concert Band and also for his almost 20-year involvement with the South Australia Police Band. That band has been commended for all its work within the community. Another band that SAPOL supports is the South Australia Police Rangers Youth Band, allowing an option for young musicians, on leaving school, to join a band before making a commitment to a larger community-based band such as the St Peter's band.

I commend the Commissioner for his initiative with the Rangers Youth Band and his commitment to the band of the South Australia Police, and also to his broader support for the special projects team within SAPOL, which was responsible for the Sensational Adelaide Tattoo. The special projects team was recently honoured by the City of Port Adelaide Enfield at its Australia Day awards for its hard work and dedication to excellence. The team does the force and, indeed, the state proud. Dean Jeffries is a fine example of the tradition of the band of the South Australia Police and its dedication to excellence and community engagement for the police in showing another side of police work.

Dean Jeffries has recently retired after more than 40 years with the St Peter's band, and his story was featured in an article by Andrew Hough in *The Advertiser* last week. Dean's wife Fay has always supported his passion, for over 50 years. As a former band widow, I commend Fay for her staunch support. As I often say, behind every man is a great woman. No doubt, Fay is a great woman, although I suspect she shares Dean's passion for music and, indeed, bands.

Mr Brindal: Who's behind you?

Ms BEDFORD: I'm a great woman without support. It was good to see that Dean is suggesting that he will go back to writing music. This, of course, is a very difficult role. Anyone who has had anything to do with music will know that writing for a band is a huge job. Bands are an important part of community life, and in my community, David Gardiner, also a member of the band of the South Australia Police, has contributed in a similar way to the Banksia Park community bands, taking on all comers no matter their level of expertise or age. David's work with the Redbacks band is well known as an opportunity for many young musicians to be involved in a marching band. Through the Sensational South Australian Tattoo the Redbacks have shown their style to a greater audience. Each time the tattoo is held, bands from interstate and overseas come to Adelaide and share tips with, and enthuse, our local musicians.

Through these contacts, international invitations are extended to our own bands allowing our state to be showcased. The tourism spin-offs are there to be exploited, to grow our economy, and to help with the employment opportunities for our young people. Music has much more to offer, not only as an entertainment for those of us who, rather than play an instrument, appreciate the efforts of those who can, but also as an enrichment for community life and a promotion of the state, while giving people the opportunity of attaining a skill for life that can lead to employment and many enriching occasions. The music program that the education department has offered through the Modbury High School is one that I have been happy to support for many years. That high school has competed for many years in a row at the Generations in Jazz competition in Mount Gambier, which the member for Mount Gambier knows all about. He

and I both go there each year and support that, although I know that the Premier is changing the long weekend, and I am not sure how that is going to affect us all.

That sort of opportunity for our young people is something that many of us do not ever get to have: a chance to hear such wonderful jazz and be involved in workshops and get tips from bands from all over Australia. I think they had around 60 bands last year and we are looking forward to something of a similar standard this year. Apart from the Generations in Jazz, I know that the Modbury High School bands compete at the Musicorp competitions, not only at the Adelaide Town Hall but also at other venues, and this gives the bands a chance to perform. Not only parents go to these competitions, but also the up and coming young primary school people, and that is a way to get them involved more thoroughly in music. I think that there is an important message when considering the role of music in the community, perhaps best illustrated by the film that was shown last week, *Brassed Off*, the story of community bands in Britain at the time of pit closures.

Time expired.

LAND TAX REFORM

Ms CHAPMAN (Bragg): Three years ago I was elected to this house, at a time when I had expectations that within this house there would be robust debate, that it would be lively and informed and that that was to be expected and that, indeed, in the course of that there may even be rude or inconsiderate or insulting statements made between members of parliament. I was not naive to the fact that that would be the case. However, what has become a pattern of this government, and in particular the Deputy Premier, is conduct which is not just unbecoming but totally unacceptable when it relates to statements made, either in this house or directly, but particularly directly, to citizens of this state in relation to which they are unable to defend themselves, and clearly with the purpose of intimidating them into ceasing proceeding with the course of action consistent with that threat.

Today I asked the Treasurer and Deputy Premier questions in relation to his comments made to Mr John Darley. As is known to the house he is a person who is a member of the Land Tax Reform Association SA Inc. It is a body that has been well publicised as having a number of members who have put representations to members of the opposition, to members of the government, in particular the Treasurer, and has consulted with other members in this parliament and, in particular, the Hon. Nick Xenophon, whom I note has chaired a number of their public meetings. The clear purpose of their advocacy on these occasions has been to persuade the government in relation to a certain course of action on land tax reform. They are entitled to do that, it is their right to do that and, as a consequence, they have been privy to meetings with those parties.

Notably, on 11 March 2004, the association, including Mr Darley and other members of that group, together with Mr J. Wright the Under Treasurer, Mr B. Tuffnell the Chief of Staff to the Treasurer, Mr Ian Walker the Commissioner of State Taxation and the Hon. Nick Xenophon met in a meeting with the Treasurer during which the opposition is informed that, when making the appointment, Mr Darley was told that approximately half an hour would be allowed for the meeting. He claims that the first 20 minutes was taken up by the Treasurer abusing him for criticising the Commissioner of State Taxation's failure to return a telephone call on ABC Radio in relation to services offered by Revenue SA and that he had been waiting for some two weeks for a return phone call. The Treasurer had, according to Mr Darley, continued by making wild accusations such as 'If I took out an FOI on your department when you were CEO, I would probably find similar instances of inefficiency.' That, of course, was referring to a period when Mr Darley held office with Revenue SA.

Further, in the course of these discussions, accusations were made of his association with the Liberal Party. Mr Darley had made it quite clear that he was not a member of the Liberal Party nor a member of the government's party and that, indeed, he had made a number of representations to all parties and, as I have noted, the Hon. Nick Xenophon was a member from another place who had been party to this meeting. That was made absolutely clear in later discussions. The Commissioner of State Taxation had indicated—he was present at this meeting—that he had never discussed or complained about the radio incident with the Treasurer or his officers, and when Mr Darley had attempted to bring the discussion back to the matter of substance of which they would have to have the meeting, he claims the Treasurer had ignored him, but at the conclusion of the meeting, after some 60 minutes, the Treasurer had turned to him and said, 'There will be further consequences for you.' Now, whatever that means—and it appears that the Treasurer cannot recall having made that statement—but whatever that means, it is totally unacceptable to make a threat to any citizen, and to Mr Darley, on this occasion.

Mr Darley is currently the Chairman of the Commission of Charitable Funds—a position as an appointment under the government which expires on 30 June 2005. I am pleased to note that the Treasurer in question time today indicated his support for his reappointment at the expiration of that time, namely, at 1 July this year. But it is totally unacceptable for the Treasurer to continue this sort of conduct, in particular, to Mr Darley. He has made attacks publicly to the Chairman of the Parole Board. We have had the statements made by him during last year in relation to statements that she should dare make to criticise the government, and it continues a pattern that is unacceptable.

Time expired.

AUSTRALIA DAY CITIZENSHIP CEREMONIES

Ms THOMPSON (Reynell): The pattern of parliamentary sitting times means that members in this house are not readily in a position to recognise the importance of community events that occurred on Australia Day, so I wanted to take this opportunity to congratulate all those who became Australian citizens on that day and, particularly, the 132 people who became citizens at a ceremony at Noarlunga and, also, to commend those people who have been recognised by their local communities as Citizens of the Year in that local community. Of course, I want to recognise those citizens in Noarlunga (Onkaparinga) especially. The City of Onkaparinga holds a number of Australia Day breakfasts to cover its wide geographic area at Aberfoyle Park, Aldinga, the central one in Noarlunga and another at Willunga where breakfasts are provided by a range of volunteer organisations notably Lions Clubs, Aldinga Bay Residents' Association and Rotary clubs.

At the breakfast in the Noarlunga Centre this year, I noticed more citizens than usual attending just out of general interest. I spoke to some young people there and asked if they had some connection with the nominees for Young Citizen

of the Year. I was surprised to be told that they had decided to come along because it was a nice event and a free feed. I suppose you can always get young people to places where there is a free feed, as the member for Colton knows. But they also had to rise pretty early in order to get there. So, I think it was more than the free feed that attracted those young people to go out and join with other citizens in recognising Australia Day.

The citizenship ceremony was very moving, as the ceremonies conducted by the City of Onkaparinga under the leadership of Mayor Ray Gilbert, supported by his wife, Edith, always are. Onkaparinga, I think, organises a very suitable citizenship ceremony. People take their oath in small groups so that the ceremony does not take overly long, because long ceremonies can be very difficult for the many young people present, as well as some of the older people. But it is still meaningful, personal and inclusive in the way in which relatives are invited to go to the stage to take special photographs of that day. In Onkaparinga, as I recall, as usual, the new citizens were mainly from England, Scotland, Wales, Ireland, New Zealand and the USA, but there were also some citizens from Afghanistan and Poland.

The Young Citizen of the Year for Onkaparinga was Amie Jade Ritchie. Besides helping young people at the Vault Youth Enterprise Centre at Aldinga with dance productions, Amie has started her own company, Dance JC Crew, and trains young people to become dance instructors. Amie is currently studying a double degree in secondary teaching and physical education. She sees dance as a medium to enable young people to develop good peer supports and to help marginalised youth become involved with positive activities. Last year, Amie won a City of Onkaparinga Youth Recognition Award and a Mission Australia's Young Entrepreneur of the Year Award. So, congratulations to Amie. This is a very well deserved recognition of her talent.

I also would like to congratulate Norm Lee, Citizen of the Year. Norm joined Trees for Life 12 years ago and embarked upon a crusade to grow seedlings to address issues such as salinity and soil erosion. Each week he and Bush for Life partner, Val Percy, work at their Onkaparinga Hills site removing weeds and dumped rubbish and repairing broken fences to deter bike riders and horse riders from entering sections of pristine bush. Mr Lee also works fortnightly at Mount Bold Reservoir removing large sections of blackberry bushes.

The Community Event of the Year was for the Reynell Business and Tourism Association for the opening of the John Reynell Heritage Park in Old Reynella. I have spoken previously in this place about that important event, which was very well patronised by local residents in Reynella, and the Reynell Business and Tourism Association also is to be highly commended.

CHILD ABUSE

Mr BRINDAL (Unley): Mr Speaker, few people have worked in this place harder than you on the issue of child abuse. I have had some small part in that, and I think every person in this chamber applauds the fact that, at long last, reluctantly, the government sought to have an inquiry. But, sir, I know you well enough to know that, while you have long sought justice in this matter (as have I, which I continue to do), justice is not served in witch-hunts. The reason, sir, why I took what was probably (as you ruled) an inappropriate step today to try to table something in the interests of natural justice was to try to prevent what, in my opinion, has clearly become a witch-hunt. Sir, you have advised me that other avenues are open and, in the interests of justice, as a member of this place, I will attempt to pursue them, as you would always tell me is my right. But you would also understand, sir, that those ways are somewhat more laborious and time consuming. Nevertheless, if that is what it takes, it should be done.

While we all looked carefully at the Olsson report (protected as it is by parliamentary privilege), the report that I have been given by Mr Nicol at least calls into questioning light some of the assertions of the original report. Many members of this house, and the general public of South Australia, because of the media frenzy that followed the publication of that report, tend to believe that Archbishop George, in his episcopacy, did very little. Sir, you have said that you are a practising Anglican. So am I. But even if we were not practising Anglicans, the whole of South Australia knows that, if Ian George was noted for one thing, it was for his social conscience and his zeal for social reform.

Indeed, conversations (which I am not at liberty to repeat) with the previous premier and some of the senior people in the Liberal government would certainly suggest that Ian George was not always flavour of the month with us because he often said things that we as a government wished he had not said. But he had this reputation and, indeed, since 1991 (which was virtually the time he was appointed), he sought to introduce measures to reform the process of the church in dealing with reform. Were they totally adequate; could they have done more; could they have done it more quickly? That is the legitimate substance of debate. But to present a report that looked as if a person had done nothing when, in fact, he had done much is the element of a miscarriage of natural justice.

I would like to read a few comments that were made—and this is one of the reasons why I think that parliamentary privilege may well eventually be accorded at least to some of this document. The author says:

> The rules of evidence and natural justice were not applied in any sense known to a Court of Law. . . The inquiry, in my opinion, made a severe error in publishing findings in such circumstances. In the ensuing media frenzy various diocesan leaders scandalously 'leaked' information about Diocesan discussions (including the Professional Standards Committee, which had no brief to discuss the Archbishop's position). . . The writer is left with the overall impression that the Diocesan Council were interested in finding someone to take the blame rather than implementing solutions.

It further states:

> The Diocesan Council responded to the public demands of the Deputy Premier, later reinforced by the Premier, that the Archbishop should resign by passing a resolution advising the Archbishop to resign.
>
> . . . It then applied improper pressure to the Archbishop by authorising the Executive Officer of the Synod to release the resolution to the media on the following day. This too, in spite of a pledge of confidentiality, was also 'leaked' to the media.

Sir, this is partly about your church and my church, the Anglican Church, but it is about our right as members of parliament to stand up fearlessly for what we believe. The Premier and the Deputy Premier stood up and made statements which now might not have been based on the best of fact or absolute truth.

One of the reasons I think it needs to be debated in this chamber is that there is an encumbrance on us—every backbench member, certainly the Speaker and, most particularly, those in higher office—to ensure that, as far as is humanly possible, we stick to the facts and do not get them

wrong. If those people holding the highest office in this state have made statements on erroneous fact, then it needs to be corrected.

Time expired.

EGGING

Mr CAICA (Colton): I rise today to alert the house of my concern about a growing trend within my electorate—and because my electorate is not that different from any others, I assume it is something that is happening across all electorates. It is frightening for the many elderly and not so elderly victims who are targeted and just plain annoying for those who are the victims of a random attack. I am talking about the growing increase of an act which can only be described and which I understand is described as egging. For those who are not aware, egging involves a person or persons throwing an egg or eggs at a stationary target—a car, a house, a shop, or a school—and, more frighteningly, on occasions, an unsuspecting pedestrian.

Usually this occurs under the cloak of darkness or as was the case for an elderly constituent of mine (an unsuspecting victim I might add), during the twilight hours. To many it might seem that this is simply a harmless prank, but it is not. I know of a couple living in my electorate who were targeted over an extended period. This was ruining their lives and it was necessary for the police to become involved. I admit that I have even been egged myself; in fact it has happened on two occasions. As I said, it is just plain annoying. I have woken up on two occasions to find both my car and my wife's car covered in egg and eggs smashed against the front door of the house, obviously hurled from outside the property. It is not just my house which has been affected but also my neighbours' houses and others in any particular vicinity on any particular night.

I spoke with Simon, my son, about it. I said, 'Have you done anything, Simon, that might cause some form of retribution that I might not be aware of? He said 'No, dad, that is not the case.' It just happens from time to time that some children—I should not necessarily say 'children' because I do not know the age—or people go around egging people's cars and, indeed, throwing them at people who might be walking along the street for what I guess they might describe as 'having a good time'. On waking up in the morning, it is not very pleasant to find egg white, yoke and pieces of shell all over the car—and it sets like concrete—and have to clean it up before going out.

It might seem like a prank to perpetrators, but for victims it can often be very frightening and, as I said, for others it can be plain annoying. I cannot see that there is any fun in it whatsoever for the perpetrators. It cannot be fun. It is clearly stupid. It is disrespectful and it can be a dangerous activity. Obviously it is perpetrated by those who must be bored. I cannot think why else they would be doing it, other than they cannot find anything else to do. It is all right to raise this issue but then, in the same breath, I have to say, 'What can be done about it?' I would urge those who have been the victims of egging to notify the police because you know as well as I do, sir, that we need statistical data and evidence about the prevalence of such things before it is taken more seriously.

I know that the majority of people who have contacted me have not contacted the police, so that is one step that ought be undertaken and, if possible, get the registration numbers of the cars from which the eggs are being hurled, although that is difficult because, as I said, it often occurs at nighttime. However, most importantly, the community needs to be informed that this activity is stupid, wasteful, disrespectful and that it can be dangerous. It is certainly not amusing and should not be tolerated at all. I would urge those who are doing it to cease. I would also urge all members of our community to have a chat to their sons, daughters, young people and not so young people about putting a stop to what is a stupid activity, which, as I said, can be frightening and certainly could be dangerous and which shows a total lack of respect.

Time expired.

PHYSIOTHERAPY PRACTICE BILL

The Hon. L. STEVENS (Minister for Health) obtained leave and introduced a bill for an act to protect the health and safety of the public by providing for the registration of physiotherapists and physiotherapy students; to regulate the provision of physiotherapy for the purpose of maintaining high standards of competence and conduct by the persons who provide it; to repeal the Physiotherapists Act 1991; and for other purposes. Read a first time.

The Hon. L. STEVENS: I move:

That this bill be now read a second time.

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

This Bill is one of a number of Bills being drafted to regulate health professionals in South Australia. Like the *Podiatry Practice Bill 2004* introduced earlier this session, the Physiotherapy Practice Bill is based on the *Medical Practice Act 2004*. I would like to point out to the House that this Bill is very similar, and for the most part identical, to the Medical Practice Act and the Podiatry Practice Bill. The provisions are therefore largely familiar to the House. The Physiotherapy Practice Bill replaces the *Physiotherapists Act 1991*. The key purpose of the current Act as set out in its long title is "to provide for the registration of physiotherapists and to regulate the practice of physiotherapy".

Consistent with the Government's commitment to protecting the health and safety of consumers, the long title of the Physiotherapy Practice Bill states that it is a Bill for an Act "to protect the health and safety of the public by providing for the registration of physiotherapists". At the outset it is made clear that primary aim of the legislation is the protection of the health and safety of the public, and that the registration of physiotherapists is the key mechanism by which this is achieved.

The current Act was reviewed in line with the requirements of National Competition Policy. The Review identified provisions of the Act restricting competition that were not justifiable on the grounds of providing a public benefit. Consistent with the Government's commitment to National Competition Policy, the Physiotherapy Practice Bill 2005 omits these provisions.

The Bill removes the ownership restrictions that exist in the current legislation and allows a physiotherapy services provider, being a person who is not a registered physiotherapist, to provide physiotherapy through the instrumentality of a registered physiotherapist.

The Bill includes the following measures to ensure that non-registered persons who own physiotherapy practices are accountable for the quality of physiotherapy services provided:

- a requirement that a corporate or trustee physiotherapy services provider notify the Board of their existence and provide the names and addresses of persons who occupy positions of authority in the provider and of the physiotherapists through the instrumentality of whom they provide physiotherapy;

- a prohibition on physiotherapy services providers giving improper directions to physiotherapists or physiotherapy students through the instrumentality of whom they provide physiotherapy;
- a prohibition on any person giving or offering a benefit as inducement, consideration or reward for a physiotherapist or physiotherapy student referring patients to a health service provided by the person, or recommending that a patient use a health service provided by the person or a health product made, sold or supplied by the person;
- a requirement that physiotherapy services providers comply with codes of conduct applying to such providers (thereby making them accountable to the Board by way of disciplinary action).

The definition of "physiotherapy services provider" in the Bill excludes "exempt providers". An exempt provider is a recognised hospital, incorporated health centre or private hospital within the meaning of the *South Australian Health Commission Act 1976*. These providers are accountable to me under that Act. I have the power to investigate and make changes to the way a hospital or health centre may operate, or vary the conditions applying to a private hospital licensed under that Act. It is therefore not reasonable that these providers be accountable to both me and the Board. Without this exclusion from the definition, the Board would have the capacity to conduct disciplinary proceedings against these providers and effectively prohibit a hospital or health centre from providing physiotherapy services.

The Bill requires all providers (including exempt providers) to report to the Board unprofessional conduct or medical unfitness of persons through the instrumentality of whom they provide physiotherapy. In this way the Board can ensure that services are provided in a manner consistent with a professional code of conduct and the interests of the public are protected. The Board may also make a report to me about any concerns it may have arising out of this information.

The Board will have responsibility under the Bill for developing codes of conduct for physiotherapy services providers. I will need to approve these codes. This is to ensure that they do not contain provisions that would limit competition, thereby undermining the intent of this legislation. It also gives me some oversight of the standards that relate to the profession and providers.

This Bill, like the Medical Practice Act, deals with the medical fitness of registered persons and applicants for registration and requires that where a determination is made of a person's fitness to provide physiotherapy, regard is given to the person's ability to provide physiotherapy without endangering a patient's health or safety. This can include consideration of communicable diseases.

This approach was agreed to by all the major medical and infection control stakeholders when developing the provisions for the Medical Practice Act and is in line with the way in which these matters are handled in other jurisdictions, and across the world. It is therefore appropriate that similar provisions be used in the Physiotherapy Practice Bill.

Provision is made for 3 elected physiotherapists on the Board, and 1 physiotherapist selected by me from a panel of 3 physiotherapists nominated by the Council of the University of South Australia. The membership of the Board also includes a legal practitioner, a medical practitioner and 2 persons who are not legal practitioners, medical practitioners or physiotherapists. This ensures there is a balance on the Board between physiotherapists and non-physiotherapists and enables the appointment of members to the Board who can represent other interests, in particular, those of consumers.

In addition there is a provision that will restrict the length of time which any one member of the Board can serve to 3 consecutive 3 year terms. This is to ensure that the Board has the benefit of fresh thinking. It will not restrict a person's capacity to serve on the Board at a later time but it does mean that after 9 consecutive years, they will have to have a break.

Standards and expectations by Government in regard to transparency and accountability are now much more explicit than in the past and the *Public Sector Management Act 1995*, as amended by the *Statutes Amendment (Honesty and Accountability in Government) Act 2003*, provides a clear framework for the operation of the public sector, including the Physiotherapy Board of South Australia.

Provisions relating to conflict of interest and to protect members of the Board from personal liability when they have acted in good faith are included in Schedule 2 of the Bill pending commencement of the amendments to the Public Sector Management Act.

Consistent with Government commitments to better consumer protection and information, this Bill increases the transparency and accountability of the Board and ensures that information about a physiotherapy services provider is available to the public.

Currently most complaints are taken to the Board by the Registrar acting on behalf of the complainant. Complainants do not usually take their own case to the Board for fear of having costs awarded against them and, because they are not a party to the proceedings, they do not have a legal right to be present during the hearing of those proceedings. This is obviously an unsatisfactory situation and I have had the relevant provisions of the Medical Practice Act mirrored in this Bill to provide a right for the complainant to be present at the hearing of the proceedings. This ensures that the proceedings, from the perspective of the person making the complaint, are more transparent. The Board can however, if it considers it necessary, exclude that person from being present at the hearing of part of the proceedings where, for example, the confidentiality of certain matters may need to be protected.

New to the Physiotherapy Practice Bill is the registration of students. This provision is supported by the Physiotherapists Board and the University of South Australia, which is the only provider of education for physiotherapy students in South Australia. It requires that students undertaking a course of physiotherapy based in South Australia, interstate or overseas are subject to the same requirements in relation to professional standards and codes of conduct as a registered physiotherapist while working in a practice setting where they are gaining their clinical experience.

Physiotherapists and physiotherapy services providers will be required to insure, in a manner and to an extent approved by the Board, against civil liabilities that might be incurred in connection with the provision of physiotherapy or with disciplinary proceedings. This is designed to ensure that there is adequate protection for the public should circumstances arise where this is necessary.

The Bill replaces the broad prohibition on the provision of physiotherapy for fee or reward by unqualified persons with offences of providing "restricted therapy" unless qualified or providing prescribed physical therapy for fee or reward unless qualified. This is consistent with the need for the legislation to be as precise as possible in describing the services that should be provided only by registered persons.

"Restricted therapy" is defined to mean "the manipulation or adjustment of the spinal column or joints of the human body involving a manoeuvre during which a joint is carried beyond its normal physiological range of motion" or any other physical therapy declared by the regulations to be restricted therapy.

It is therefore clear to a practitioner and the public precisely what can be done only by a physiotherapist or other suitably qualified person. Because of the significant health risks associated with the provision of restricted therapy by unqualified persons, the legislation ensures that the provision of such therapy is restricted to registered persons. Physiotherapy services other than restricted therapy or prescribed physical therapy can be provided by other practitioners so long as they do not hold out to be a physiotherapist, or use words restricted for the use of physiotherapists, such as "manipulative therapist" or "physical therapist".

This Bill balances the needs of the profession and physiotherapy services providers with the need of the public to feel confident that they are being provided with a service safely, either directly by a qualified practitioner or by a provider who uses registered physiotherapists.

As I stated in the beginning, the Physiotherapy Practice Bill is based on the Medical Practice Act and the provisions in the Physiotherapy Practice Bill are in most places identical to it. One exception is that unlike the Medical Practice Act, this Bill does not establish a Tribunal for hearing complaints. Instead, like the current practice, members of the Board can investigate and hear any complaint.

By following the model of the Medical Practice Act, this and other Bills that regulate health professionals will have consistently applied standards and expectations for all services provided by registered health practitioners. This will be of benefit to all health consumers who can feel confident that no matter which kind of registered health practitioner they consult, they can expect consistency in the standards and the processes of the registration boards.

I believe this Bill will provide an improved system for ensuring the health and safety of the public and regulating the physiotherapy profession in South Australia and I commend it to all members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title
2—Commencement
These clauses are formal.

3—Interpretation
This clause defines key terms used in the measure.

4—Medical fitness to provide physiotherapy
This clause provides that in making a determination under the measure as to a person's medical fitness to provide physiotherapy, regard must be given to the question of whether the person is able to provide physiotherapy personally to a patient without endangering the patient's health or safety.

Part 2—Physiotherapy Board of South Australia
Division 1—Establishment of Board
5—Establishment of Board
This clause establishes the Physiotherapy Board of South Australia as a body corporate with perpetual succession, a common seal, the capacity to litigate in its corporate name and all the powers of a natural person capable of being exercised by a body corporate

Division 2—Board's membership
6—Composition of Board
This clause provides for the Board to consist of 8 members appointed by the Governor, empowers the Governor to appoint deputy members and requires at least 1 member of the Board to be a woman and at least 1 to be a man.

7—Terms and conditions of membership
This clause provides for members of the Board to be appointed for a term not exceeding 3 years and to be eligible for re-appointment on expiry of a term of appointment. However, a member of the Board may not hold office for consecutive terms that exceed 9 years in total. The clause sets out the circumstances in which a member's office becomes vacant and the grounds on which the Governor may remove a member from office. It also allows members whose terms have expired, or who have resigned from the Board, to continue to act as members to hear part-heard proceedings under Part 4.

8—Presiding member and deputy
This clause requires the Minister, after consultation with the Board, to appoint a physiotherapist member of the Board to be the presiding member of the Board, and another physiotherapist member to be the deputy presiding member.

9—Vacancies or defects in appointment of members
This clause ensures acts and proceedings of the Board are not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

10—Remuneration
This clause entitles a member of the Board to remuneration, allowances and expenses determined by the Governor.

Division 3—Registrar and staff of Board
11—Registrar of Board
This clause provides for the appointment of a Registrar by the Board on terms and conditions determined by the Board.

12—Other staff of Board
This clause provides for the Board to have such other staff as it thinks necessary for the proper performance of its functions.

Division 4—General functions and powers
13—Functions of Board
This clause sets out the functions of the Board and requires it to exercise its functions with the object of protecting the health and safety of the public by achieving and maintaining high professional standards both of competence and conduct in the provision of physiotherapy in South Australia.

14—Committees
This clause empowers the Board to establish committees to advise the Board or the Registrar or assist the Board to carry out its functions.

15—Delegations
This clause empowers the Board to delegate its functions or powers to a member of the Board, the Registrar, an employee of the Board or a committee established by the Board.

Division 5—Board's procedures
16—Board's procedures
This clause deals with matters relating to the Board's procedures such as the quorum at meetings, the chairing of meetings, voting rights, the holding of conferences by telephone and other electronic means and the keeping of minutes.

17—Conflict of interest etc under Public Sector Management Act
This clause provides that a member of the Board will not be taken to have a direct or indirect interest in a matter for the purposes of the *Public Sector Management Act 1995* by reason only of the fact that the member has an interest in the matter that is shared in common with physiotherapists generally or a substantial section of physiotherapists in this State.

18—Powers of Board in relation to witnesses etc
This clause sets out the powers of the Board to summons witnesses and require the production of documents and other evidence in proceedings before the Board.

19—Principles governing proceedings
This clause provides that the Board is not bound by the rules of evidence and requires it to act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms. It requires the Board to keep all parties to proceedings before the Board properly informed about the progress and outcome of the proceedings.

20—Representation at proceedings before Board
This clause entitles a party to proceedings before the Board to be represented at the hearing of those proceedings.

21—Costs
This clause empowers the Board to award costs against a party to proceedings before the Board and provides for the taxation of costs by a Master of the District Court in the event that a party is dissatisfied with the amount of costs awarded by the Board.

Division 6—Accounts, audit and annual report
22—Accounts and audit
This clause requires the Board to keep proper accounting records in relation to its financial affairs, to have annual statements of account prepared in respect of each financial year and to have the accounts audited annually by an auditor approved by the Auditor-General and appointed by the Board.

23—Annual report
This clause requires the Board to prepare an annual report for the Minister and requires the Minister to table the report in Parliament.

Part 3—Registration and practice
Division 1—Registers
24—Registers
This clause requires the Registrar to keep certain registers and specifies the information required to be included in each register. It also requires the registers to be kept available for inspection by the public and permits access to be made available by electronic means. The clause requires registered persons to notify a change of name or nominated contact address within 1 month of the change. A maximum penalty of $250 is fixed for non-compliance.

25—Authority conferred by registration
This clause sets out the kind of physiotherapy that registration on each particular register authorises a registered person to provide.

Division 2—Registration
26—Registration of natural persons as physiotherapists
This clause provides for full and limited registration of natural persons on the register of physiotherapists.

27—Registration of physiotherapy students
This clause requires persons to register as physiotherapy students before undertaking a course of study that provides qualifications for registration on the register of physiotherapists, or before providing physiotherapy as part of a course of study related to physiotherapy being undertaken outside the State, and provides for full or limited registration of physiotherapy students.

28—Application for registration and provisional registration
This clause deals with applications for registration. It empowers the Board to require applicants to submit medical reports or other evidence of medical fitness to provide physiotherapy or to obtain additional qualifications or experience before determining an application.

29—Removal from register
This clause requires the Registrar to remove a person from a register on application by the person or in certain specified circumstances (for example, suspension or cancellation of the person's registration under this measure).

30—Reinstatement on register

This clause makes provision for reinstatement of a person on a register. It empowers the Board to require applicants for reinstatement to submit medical reports or other evidence of medical fitness to provide physiotherapy or to obtain additional qualifications or experience before determining an application.

31—Fees and returns

This clause deals with the payment of registration, reinstatement and annual practice fees, and requires registered persons to furnish the Board with an annual return in relation to their practice of physiotherapy, continuing physiotherapy education and other matters relevant to their registration under the measure. It empowers the Board to remove from a register a person who fails to pay the annual practice fee or furnish the required return.

Division 3—Special provisions relating to physiotherapy services providers

32—Information to be given to Board by physiotherapy services providers

This clause requires a physiotherapy services provider to notify the Board of the provider's name and address, the name and address of the physiotherapists through the instrumentality of whom the provider is providing physiotherapy and other information. It also requires the provider to notify the Board of any change in particulars required to be given to the Board and makes it an offence to contravene or fail to comply with the clause. A maximum penalty of $10 000 is fixed. The Board is required to keep a record of information provided to the Board under this clause available for inspection at the office of the Board and may make it available to the public electronically.

Division 4—Restrictions relating to provision of physiotherapy

33—Illegal holding out as registered person

This clause makes it an offence for a person to hold himself or herself out as a registered person of a particular class or permit another person to do so unless registered on the appropriate register. It also makes it an offence for a person to hold out another as a registered person of a particular class unless the other person is registered on the appropriate register. In both cases a maximum penalty of $50 000 or imprisonment for 6 months is fixed.

34—Illegal holding out concerning limitations or conditions

This clause makes it an offence for a person whose registration is restricted, limited or conditional to hold himself or herself out, or permit another person to hold him or her out, as having registration that is unrestricted or not subject to a limitation or condition. It also makes it an offence for a person to hold out another whose registration is restricted, limited or conditional as having registration that is unrestricted or not subject to a limitation or condition. In each case a maximum penalty of $50 000 or imprisonment for 6 months is fixed.

35—Use of certain titles or descriptions prohibited

This clause creates a number of offences prohibiting a person who is not appropriately registered from using certain words or their derivatives to describe himself or herself or services that they provide, or in the course of advertising or promoting services that they provide. In each case a maximum penalty of $50 000 is fixed.

36—Restrictions on provision of physiotherapy by unqualified persons

This clause makes it an offence to provide restricted therapy, or to provide prescribed physical therapy for fee or reward, unless the person is a qualified person or provides the therapy through the instrumentality of a qualified person. A maximum penalty of $50 000 or imprisonment for 6 months is fixed for the offence. However, these provisions do not apply to physiotherapy provided by an unqualified person in prescribed circumstances. In addition, the Governor is empowered, by proclamation, to grant an exemption if of the opinion that good reason exists for doing so in the particular circumstances of a case. The clause makes it an offence punishable by a maximum fine of $50 000 to contravene or fail to comply with a condition of an exemption.

37—Board's approval required where physiotherapist or physiotherapy student has not practised for 5 years

This clause prohibits a registered person who has not provided physiotherapy of a kind authorised by their registration for 5 years or more from providing such physiotherapy without the prior approval of the Board and fixes a maximum penalty of $20 000. The Board is empowered to require an applicant for approval to obtain qualifications and experience and to impose conditions on the person's registration.

Part 4—Investigations and proceedings

Division 1—Preliminary

38—Interpretation

This clause provides that in this Part the terms ***occupier of a position of authority***, ***physiotherapy services provider*** and ***registered person*** includes a person who is not but who was, at the relevant time, an occupier of a position of authority, a physiotherapy services provider or a registered person.

39—Cause for disciplinary action

This clause specifies what constitutes proper cause for disciplinary action against a registered person, a physiotherapy services provider or a person occupying a position of authority in a corporate or trustee physiotherapy services provider.

Division 2—Investigations

40—Powers of inspectors

This clause sets out the powers of an inspector to investigate suspected breaches of the Act and other matters.

41—Offence to hinder etc inspector

This clause makes it an offence for a person to hinder an inspector, use certain language to an inspector, refuse or fail to comply with a requirement of an inspector, refuse or fail to answer questions to the best of the person's knowledge, information or belief, or falsely represent that the person is an inspector. A maximum penalty of $10 000 is fixed.

Division 3—Proceedings before Board

42—Obligation to report medical unfitness or unprofessional conduct of physiotherapist or physiotherapy student

This clause requires certain classes of persons to report to the Board if of the opinion that a physiotherapist or physiotherapy student is or may be medically unfit to provide physiotherapy. A maximum penalty of $10 000 is fixed for non-compliance. It also requires physiotherapy services providers and exempt providers to report to the Board if of the opinion that a physiotherapist or physiotherapy student through whom the provider provides physiotherapy has engaged in unprofessional conduct. A maximum penalty of $10 000 is fixed for non-compliance. The Board must cause reports to be investigated.

43—Medical fitness of physiotherapist or physiotherapy student

This clause empowers the Board to suspend the registration of a physiotherapist or physiotherapy student, impose conditions on registration restricting the right to provide physiotherapy or other conditions requiring the person to undergo counselling or treatment, or to enter into any other undertaking if, on application by certain persons or after an investigation under clause 42, and after due inquiry, the Board is satisfied that the physiotherapist or physiotherapy student is medically unfit to provide physiotherapy and that it is desirable in the public interest to take such action.

44—Inquiries by Board as to matters constituting grounds for disciplinary action

This clause requires the Board to inquire into a complaint relating to matters alleged to constitute grounds for disciplinary action against a person unless the Board considers the complaint to be frivolous or vexatious. If after conducting an inquiry, the Board is satisfied that there is proper cause for taking disciplinary action, the Board can censure the person, order the person to pay a fine of up to $10 000 or prohibit the person from carrying on business as a physiotherapy services provider or from occupying a position of authority in a corporate or trustee physiotherapy services provider. If the person is registered, the Board may impose conditions on the person's right to provide physiotherapy, suspend the person's registration for a period not exceeding 1 year, cancel the person's registration, or disqualify the person from being registered.

If a person fails to pay a fine imposed by the Board, the Board may remove their name from the appropriate register.

45—Contravention of prohibition order

This clause makes it an offence to contravene a prohibition order made by the Board or to contravene or fail to comply with a condition imposed by the Board. A maximum penalty of $75 000 or imprisonment for 6 months is fixed.

46—Register of prohibition orders

This clause requires the Registrar to keep a register of prohibition orders made by the Board. The register must be kept available for inspection at the office of the Registrar and may be made available to the public electronically.

47—Variation or revocation of conditions of registration

This clause empowers the Board, on application by a registered person, to vary or revoke a condition imposed by the Board on his or her registration.

48—Constitution of Board for purpose of proceedings

This clause sets out how the Board is to be constituted for the purpose of hearing and determining proceedings under Part 4.

49—Provisions as to proceedings before Board

This clause deals with the conduct of proceedings by the Board under Part 4.

Part 5—Appeals

50—Right of appeal to District Court

This clause provides a right of appeal to the District Court against certain acts and decisions of the Board.

51—Operation of order may be suspended

This clause empowers the Court to suspend the operation of an order made by the Board where an appeal is instituted or intended to be instituted.

52—Variation or revocation of conditions imposed by Court

This clause empowers the District Court, on application by a registered person, to vary or revoke a condition imposed by the Court on his or her registration.

Part 6—Miscellaneous

53—Interpretation

This clause defines terms used in Part 6.

54—Offence to contravene conditions of registration

This clause makes it an offence for a person to contravene or fail to comply with a condition of his or her registration and fixes a maximum penalty of $75 000 or imprisonment for 6 months.

55—Registered person etc must declare interest in prescribed business

This clause requires a registered person or prescribed relative of a registered person who has an interest in a prescribed business to give the Board notice of the interest and of any change in such an interest. It fixes a maximum penalty of $20 000 for non-compliance. It also prohibits a registered person from referring a patient to, or recommending that a patient use, a health service provided by the business and from prescribing, or recommending that a patient use, a health product manufactured, sold or supplied by the business unless the registered person has informed the patient in writing of his or her interest or that of his or her prescribed relative. A maximum penalty of $20 000 is fixed for a contravention. However, it is a defence to a charge of an offence or unprofessional conduct for a registered person to prove that he or she did not know and could not reasonably have been expected to know that a prescribed relative had an interest in the prescribed business to which the referral, recommendation or prescription that is the subject of the proceedings relates.

56—Offence to give, offer or accept benefit for referral or recommendation

This clause makes it an offence—

(a) for any person to give or offer to give a registered person or prescribed relative of a registered person a benefit as an inducement, consideration or reward for the registered person referring, recommending or prescribing a health service provided by the person or a or health product manufactured, sold or supplied by the person; or

(b) for a registered person or prescribed relative of a registered person to accept from any person a benefit offered or given as a inducement, consideration or reward for such a referral, recommendation or prescription.

In each case a maximum penalty of $75 000 is fixed.

57—Improper directions to physiotherapists or physiotherapy students

This clause makes it an offence for a person who provides physiotherapy through the instrumentality of a physiotherapist or physiotherapy student to direct or pressure the physiotherapist or student to engage in unprofessional conduct. It also makes it an offence for a person occupying a position of authority in a corporate or trustee physiotherapy services provider to direct or pressure a physiotherapist or physiotherapy student through whom the provider provides physiotherapy to engage in unprofessional conduct. In each case a maximum penalty of $75 000 is fixed.

58—Procurement of registration by fraud

This clause makes it an offence for a person to fraudulently or dishonestly procure registration or reinstatement of registration (whether for himself or herself or another person) and fixes a maximum penalty of $20 000 or imprisonment for 6 months.

59—Statutory declarations

This clause empowers the Board to require information provided to the Board to be verified by statutory declaration.

60—False or misleading statement

This clause makes it an offence for a person to make a false or misleading statement in a material particular (whether by reason of inclusion or omission of any particular) in information provided under the measure and fixes a maximum penalty of $20 000.

61—Registered person must report medical unfitness to Board

This clause requires a registered person who becomes aware that he or she is or may be medically unfit to provide physiotherapy to forthwith give written notice of that fact of the Board and fixes a maximum penalty of $10 000 for non-compliance.

62—Report to Board of cessation of status as student

This clause requires the person in charge of an educational institution to notify the Board that a physiotherapy student has ceased to be enrolled at that institution in a course of study providing qualifications for registration on the register of physiotherapists. A maximum penalty of $5 000 is fixed for non-compliance. It also requires a person registered as a physiotherapy student who completes, or ceases to be enrolled in, the course of study that formed the basis for that registration to give written notice of that fact to the Board. A maximum penalty of $1 250 is fixed for non-compliance.

63—Registered persons and physiotherapy services providers to be indemnified against loss

This clause prohibits registered persons and physiotherapy services providers from providing physiotherapy unless insured or indemnified in a manner and to an extent approved by the Board against civil liabilities that might be incurred by the person or provider in connection with the provision of physiotherapy or proceedings under Part 4 against the person or provider. It fixes a maximum penalty of $10 000 and empowers the Board to exempt persons or classes of persons from the requirement to be insured or indemnified.

64—Information relating to claim against registered person or physiotherapy services provider to be provided

This clause requires a person against whom a claim is made for alleged negligence committed by a registered person in the course of providing physiotherapy to provide the Board with prescribed information relating to the claim. It also requires a physiotherapy services provider to provide the Board with prescribed information relating to a claim made against the provider for alleged negligence by the provider in connection with the provision of physiotherapy. The clause fixes a maximum penalty of $10 000 for non-compliance.

65—Victimisation

This clause prohibits a person from victimising another person (the victim) on the ground, or substantially on the ground, that the victim has disclosed or intends to disclose information, or has made or intends to make an allegation, that has given rise or could give rise to proceedings against the person under this measure. Victimisation is the causing of detriment including injury, damage or loss, intimidation or harassment, threats of reprisals, or discrimination, disadvantage or adverse treatment in relation to the victim's employment or business. An act of victimisation may be dealt with as a tort or as if it were an act of victimisation under the *Equal Opportunity Act 1984*.

66—Self-incrimination

This clause provides that if a person is required to provide information or to produce a document, record or equipment under this measure and the information, document, record or equipment would tend to incriminate the person or make the person liable to a penalty, the person must nevertheless provide the information or produce the document, record or equipment, but the information, document, record or equipment so provided or produced will not be admissible in evidence against the person in proceedings for an offence, other than an offence against this measure or any other Act relating to the provision of false or misleading information.

67—Punishment of conduct that constitutes an offence

This clause provides that if conduct constitutes both an offence against the measure and grounds for disciplinary action under the measure, the taking of disciplinary action is not a bar to conviction and punishment for the offence, and conviction and punishment for the offence is not a bar to disciplinary action.

68—Vicarious liability for offences

This clause provides that if a corporate or trustee physiotherapy services provider or other body corporate is guilty of an offence against this measure, each person occupying a position of authority in the provider or body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless it is proved that the person could not, by the exercise of reasonable care, have prevented the commission of the principal offence.

69—Application of fines

This clause provides that fines imposed for offences against the measure must be paid to the Board.

70—Board may require medical examination or report

This clause empowers the Board to require a registered person or a person applying for registration or reinstatement of registration to submit to an examination by a health professional or provide a medical report from a health professional, including an examination or report that will require the person to undergo a medically invasive procedure. If the person fails to comply the Board can suspend the person's registration until further order.

71—Ministerial review of decisions relating to courses

This clause gives a provider of a course of education or training the right to apply to the Minister for a review of a decision of the Board to refuse to approve the course for the purposes of the measure or to revoke the approval of a course.

72—Confidentiality

This clause makes it an offence for a person engaged or formerly engaged in the administration of the measure or the repealed Act (the *Physiotherapists Act 1991*) to divulge or communicate personal information obtained (whether by that person or otherwise) in the course of official duties except—

(a) as required or authorised by or under this measure or any other Act or law; or

(b) with the consent of the person to whom the information relates; or

(c) in connection with the administration of this measure or the repealed Act; or

(d) to an authority responsible under the law of a place outside this State for the registration or licensing of persons who provide physiotherapy, where the information is required for the proper administration of that law; or

(e) to an agency or instrumentality of this State, the Commonwealth or another State or a Territory of the Commonwealth for the purposes of the proper performance of its functions.

However, the clause does not prevent disclosure of statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates. Personal information that has been disclosed for a particular purpose must not be used for any other purpose by the person to whom it was disclosed or any other person who gains access to the information (whether properly or improperly and directly or indirectly) as a result of that disclosure. A maximum penalty of $10 000 is fixed for a contravention of the clause.

73—Service

This clause sets out the methods by which notices and other documents may be served.

74—Evidentiary provisions

This clause provides evidentiary aids for the purposes of proceedings for offences and for proceedings under Part 4.

75—Regulations

This clause empowers the Governor to make regulations.

Schedule 1—Repeal and transitional provisions

This Schedule repeals the *Physiotherapists Act 1991* and makes transitional provisions with respect to the Board, registrations and physiotherapy students.

Schedule 2—Further provisions relating to Board

This Schedule sets out the obligations of members of the Board in relation to personal or pecuniary interests. It also protects members of the Board, members of committees of the Board, the Registrar of the Board and any other person engaged in the administration of the measure from personal liability. The Schedule will expire when section 6H of the *Public Sector Management Act 1995* (as inserted by the *Statutes Amendment (Honesty and Accountability in Government) Act 2003*) comes into operation, or if that section has come into operation before the commencement of clause 3 of Schedule 2, the Schedule will be taken not to have been enacted.

Mr BROKENSHIRE secured the adjournment of the debate.

KANGAROO ISLAND KOALAS

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

Leave granted.

The Hon. J.D. HILL: In question time today the Deputy Leader of the Opposition asked me a question about the transportation of koalas to Kangaroo Island and whether it was done by charter flights. I sought advice from my department and I am advised that koalas are being translocated off the island by aircraft. This has been the form of transport since translocation began under the former government in 1997. It is believed that this is the most humane and efficient method of transport. I am also advised that quotes were sought from air freight operators and Aussie Air was selected to run a service at a cost of $1 900 per service.

CORRECTIONAL SERVICES (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 8 December. Page 1244.)

Mr BROKENSHIRE (Mawson): I will be brief in my comments on this only because this bill has been covered extremely well by members in another place. I commend the lead speaker of the opposition for his comments and amendments put through in that house, which were then supported by the majority of members in another place. The relevant correctional action that made common sense was passed in that house and is part of the debate here this afternoon in this place. This bill I can recall being drafted when I was minister. It takes some time for these amendments to come through and I am pleased to see that, with the amendments of the other place, which the opposition in the House of Assembly support, we will support this bill through this house. It will not be long before we need a complete rewrite of the act.

The processes around correctional services are much broader and, without wanting to offend anyone, more strategic in many areas than they were when the original bills on correctional services were debated and passed in this parliament. The complexities of prisoners and issues around them are far greater. Today sadly we have more people with

dysfunctional lives as a result of circumstances that are not of their own doing. We have illicit drugs, which change a person's whole being in society. It affects their families and sadly we see too many of them finding themselves in some sort of correctional services management. This bill has some basic housekeeping amendments to it and a series of other important initiatives that I would best describe as modernising the requirements of operating the Department of Correctional Services and the matters relevant to correctional services per se. I congratulate our lead speaker in another place and advise that the opposition supports the bill.

The Hon. J.D. HILL (Minister for Environment and Conservation): I thank the opposition for the support it has given to the bill as it has reached this place. I will not canvass the arguments made in another place but simply recognise the bipartisan support the legislation now has. I thank the officers for the work they have done in achieving this piece of legislation and commend the bill to the house.

Bill read a second time.

The SPEAKER: I take the opportunity afforded me to make some remarks about criminal behaviour in society, the apprehension of the criminal after having committed the acts and, more particularly, after being found guilty of the acts, the whole philosophy behind the purpose for sentencing. It is the 21st century. There was a time when our society was living in the 19th century. It was understood then that the approach that had been taken for two centuries was wrong and, as a result of the legislative reforms that followed the glorious reforms of the Westminster parliament from 1828 to 1832, the whole approach to criminal conduct and the way in which people were sentenced in the jurisdiction and constitutional part of society in the United Kingdom changed. No longer were people transported.

As we sit here at the beginning of the 21st century and reflect upon what was happening at that time, namely, the transportation of citizens from the United Kingdom to other parts of the world as a punishment for doing what was thought to be wrong at the time, we find it almost laughable. Equally, I am sure, in not 100 or 150 years, we will reflect upon what we were doing in the 21st century and laugh about that—at least those who come after us will.

The Hon. I.F. Evans interjecting:

The SPEAKER: As may be, the member for Davenport points out. Notwithstanding the observation I have made historically, I wish to place on record, with great emphasis, the idiocy of the present underlying philosophy of sentencing. It ought not to be about retribution, yet so many people think it is. It ought to be about rehabilitation, and that ought to take as long as it takes to ensure that an objective and independent panel of people, competent to do the job, have assessed the individual person who committed the crime for which they have been sentenced to a period of incarceration or community service, and satisfied themselves that they have made sufficient renovation of their mindset, their attitude to the rest of society and their own lives as part of it, then a sufficient shift has occurred in their understanding of what it is to be civilised that they can both, in the first instance, be put on parole and then, finally, have completely renovated their mindset and rehabilitated their behaviour to the extent that they can be released in society without further recrimination or retribution being seen as necessary in any part.

To say in sentencing that a punishment should fit the crime is ridiculous. It costs us all as taxpayers an enormous amount to punish people. It is almost as if we want to punish those others more deserving of the expenditure of dollars who suffer in consequence and need care for disabilities they have, unrelated to crime; for instance, people on the elective surgery waiting lists, and so on, for knee and hip replacements, as well people who cannot care for themselves, who have not been born with sufficient aptitude to be able to do that. They are left waiting without the compassion we would otherwise be able to confer on them, simply because we adopt the attitude that punishment, which costs a hell of a lot of money, has to be meted out in some other domain of public administration to those whom the courts have found to be criminal in their behaviour.

I repeat that sentencing ought to be about rehabilitation and renovating the mindset of the criminal, not about retribution. It will be a far more effective society, less likely to alienate from it people who have not been brought up in a way which we all, I am sure, believe is appropriate but who have been brought up to be paranoid; who have been brought up to have the view that society at large is out to get them and that they should, in the first instance, take liberties to get society before it gets them. All of that and more, like self indulgence and selfishness and indifference to the interests and needs of others, is at the basis of criminal behaviour. That is what needs to be addressed, not the belief that you have to make someone suffer just because they committed a crime.

Having put what I consider to be more relevant to the approach to be taken in future to sentencing, I endorse—whether or not he believed them to be appropriate—the remarks made by the member for Mawson that such action will require a complete rewriting of the criminal law sentencing provisions and other aspects of law, in particular, the correctional services administrative approaches where we do not have gaolers but, in effect, carers who assist in the process of rehabilitation, more than was the case in the 20th century, and certainly more than was the case in earlier times.

Bill read a second time and taken through its remaining stages.

ENVIRONMENT PROTECTION (MISCELLANEOUS) AMENDMENT BILL

In Committee.

(Continued from 10 February. Page 1529.)

Clause 37.

The Hon. I.F. EVANS: Do the words 'threatened harm' have the same meaning as 'potential harm'?

The Hon. J.D. HILL: I am advised that it is a matter of common interpretation of the language. I guess that, ultimately, a court might determine it to be a particular way, but the normal use of the word 'threatened' is that it is a harm which is actively being contemplated and which may occur if certain things happen. The term 'potential', I imagine, includes a broader range of possible outcomes.

The Hon. I.F. EVANS: I am not sure how the average person is meant to distinguish those terms when they report these threatening activities to the authority. How will a person distinguish whether it is an activity that is leading to potential harm or whether it is an activity leading to threatened harm? Now that we understand that 'threatened harm' has a different meaning to 'potential harm' we will look forward to the court cases that will argue about those words. The way in which I read it is that the government is changing the intent of this clause.

Prior to the amendments being moved, the act required that an incident had to occur so that serious or material harm from pollution is caused or threatened in the course of an activity undertaken. The government is now taking out the requirement for an incident to occur. I am wondering why the government is doing that, because it seems to me that it broadens the potential for people to get caught up in this provision innocently, whereas previously there was slightly more protection through the wording of the current act.

The Hon. J.D. HILL: I am advised that the clause amends section 83 to remove the references to an incident, which might have suggested that the section was dealing with only harm caused or threatened by a one-off event rather than harm that might be caused or threatened slowly over time. The obligation to notify the EPA after an incident threatening or causing serious or material harm is being clarified by this mechanism. The term 'incident' is not defined under the act. There is concern that the term is understood to mean a one-off event and that an isolated act which would not immediately cause harm resulting in serious or material environmental harm but which cumulatively over time would do so is not required to be reported pursuant to this section. An example would be a leaking tap, pipe or something like that. It is considered that these actions should also be reported.

Clause 37 therefore proposes to amend section 83(1) of the act to ensure that actions which have cumulatively caused serious or material environmental harm over time are also reported once a person becomes aware of their impact. It does this by removing the term 'incident' from the existing section. This addresses a gap in the requirement to notify the EPA of instances of environmental harm and seeks to ensure that the EPA is aware of all cases of harm. The environmental benefit of the EPA being notified is that remedial measures can be put in place.

Clause passed.

Clauses 38 and 39 passed.

Clause 40.

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

Page 17, after line 16—
Insert:

(4a) Section 87(2)(a)—delete 'business; or' and substitute: business (and no part of the premises are used for residential purposes); and

This amendment protects people's private residences from the prying hands of inspectors and bureaucracy. There is a fundamental principle in this country that people are entitled to live in their homes without the prying hands of bureaucracy. There is absolutely no excuse. It is not necessary, desirable or proper that, in a democracy, an inspector has the right to go into anyone's home. The people who want these provisions would not want people going into their homes. I repeat: they would not want people going into their homes. I say to Dr Vogel: would he like people marching into his home without his knowledge? We will not tolerate this in a democracy, and it is obscene in the extreme even to put it in the legislation. It absolutely demonstrates what we on this side have been talking about. It absolutely demonstrates the need for change and the need for these people to come to their senses and act reasonably. We would not have had all this debate had people acted reasonably.

Later, I will talk at length about the marina at Port Augusta, about the stupidity of the disgraceful decision that will hold that city back and about the unreasonable attitude of some people. If you asked anyone in the community, 'Are you aware that Sir Humphrey Appleby (the South Australian branch) wants to go into your home without a warrant?', they would be appalled. This amendment also affects private vehicles. There is no need for it. Why would you want to go into the vehicle of some poor innocent person who probably does not know their rights anyway? What is so wrong about this is that the average citizen is at a tremendous disadvantage when dealing with these people. Fancy dealing with the Craig Whissons of this world! (The Speaker will explain that.) Why would you put this in the legislation? Why would you want to impose this sort of requirement on some innocent person? There must be something fundamentally wrong with their attitude to life. They must get up in the morning and want to make life as difficult as they possibly can for people.

On the front of this building are the principles on which South Australia was founded. It ought to be mandatory for every public servant to read that inscription so that they can see what the people who founded this province—not a colony but a province—set out to do. They believed in people's rights, and they wanted to make a new start and give people a fair go. They wanted to create an even playing field, and they wanted to protect the ordinary citizen against the ravages wrought by the state. The obsession to give more power to the bureaucracy at the expense of ordinary, decent, hard-working, good South Australian citizens is a course of action that should be resisted on every occasion.

Unfortunately, I do not think that enough members of the parliament have read these clauses to know their effect. They get excited only when one of their constituents is suddenly a victim of this sort of arbitrary decision making. A few weeks ago, a constituent said to me, 'When I see a car with a government numberplate coming up my driveway, I know they are not here to help me or to do anything productive or good. They are here to threaten or intimidate me.' He is right. People are angry about the way they have been treated by another arm of government, and so I say to the minister: this is a very simple amendment which restores the ideals by which we should all stand, namely, that people are entitled to live in their home without bureaucracy, with its attitude and its agendas and obsessed with its power, walking through it. This has been brought about by bitter experience.

Let me say again: these provisions are not necessary; there is no need for them. If the minister wishes, we can go into detail. Later we will go into the example of stupidity I gave earlier—and there are many others. I call on the minister to accept this amendment so that fairness and the principles this place was established on can be maintained.

The Hon. J.D. HILL: For the benefit of the house I point out the existing rule, which is in Part 10, 'Enforcement', Division 1, Section 87(2), and which provides:

An authorised officer may not exercise the power of entry under this section in respect of premises except—

and there are two situations where that can happen:

(a) the premises are business premises being used at the time in the course of business; or
(b) the authorised officer reasonably suspects that—
  (i) a contravention of this act has been, is being or is about to be committed on the premises; or
  (ii) something may be found in the premises that is being used in or constitutes evidence of a contravention of this act.

So, the capacity for an EPA officer to enter a domestic situation is considerably constrained. In other circumstances, warrants have to be sought. It is really to allow officers where the situation is hot; where an act of pollution is actually happening at the time. It is consistent with the powers given

to police officers in the pursuit of people who are committing crimes. They do not have to seek a warrant if they are in hot pursuit, and it is the same kind of situation. I have just asked how often this power has been used, and it has been used very sparingly, in the knowledge of the advice I am given. In most cases, the EPA does seek a warrant if it is going to enter premises.

However, I am advised that, if the amendment moved by the member for Stuart were successful, that would stop EPA officers entering any part of a premises if part of those premises were used for residential purposes. There are the situations where it becomes a bit difficult: where the front part is an office or a workplace of some sort and there is a flat or something in the building. If part of the building were for residential purposes, then the officer—

The Hon. G.M. Gunn: Minister, you have not read the amendment properly. It says 'if no part of the premises are used for residential purposes.' They are talking about that section of the premises that is residential.

The Hon. J.D. HILL: I am just telling the honourable member the advice that I have. In any event, whether or not it did that, I would not support it, so it is a moot argument. The amendment to section 87(2)(a) would limit the EPA from entering business premises if part of the premises were residential. As such, this amendment would create a large obstruction to authorised officers to effectively enforce and administer the act where a suspected contravention of the act is being committed in business premises that also contain residential premises.

I seek some guidance. Under amendment No. 2 there are four parts that the member for Stuart is seeking to add. I assume that his contribution covered all those four parts and they are not four separate amendments.

The Hon. G.M. Gunn: Yes.

The Hon. J.D. HILL: Thank you. The amendment to section 87(3) seeks to limit the powers of inspection and seizure of vehicles to commercial vehicles. This would also inhibit the EPA's ability to enforce and administer the act. There are numerous instances where a person's private vehicle (a car, boat or trailer) has featured in the commission of pollution incidents. To exclude an authorised officer from inspecting a car, boat or trailer to circumstances where he or she can show that it was being used in the course of business at the time would create a significant barrier to the effective enforcement and administration of the act.

This would create a huge operational impediment, as authorised officers would have to try to establish alleged use of the vehicle at the time before exercising the power to inspect or search the vehicle. Two recent instances where the EPA officers were required to enter upon and inspect vehicles were the following. In December 2003, officers received reports of leaking 44 gallon drums on the rear of a utility, which had left a trail along Pulteney Street, North Terrace and then Kintore Avenue, where the driver parked. EPA and council officers inspected this vehicle and its load and soon established that the drums contained only vegetable oil and the owner received an expiation notice.

The proposed amendment would severely limit the powers of EPA officers to inspect vehicles in such circumstances, particularly if the driver claimed he was not engaged in a business activity at the time or claimed it was not a prescribed vehicle. Similarly, recently, EPA officers were called to investigate the source of a diesel spill in the North Haven boat marina. With the aid of local residents the source of the spill was traced to a privately-owned vessel moored at the marina. EPA officers boarded and inspected the vessel, locating a leaking fuel tank on the boat. The proposed amendment would severely restrict the EPA's power to locate the source of such spills coming from private vessels, particularly those not occupied or being used in the course of business at the time. Valuable time would be lost trying to find the owner or obtaining a warrant to enable such inspection to take place and corrective action taken.

I want to point out to the committee that this is a power that is used very sparingly. I think it highly unlikely that the member for Stuart could point to an example where the excesses that he is describing could potentially take place have actually taken place. It is a necessary power for EPA officers to have if the circumstances were such that an incident was happening and they had to take immediate action. To slow them by their having to get a warrant would mean in some cases, potentially, that serious pollution could occur or those who have been responsible for pollution would be able to get away.

The other point I would make is that the member is attempting to amend the existing legislation, not something that I have brought forward. The powers that he is referring to are those that have been in the legislation since it was introduced in 1995, as I understand it, which is 10 years.

The Hon. I.F. EVANS: Section 87(3) states that an authorised officer may not exercise the power to enter a vehicle, except in certain circumstances. What is wrong with the member for Stuart's amendment which seeks to change that power so that an authorised officer may not exercise the power to enter, inspect or seize a vehicle except in certain circumstances? The way the act is written, they have the power to enter and inspect the vehicle except in the circumstances outlined in the act, but there is no limitation on the power to seize. As I understand it, the second part of the amendment of the member for Stuart seeks to put the same restriction on the power to seize a vehicle as the power to enter and inspect a vehicle. I wonder why the government has a problem with that.

The Hon. J.D. HILL: We are getting into the hypothetical, because the advice I have is that, in practice, there has never been a seizure of vehicles but, if it was limited to only business vehicles, which I understand was what the member suggested, it would raise all of the kinds of problems that I outlined in relation to stopping a vehicle and inspecting it and so on. How do you know it is a business vehicle: how do you prove that particular element?

The other thing, of course, in relation to a pollution event, is that it may well be that the officers need to seize the vehicle as part of the collection of evidence and, if they were constrained in the way that the member for Stuart requests, that evidence could be lost. As I say, this is not something that at least the officer who is with me is aware has ever happened, but it is a power which it is prudent to have on the books in case a set of circumstances did occur in which a vehicle may need to be taken. For example, if a private vehicle had oil or some other chemical on the back which leaked, there may be a desire to keep that vehicle for evidentiary purposes. However, it is hypothetical, because it has not been used.

The Hon. I.F. EVANS: I will walk you slowly through the point I am making. I am not arguing in relation to the member for Stuart's amendment labelled (4a). I am splitting the member for Stuart's amendments into four categories, so forget about (4a); I am not arguing that point. Let us say that (4a) is lost and does not exist. Then let us consider the

member for Stuart's amendment is labelled (4b), which simply seeks to insert into the act a provision that imposes the same restrictions for the seizure of a vehicle as exist in the act on an officer inspecting or entering a vehicle. It seems to me that the member for Stuart makes a valid point: if you have restrictions on the power to enter a vehicle and inspect a vehicle, it seems logical that you must have the same restrictions on the power to seize a vehicle, because you cannot seize a vehicle without stopping it. I think that that one amendment on a stand-alone basis is valid.

The Hon. J.D. HILL: I understand the point that the honourable member is making, and I will have to get some further advice. If it as simple as he is suggesting (and, on the face of it, it would seem to be), I will consider it between the houses and support it in the other place, if a member from the opposition benches wishes to pursue it. I want to check it to clarify the point that you are making but I guess that you are saying that, in the hierarchy of things, inspecting is a lower level matter than seizing, yet it is easier to seize than it is to inspect. So, on the face of it, I agree with the point that you are making.

The Hon. G.M. GUNN: I find it difficult to understand and comprehend that, in a democracy, in a decent society, that anyone would even want the right without a warrant to go into a residential section of a premises, where a person and their spouse and children may be. I wonder if these people who are so keen on this sort of thing would like two or three of these people to march into their home unannounced, because that is what the minister is giving them the power to do. Let me give you an example. Someone has made a fictitious complaint to the EPA, as they do about people, and these people front up to a spouse with two or three little children by themselves in an isolated farmhouse. That is what happens. It would be an outrage.

The difficulty, minister, is that I do not know whether you have personally dealt with these inspectorial-type people or been confronted by them, because they are not always truthful, they have their own agendas, and it is appalling. I say to the Whip, I bet she would not like them stamping through her house or her children's house—a fair-minded, good person that she is—and nor should they. It is appalling to put this sort of legislation on the statute books, and it is not the role of this parliament to impose unnecessary conditions and threats upon ordinary citizens. It is no good. There is no reason whatsoever to have this legislation, and any officer who promotes it or tells the minister that he has to have it is obviously unwise or incompetent. If you want to have a fight, I am not going to give in on this. I am not saying that they cannot go into a business premises, but I am saying that, if there is a flat above it or if it is a farm house, then you do not go in.

It is very well to say about police officers; police officers are trained, and they are constrained in many ways and, therefore, they understand quite clearly. There are no appeals against it. This is how wicked this whole legislation is. You have a Police Complaints Authority: you do not have an Environmental Protection Authority to which people can make complaints. You will have if this parliament is reasonable later on when I move some of my amendments but, at this stage, you have none. The minister has even compounded the argument because you are meant to have a board sitting over it to have a kind of supervising role to make sure that commonsense applies, but he has made the chief executive the chair of the board, so he has compromised any ability the board has to stand aside from it. Those who advised the minister have made it worse, not better. That is why we are concerned. That is why these issues need to be clearly and precisely debated in this committee. This committee is here to see that the community of South Australia gets justice and is treated fairly so that we have in place a set of proposals that will protect the general public from irresponsible behaviour. Notwithstanding that, we have a set of proposals to protect ordinary decent South Australians against the power of the state. Mr Chairman, in the past, you have complained about the actions of police officers being arbitrary in their decisions; well, you have a chance this afternoon to protect people against this sort of behaviour.

I cannot, for the life of me, understand why a bunch of people would even want that right. I put it to this committee that a spouse with a couple of little children at home suddenly gets a knock on the door. What are these people looking for? They say that they are looking for evidence. Are they going to ramp through the person's desk? The little children are there; they have woken up suddenly and are terrified. That is what happens. We know what happens. I am surprised at the minister and the members who sit behind. How many members of the government and the opposition have actually read through this bill clause by clause? They will only get upset when Sir Humphrey and his band of merry men waving around their regulations want to make life difficult for them and start knocking on their doors or rummaging through their factories. The government seems to be intent on constricting people and controlling them, regulating them and making it difficult for them to make a decent living and provide opportunities for South Australians. If you continue down this track, what with the environmental protection authority, the native vegetation authority and other bands of merry people, you will make South Australia a place in which people will not want to come and invest.

Do not think that we are unaware of what the government has done to industry and the real concern out there and how close a couple of big industries have been to being interfered with and shut down. I know the whole story, and they are that close to a couple of them. There are a couple of members on the other side as nervous as could be about what is going to happen to the industries in their electorates. I know who they are. I wonder how the member for Giles is going. They would be as nervous as could be. Yet, I am appalled that you would want to leave this provision in this act, and all I am trying to do is give an ordinary person, for goodness sake, a bit of protection.

If they want to defend themselves against the government, how many people are in the EPA now? I understand that there are over 200; they have increased it from 80 and they now have 200 people. How many lawyers do they have? How many bureaucrats feeding the stuff in? The average citizen who may be some small businessperson battling to keep their head above water, paying heaps of levies and charges. How are they going to defend themselves against this sort of intrusion? Now you want to put in civil amenities, to come along and intimidate them and say, 'Look, if you agree to this, we will fine you X or Y,' or threaten them by saying, 'If you go to court, you will pay more.'

What sort of an exercise is that? I know people can get sick of me, but I have every right to stick up for the little people in this state, and I am going to do so. I call upon you, Mr Chairman, as someone who has always advocated the right of little people, that people should be equal before the law. We do not have a public advocate. We have an environmental public advocate. We have one of those, and I wonder

if they are being assisted and helped. I heard them on the radio this morning as I drove into this building, and I wondered if they are being helped by this particular department. Are they being helped? Are they being funded? Are they being encouraged? If this is the case, from what they are now talking about, they will be in for a good fight. If they are not successful, heaven help you with what is going to happen in that area.

So, I say to the minister that surely at this stage he can agree to protect people's privacy. The most important element in our society is the ability for people to live freely, happily and without interference in their own home. That is not an unreasonable request, and it should not be able to be interfered with by anyone, except where they have had to justify before a magistrate that there is an absolute need, and then, of course, you have some protection. Hopefully, a magistrate would not, without great consideration, breach that particular fundamental plank of our democratic process.

We come to this parliament, and if the parliament just brushes this aside, as it would like to do, then we have lost control of it. The member for Schubert gave a clear example of where one woman told him to mind his own business. By sheer example, these people have brought this upon themselves, and that is why I feel so strongly about it. Once it leaves here, it is bye bye. Like my constituent, the Mayor of Quorn, can ring up, and they do not even return his telephone calls. An elected official understands a bit about this. His father was a member of this place and was a member of the federal parliament; he was elected. This is what happens when you allow appointed people who are not subject to the will of elected people.

There is a fundamental principle in democracy that Sir Humphreys and bureaucrats should be subject to the will of elected people; and you can get rid of elected people. I know from my experience on the Economic and Finance Committee where we had experience with people on water catchment boards who thought that they were a law unto themselves, and they found out very simply what happens when you take that attitude. The member for Mount Gambier and myself had occasion to have to place their particular proposals aside, and they got themselves into quite a tantrum. However, the will of this parliament prevailed, as it should, and as it will, because no matter what happens these provisions will eventually be put in. The more they resist, the more suspicious that some of us become, because if they persist with having these provisions there must be an ulterior motive. Why would you want to allow people to enter someone's private residence as a fundamental principle? There is no reason, except if you have an ulterior motive. So, I say to the minister, for goodness sake, at this late hour, come to a reasonable decision and protect these people against this unnecessary and unwise provision.

The Hon. I.F. EVANS: Can the minister advise the committee of any examples where officers may need the power to go into private premises?

The Hon. J.D. HILL: A couple of examples would be where a private premises was emitting some pollution in the middle of night, where it was not possible to easily get a warrant, or a circumstance where perhaps the premises were unoccupied at the time, so a knock on the door would not get anybody to come to the door. It is unlikely in the case of a fire that someone is not home, but it is possible. Someone might be burning poisonous material in the fireplace; sewage might be coming out from a bathroom; there might be an illicit chemical plant in the premises producing some sort of drug, fertiliser, or something like that; and it may be something that needs to be acted upon quickly. These circumstances have not arisen very often, but they are potential problems, and this provides the power. This is a power that has been there since 1993. I understand that when it was introduced it was done as a bipartisan position. It is not something the government is suddenly introducing: it has been there for 10 years. I doubt if anyone can point to an example where this power has been misused.

The Hon. G.M. GUNN: The minister had to really labour to find some reasons. If someone is producing illicit drugs, the police have powers to deal with that, and they do so on a regular basis. I actually have had discussions with members of the police. Someone who sat in this chamber, a former member for Florey, who spends a lot of time assisting my family, was in the Drug Squad. I actually do understand. The minister really had to labour to find some reasons. In relation to any of those matters, they would not be prevented from doing their duty because of my concern about residents. The minister talked about sewage. If someone has a septic tank, the septic tank (or these new enviro things) is not in the residence: it is out in the backyard, so you do not have to go into the house. We have dealt with that issue, so I suggest the minister thinks of a couple of others. What was the other point the minister made?

Mr Goldsworthy: Fertiliser.

The Hon. G.M. GUNN: To produce fertiliser! Does the minister really believe someone would produce fertiliser in their residence? The minister would have to get up really early in the morning and have had a couple of cold showers to come up with that one. I give the minister full marks for trying, but it really does take the prize for stupidity. That a minister of the Crown would be fed such nonsense and use it as an excuse to go into some unsuspecting person's home makes me even more determined that we should persist with this. The minister will have to do better than that. I am sure that the Hon. Mr Redford in another place will have some fun with some of these examples when I have a talk to him. He will be reading with interest some of these answers, because these are really crackerjack. I give full credit to the people for effort, but not for substance. I would hope that, while he is having those discussions, the minister take a couple of steps back and take a deep breath because, once the bill leaves here, it is gone. The obsession to arm these people with these tremendous powers at the expense of the ordinary citizen who is trying to make a living is disturbing to me. The march down the road to curtailing people seems to be never ending with respect to people in arms of government.

I am really very disappointed. I would far sooner not be jumping up and down and taking up the time of this parliament, but I have no alternative. If we do not stick up for the rights of the average citizen, what are we sent here for? Why am I elected to this parliament? Is it to be a rubber stamp, or is it to carefully go through the legislation that ministers introduce and analyse it, question it and comment upon it? That is why we are here. We are not here just to say, 'Yes, it can go through', and then be good fellows and attend functions around the electorate. We are here to give due attention to legislation. If that means being obstructive and difficult, so be it. I am not normally one to get on my feet, but these things have tested my normal hesitation to be active in this place. I ask the minister whether is he prepared to further consider the amendments.

The Hon. J.D. HILL: I have really answered that question. That is kind of an invitation to repeat what I have

said. I have said that I would consider the amendment in relation to the matter about seizure raised by the member for Davenport. I think he made a reasonable point. It cannot easily be fixed by the suggestion made by the member for Stuart, because it is in a different section of the act, but we will find a form of words that does that and look to putting it in the other place.

I am happy to look again at the other matters that the member raised, but I am saying to the member that the powers which have been in the legislation for 10 or 11 years and which are rarely, if at all, used seem to be sensible powers because of the potential for circumstances that might require them. I would like the member to point, if he can, to some examples—perhaps not now, but afterwards. If he has examples where these powers have been abused, I would certainly like to see evidence of it. I am happy to have another look at it, but I cannot say that I will be persuaded, other than in relation to that particular issue over seizure.

The Hon. G.M. GUNN: I suppose I may have made a little progress in this matter. I can tell the minister about other areas of government (I will not do it now; I am happy to tell him privately) where the attitude of people has been abused, unfortunately and unwisely. But let me just say this to the minister: once these provisions are passed, the citizens who are affected have no adequate redress.

The Hon. J.D. Hill: But they are already there.

The Hon. G.M. GUNN: What I am trying to do is to improve them, because it is a well-known fact that, under Labor administrations, bureaucracy becomes very powerful. I say to the minister that it is bad enough under any form of administration when it is not necessary. There is a desire within certain minority sections of the community to impose unreasonable conditions upon people who do not have the ability to defend themselves. Unfortunately, we are progressing headlong down a road to make life as difficult as we can for the community. It will come to an abrupt end, because they normally reach a stage where they create such a fuss and embarrass a minister so the whole thing is turned on its head. But, until that happens, a lot of decent people are interfered with. I raise this matter with the minister: does the Ombudsman have power to intervene on behalf of a person who has been affected by these provisions?

The Hon. J.D. HILL: It is unusual to be asked questions on an amendment moved by a member himself, but my understanding is that the Ombudsman has the power to review any of the decisions of the EPA, as he does any government body.

The Hon. G.M. GUNN: This amendment is in four sections. Could we vote on each section, because I think the minister has satisfied us in subclauses (4b) and (4c). We are happy with the responses there and our real argument at this stage is only in (4a). Mr Acting Chairman, I seek your guidance.

The ACTING CHAIRMAN (Mr Snelling): Do you want to proceed with all four subclauses or do you just want to proceed with subclause (4a)?

The Hon. G.M. GUNN: I am prepared not to have a vote on (4b), (4c) and (4d) because I think the minister has agreed to do something about that and I accept him at his word. But (4a) is the part of the amendment that deals with the ability of people to be free from being hindered or hassled in their own residence—that is what we have been fighting about for the last 40 or 50 minutes (which I would have sooner not done). That is a fundamental matter of principle as far as I am concerned.

The ACTING CHAIRMAN: I am happy to put them separately. We will deal with the amendment to subclause (4a).

The committee divided on the amendment:

AYES (7)

Chapman, V. A.	Gunn, G. M. (teller)
Lewis, I. P.	McFetridge, D.
Penfold, E. M.	Redmond, I. M.
Venning, I. H.	

NOES (37)

Atkinson, M. J.	Bedford, F. E.
Breuer, L. R.	Brindal, M. K.
Brokenshire, R. L.	Brown, D. C.
Buckby, M. R.	Caica, P.
Ciccarello, V.	Conlon, P. F.
Evans, I. F.	Foley, K. O.
Geraghty, R. K.	Goldsworthy, R. M.
Hall, J. L.	Hanna, K.
Hill, J. D. (teller)	Kerin, R. G.
Key, S. W.	Kotz, D. C.
Koutsantonis, T.	Lomax-Smith, J. D.
Matthew, W. A.	Maywald, K. A.
McEwen, R. J.	Meier, E. J.
O'Brien, M. F.	Rankine, J. M.
Rann, M. D.	Rau, J. R.
Scalzi, G.	Stevens, L.
Thompson, M. G.	Weatherill, J. W.
White, P. L.	Williams, M. R.
Wright, M. J.	

Majority of 30 for the noes.

Amendment thus negatived.

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

Page 17, after line 16—insert:

(4b) Section 87(3)—delete 'a vehicle except' and substitute: or to seize a vehicle except where

(4c) Section 87(3)(a)—delete paragraph (a) and substitute:

(a) the vehicle is being used at the time in the course of business and is of a class prescribed by regulation; and

(4d) Section 87(3)(b)—delete 'where'

Amendments negatived.

The Hon. I.F. EVANS: The way I read the amendments to section 87(1)(h), the government has deleted the words 'for the purpose of determining whether a provision of this act is being or has been complied with' and replaced it to read 'as reasonably required in connection with the administration and enforcement of the act'. I interpret that as a broadening of that provision. Is that the intent? To me it is not as restricted a form as it was previously in the act.

The Hon. J.D. HILL: In essence that is correct. The wording in that section for examining or testing any plant, equipment, vehicle or other thing has been changed from the words mentioned to 'as reasonably required in connection with the administration or enforcement of this act'. The proposed amendments to this section allow authorised officers to use their powers for broader purposes than to simply determine in compliance with the act. They allow authorised officers to use their powers as reasonably required in connection with the administration or enforcement of the act.

The Hon. I.F. EVANS: Under the provision in the act, section 87(1)(g) already provides the power to take photos, films, audio, video and other recordings. Now you are introducing another clause, new paragraph (ia) which provides:

(ia) take onto or into any place or vehicle, and use, any equipment or apparatus (such as drilling, boring, earth-moving, testing, measuring, photographic, film, audio, video or other recording equipment or apparatus) as reasonably required in connection with the administration or enforcement of this Act;

What is different in that provision than the provisions that already exist? Why do you need that provision?

The Hon. J.D. HILL: They are certainly related provisions. One section allows the equipment to be taken in and the other section allows the equipment to be used. Paragraph (g) allows the taking of photographs, films and so on, and the section I have referred to allows the EPA authorised officers to go on to the property to test equipment for the development of licence conditions, or officers might test for a preventative measure to check for possible future administration and enforcement measures. Paragraph (ia) allows the officers to take onto or into any place or vehicle and use any equipment or apparatus as reasonably required. They are related, but there is a slight distinction between the powers being created.

The Hon. I.F. EVANS: I do not see the distinction. Section 87(1)(a) allows the officers to 'enter and inspect any place or vehicle for any reasonable purpose connected with the administration of the act'. That means they can get into the place or on the land.

Under existing paragraph (d), they can take samples of any substance or thing from any place or vehicle, and under paragraph (g) they can take photos, films, audio, video and other recordings. It is already covered. What new power does this give them? It provides that they can take onto or into any place. That power is already provided. If one walks through subsection 1(a), they already have the power to go onto or into any place. They also have the power to go onto or into any vehicle. They already have the power to use any equipment or apparatus. They already have all that power. There is not one new power under section 87(1)(ia) that is not already in the act.

The Hon. J.D. HILL: My advice is that it is clarification of what can be done. Paragraph (ia) gives the kinds of equipment that can be taken on. It is not ambiguous about the kinds of equipment that can be taken on; so it is drilling equipment, boring equipment, earthmoving equipment and so on. The other part also talks about the kinds of things you can do; for example, take photographs, take samples and so on. This is about bringing equipment onto the land. Some of that equipment would be fairly hefty. It is about reasonableness, as well. A person can bring in equipment which would be reasonably required to do what they need to do under the act.

The Hon. G.M. GUNN: New section 87(9) provides:

Where the exercise of a power under this section (other than a power exercised with the authority of a warrant) results in any damage, the authority or, if the power was exercised by an authorised officer appointed by a council, the council must make good the damage as soon as is reasonably practical or pay reasonable compensation. . .

What does that mean? Does it mean that people can exercise this power and damage someone's property; and, if they have a warrant, these people are not entitled to get compensation—because that is how it reads here. If that were the case, it would be another injustice perpetrated against people.

The Hon. J.D. HILL: This is a new provision. Before it may have been an issue for some sort of civil approach by a person who had property damaged. The idea is to cover not only councils that will now have particular powers under this legislation but also the authority, so if they do enter into property then they have to make good. I would have thought this was a good thing. Your point is about the cases where there is a warrant. I am seeking advice about that particular aspect.

The Hon. G.M. Gunn interjecting:

The Hon. J.D. HILL: The explanation is that they would use the warrant only if they could not get access to the property. The warrant is where a court looks at the situation and gives the agents, or the authority, the power to break a lock, if necessary. If there was an incidental act when they were on the premises, which caused damage and which was unrelated to the exercise of the warrant, presumably there would be some sort of civil remedy.

The Hon. G.M. GUNN: The response is interesting. If the officers come to a property which is locked, there is no-one there, they cannot get in, they do not go to court to get a warrant but, rather, to a magistrate or sometimes JPs. They then break down or break open the door and enter. Surely they are then responsible for the damage they have caused, because no-one is there to say yes or no. They have taken it upon themselves to take this action—and, in my view, unnecessarily on many occasions. Surely the owner or occupier of these premises—without going to considerable expense through the legal system (which could take a long time)—are entitled to reasonable compensation for damages.

The Hon. J.D. HILL: I guess that it is analogous to the powers of a police officer, though I am not sure what the rules are if a police officer exercises his or her power in hot pursuit. This is attempting to give some assurance and protection to householders if an EPA officer exercises power without having a warrant. If there is a warrant it means that the court has considered the matter and said, 'Yes, it is reasonable in the circumstances for you to break a lock or open a window', or whatever is required to get access, in which case that is something that has already been determined by the court. It is therefore a legal, lawful act. This is saying that if in other circumstances damage is done compensation will be paid. I cannot be plainer than that.

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

delete the words '(other than a power exercised with the authority of a warrant)'

If a warrant is issued and damage occurs, the way in which the property owner who suffered the damage is reimbursed by way of civil action, which in itself will be a cost and a time requirement on their behalf, and for what reason? I have just circulated this amendment to section 87(9), which seeks to delete the words '(other than a power exercised with the authority of a warrant)'. This amendment means that if any damage is caused through the exercise of this power, it does not matter whether the EPA or the council authorised it as an administering authority: it is liable for the damage. I believe that that properly protects the landholder. It does not put them through the trauma of a civil action. Of course, it also brings an umbrella of caution to those administering the act, because they will realise that they would have to go to their superiors and say, 'Look, I have caused this damage and we will have to reimburse them.' It would provide some caution to the way in which the power is authorised. As did the member for Stuart, I had that provision tagged for questions.

The Hon. J.D. HILL: I am not prepared to accept the amendment moved by the member for Davenport. I understand his argument, but the point on which I just sought advice is that it would create precedent across other areas and, I guess, in relation to policing where warrants are issued—

The Hon. I.F. Evans interjecting:

The Hon. J.D. HILL: To the police. Police officers regularly would get a warrant from a court and create some damage entering a property—breaking a lock, a door or something along those lines. The warrant is exercised only to allow a person to use reasonable force to break into or open any part or anything in or on the place or vehicle as specified in the warrant. So, a legal process is gone through. To say that there is compensation after the courts have already ruled on it seems to go one step too far. What subsection (9) is trying to do is provide something for those who are subject to a forced entry without the exercise of a warrant. According to the advice I have received, the honourable member is taking it one step too far, but he is entitled to do that. I think it would create a precedent in other circumstances.

The Hon. I.F. EVANS: I wish to question the minister a little further on his advice. He says that it would be setting a precedent, because the police use warrants, and the warrant gives them the authority to use reasonable force to enter.

The Hon. J.D. Hill: I was talking about the EPA.

The Hon. I.F. EVANS: Yes; therefore, that argument applies to the EPA. The warrant would give it reasonable force to enter. I put to the minister that the EPA officer, even without a warrant, can use only reasonable force to enter, so the warrant is really a side issue. Whether or not they get a warrant, the EPA officer has a duty to use only reasonable force to enter. The fact that they get a warrant means that a magistrate has had some oversight and given them a tick. However, the minister has already agreed that the concept of reasonable force, and therefore the amount of damage done, has to be applied regardless of whether a warrant is issued. Therefore, the level of damage done by the application of reasonable force will be the same whether or not the EPA officer has obtained a warrant.

At this stage I support the member for Stuart's argument, because I am not convinced by the minister's argument that any different force will be applied just because the EPA officer gets a warrant. Just because they get a warrant does not mean that they will not cause any damage. Surely, if the EPA causes damage to your property, there is an expectation that someone will pay for the repair. Not having the EPA pay for the repair of the damage will encourage the EPA officers to seek a warrant more frequently, because there would be less cost to the agency. I want the minister to make some comment on this: if reasonable force is to be used when a warrant is used and when it is not, how is the amount of damage done different? Therefore, why should the liability for paying for the repair be different?

The Hon. J.D. HILL: I think that we should look at this not so much in the abstract but more in a practical sense. If an EPA officer understands that a particular event is occurring on a particular set of premises (it might be a drain that is polluting something, a smokestack, or whatever) and they want to investigate, they knock on the door and, if the owner of the property says, 'No; you can't enter,' the EPA officer goes away and gets a warrant. They knock on the door again and, if the person tells them to go away, the officer says, 'Hang on. We've got a warrant.' If the owner of the property knows that they have a warrant, the sensible thing will be for the owner to open the door and let them in. However, if the owner knows that they are entitled to compensation if the EPA officer is refused entry and breaks down the door, there is a disincentive to cooperate with an authorised officer going about his business in a peaceful way. It really promotes the use of force, because the person has nothing to lose. It would seem to me that that is a bad principle for public policy, to make it difficult for an officer with a warrant to go about exercising his responsibilities.

The Hon. I.F. EVANS: Then why not make the law say that? Why not make the law reflect your argument? Why not amend it?

The Hon. J.D. Hill interjecting:

The Hon. I.F. EVANS: No, it does not. Even if I cooperate with the EPA officer and the damage is done, I still have to pay for it.

The Hon. J.D. Hill interjecting:

The Hon. I.F. EVANS: It is. If there is a warrant issued and the EPA officer knocks on my door, I open the door and say, 'Well, if you've got a warrant,' and the EPA officer says, 'We have to knock down that wall, dig up a floor or dig up your back yard to try to get evidence', because they have a warrant, I pay for that. That is the way I interpret it and, I think, the way the member for Stuart interprets it. If you want it to reflect your argument, minister, you would put in the provision, 'other than a power exercised with the authority of warrant, where the owner or person receiving the warrant obstructs the officer or refuses to cooperate with the instructions of the warrant.'

But there is no qualification in there. Even the person who is cooperative with the EPA at that point will be liable for the damage. I think that is the offensive clause that the member for Stuart has concerns with, that even if they cooperate they are still going to get done for the damage.

The Hon. J.D. HILL: I take the argument the honourable member is making but it is really about what you are trying to promote, and this is trying to promote a cooperative and speedy resolution of issues. If someone knows that the EPA has to compensate, there is an incentive for them to put extensive barriers between the matter subject to investigation and the EPA. They could put up a whole series of fences, gates, expensive walls and a whole lot of barriers because they know that, if the EPA destroys all those barriers to get to the incident, there is an incentive for a polluter or someone trying to avoid the EPA to make it more difficult. If they know that they are going to wear the cost of any of that damage, then it is an incentive to cooperate and allow the EPA in. I just think it is bad public policy. And I am now getting to the point where I am repeating myself.

The Hon. I.F. EVANS: And so will I in my argument back to you. You have just outlined the exact argument why you should make your own amendment. You say that, where people do not cooperate, they should not receive the benefit of compensation. I do not have an argument with that point, but I do have an argument where a warrant is issued, I cooperate, damage is done, I do not get compensated, and all I have done is agree with the warrant. All I have done is help the EPA officer into my premises, some damage is done in seeking evidence and I end up paying. I think the minister's argument, when he rereads it, is right: that if an officer has issued a warrant and the owner of that premises then does not cooperate with the instructions of the warrant, then I agree with the minister that they should not be able to be compensated.

That is a reasonable position. But the minister has not taken the other side of it. What happens if a warrant is issued and the person does cooperate and damage is done? Is it the minister's view that they should be compensated? If a warrant is issued and the owner of the premises cooperates with the EPA officer, with the instructions of the warrant, and damage is done to that person's property, is the minister's view that,

given that they have cooperated, they should be compensated; that they should not have to pay for the damage to the property themselves?

The Hon. J.D. HILL: It is now getting well and truly into the hypothetical again. The kind of argument that the honourable member is developing would allow someone to put up a whole series of barriers between themselves and an EPA officer and say 'Sure, I will cooperate. I will open these bits but you still have to knock over that and do this', and they can be as cooperative as you like. You then start arguing: are they being cooperative or are they being obstructive, and you start legal arguments which would end up in court anyway.

The point is that, if there is a warrant, the EPA officer has a legal right to get to the area where there is a pollution. Just think it through: the court is unlikely to give a warrant unless there is very strong evidence of something that is happening that is causing a problem to the community. The circumstances would be relatively extreme circumstances, I guess, where the EPA would seek a warrant, and they would be relatively extreme when the court was to give that authority. If, under those circumstances, the EPA then had to pay compensation for using reasonable force, I think it would be bad public policy.

The legislation is trying to give some comfort, I suppose, to owners of premises where the EPA enters without such a warrant—without that kind of judicial consideration which is done at the initiative of the individual officer and saying to that person, 'You do not have the comfort of the court but you have the comfort of knowing you can seek compensation.' It also, from a public policy point of view, I guess, puts a little bit of pressure on the officer to think, 'Can I really justify breaking through these premises in these circumstances?' So it adds a little bit of protection for the premises owner which is not provided because the court has not been involved. The more I think of it, the stronger I think the argument is for leaving it as suggested in the legislation.

The Hon. I.F. EVANS: I assume by the way that clause 9 is drafted that the councils, as administering authorities, do not have the legal power to seek a warrant to undertake action; only the EPA authority has that.

The Hon. J.D. HILL: No, an authorised officer can approach the court and the council can have authorised officers. So, there might be some circumstances where the officer from council would need to go to court and, equally, there might be some circumstances where a council officer might need to enter premises—the sort of examples that I gave before of material being burnt in a fireplace or some chemical coming out of a pipe on a property, particularly when no-one is at home. I think that is the most likely circumstance when that power would be used.

The Hon. G.M. GUNN: Does the authorised officer have this power to seek a warrant without the concurrence of the council, or can they do it of their own volition?

The Hon. J.D. HILL: There are two stages. The authority, whether it is the EPA or the council, has to properly authorise the officer: that is stage one. The second stage is that the officer then has to be authorised by the court. What procedures were developed within each of those organisations would be a matter of administrative procedure, but there is no provision that the full council would have to be notified. I think that would be impractical. If something was happening and the officer wanted to go to a judge late at night, or whatever the circumstances, you could not wait until the monthly meeting of the council to get authority.

Clause passed.

Clause 41.

The Hon. G.M. GUNN: I have a question. From my reading of clause 41, which amends section 90, 'Offence to hinder etc authorised officers', it appears that the penalties have been increased for hindering or interfering with an officer. In the Environment Protection Act 1993, section 90(2) deals with people assisting authorised officers in relation to their conduct. It appears that the penalties have not been increased for misbehaviour on behalf of an authorised officer but the penalties have been increased in relation to the actions of a person sticking up for their rights.

Someone can vigorously defend themselves and they could be charged with hindering, where the officer could be overbearing, offensive and interfering, even going into their private residence, but you have not increased the penalties. Obviously if you are going to increase one, you must increase the other. If there is any equity, any fairness, or if people look at it in a reasonable manner then you have an even-handedness, otherwise it will be a one-sided argument.

The Hon. J.D. HILL: I understand the point that the member makes.

The Hon. G.M. GUNN: Is the minister going to do something about it? Is he, or are his officers, going to amend it in another place or give further consideration to it?

The Hon. J.D. HILL: I am sure that you will arrange for that to happen, Mr Gunn.

The Hon. G.M. GUNN: Yes, I can arrange for that to happen. I think it would be better if we did it down here, because it is not fair. I take it from what the minister has said that he would not oppose such a course of action.

The Hon. J.D. HILL: I hear what you are saying.

Clause passed.

Clause 42.

The Hon. I.F. EVANS: My question is to the minister in relation to clause 42. Why are they changing this in relation to natural persons and, if it is to protect natural persons from self-incrimination, then they are taking away the protection that business has regarding self-incrimination, leaving it only with natural persons. That is the effect of the amendment as I understand it. What is the benefit of that change where you have directors of small companies who, in effect, if they incriminate the company they in fact bankrupt themselves. What is the point of the amendment in those circumstances? There are many small companies around with husband and wife directors who have mortgaged the house to support their company. Under this provision the government generously says, 'Look, if you dob yourself in you will not get fined, but what we will do is simply bankrupt your company,' so they lose their house. Ultimately, what is the benefit?

The Hon. J.D. HILL: The member may not realise that I have an amendment that I seek to move. The amendment, which I might speak to now without having yet moved it, was put to me by the member for Enfield, who raised a similar concern. In fact, I have two amendments, one which Business SA put to me, which is to delete clause 49 and substitute a new clause, Amendment of section 98—Admissibility in evidence of information. This amendment continues to protect information if a company obtains an accredited licence. This amendment provides an incentive for businesses to improve operations to apply to become accredited, and regulation 11(a) of Environment Protection Fees and Levies regulation prescribes a process of applying for an accredited licence.

The amendment to clause 71, amendment 17, was prepared, as I say, after discussion with the member for Enfield. It is to ensure that a director's protection against self-incrimination remains. Accordingly, separate proceedings would need to be initiated for a director of a company if evidence produced to incriminate the company also incriminated the director. In the second proceedings against the director the self incriminating evidence could not be used. I understand that that would generally fix the issues. The overall purpose of this clause is to limit the protection against self-incrimination to natural persons. The clause seeks to amend section 91 of the act to remove the protection against self-incrimination for corporations. In light of trends for a reduction in the protection against self-incrimination for corporations, evidenced by changes to the Corporations Law, it is considered that section 91 of the act should not afford such a privilege to corporations.

[Sitting suspended from 6 to 7.30 p.m.]

The Hon. J.D. HILL: I was on my feet before the break speaking about individuals being able to protect themselves from self-incrimination. The member for Davenport raised with me the question of small business, single operators and the like.

The Hon. I.F. Evans: Sole directors.

The Hon. J.D. HILL: Sole directors. Over the dinner break I had conversations about this with the Minister for Small Business and the head of the EPA, and I give an undertaking to the house that, between here and another place, I will move an amendment. I have not been able to have that drafted over the dinner break, but I will move an amendment, or have an amendment moved in the other place, to limit that expansion to licensed premises only. There are 2 000 or so licensed operations in South Australia, so that would effectively allow the continuing protection from self-incrimination against small businesses. I think it is unlikely—and this is the advice from the head of the EPA—or very rare that there would be a sole trader or a small company that was a licensed operator. So, it is really the big end of town and the operations that are the most risky that would be covered, and that would be in keeping with the spirit of the High Court's commentary and the Corporations Act. That is a concession that the government is prepared to make.

Clause passed.

Clause 43 passed.

Clause 44.

The Hon. I.F. EVANS: I want to tease out the retrospective nature of this clause. This clause deals with environmental protection orders relating to cessation of activity, and I am interested in whether previous owners of the land where the activity has ceased can become liable under this particular provision. As an example, I own a block of land where the activity occurs and I sell it to you, then some time later the activity ceases but there is an environmental problem on it, and then I assume that they license it or put an environmental protection order on it (or whatever they do). Can that apply backwards to previous owners at all?

The Hon. J.D. HILL: Let me test my arm and I will get advice on whether I am wrong. As I understand it, this is not a retrospective provision: it will only apply once the legislation is through for events that occur after legislation; that is, for activities that cease after this legislation is put through. In the hypothetical situation, if you own a landfill site, the legislation is put through, and a week after you close the landfill site, then this closure measure would apply to you. If you then sold your interests in that land to me, as I understand it, you would either have to retain the responsibility for the licensing of it or you transfer that to me. That would be part of the deal between us.

The point is that the fact that there was a closure order on your property would be identified on the section 7 notices. So, any potential buyer would be aware of that when they bought the property, and the EPA would have to reissue an order on any potential purchaser. It would be a transparent thing: the person buying from you would know what they were getting and what the obligations were. We are not saying that you owned a landfill site 10 years ago, which you sold to us. We cannot then go back to you under this legislation to cause you to clean it up.

The Hon. I.F. EVANS: It is only in relation to prescribed activities, which I understand are the activities under the four or five page schedule 1 in the act. So, in these protection orders relating to cessation of activity, when we are talking about activity we are talking about only those matters covered under schedule 1 of the act. New section 93A(1) provides:

> The authority may issue an environment protection order for the purpose of preventing or minimising environmental harm that may result from a prescribed activity of environmental significance after the activity has ceased.

The definition of 'prescribed activity' states:

> means an activity specified in schedule 1.

Am I right in interpreting that to mean that, if it is not in schedule 1, the authority cannot issue an environment protection order in relation to the cessation of an activity?

The Hon. J.D. HILL: As I understand it, but we are talking about a special kind of protection order. A post closure protection order can apply only to those activities in schedule 1. Of course, there are other protection orders.

The Hon. I.F. EVANS: But this clause deals only with post closure protection orders?

The Hon. J.D. HILL: Yes, that is right.

The Hon. I.F. EVANS: I accept the fact that the legislation does not apply to previous owners. So, I assume from the minister's previous answer that it applies only to activities that cease after this act is proclaimed. If an activity that was a prescribed activity of environmental significance (that is, an activity under schedule 1) had ceased and a contamination issue exists today, I assume that a post closure order cannot be issued in relation to that environmental harm or contamination.

The Hon. J.D. HILL: Yes, that is correct. There is the issue of site contamination policy generally, and that is being worked through separately. However, this is not trying to do that: this is just dealing with a particular set of circumstances. It primarily came out through discussion with local government about what happens after particular landfill sites have been closed. I think that was one of the major issues: how do you manage some of the landfill sites after closure? It is really about those kinds of things. The Mobil Oil Refinery was highlighted then, too. We have no way of ordering a clean-up or monitoring that site into the future. It is only things that cease activity after the legislation goes through.

The Hon. I.F. EVANS: This is probably a really silly question, but I am interested in how we go about establishing that the activity has ceased. Is it when the licence runs out, or is it when the business owner notifies? I was thinking of the Mobil site, for instance.

The Hon. J.D. HILL: I was thinking the same thing.

The Hon. I.F. EVANS: If it was when the licence ran out, even though they do not physically turn the machines over, the licence may still apply even though there is no physical activity on site. If it is when the licence runs out does the minister, under the current act or the bill as proposed, have the opportunity simply to continue to extend the licence at the minister's will, not at the business's will, so that the licence conditions could be maintained—even though physical activity has stopped, the licence conditions still apply?

The Hon. J.D. HILL: As I understand it, that second part of the question is made a bit redundant by the answer to the first. The answer I have is that the order can be applied once it has stopped doing what it was there to do. So, if it stops receiving waste it has stopped receiving waste, and that is when the post-closure order can occur. In the case of the Mobil oil refinery, I am told, it has stopped acting as a refinery, so it would not be captured by this piece of legislation. Whether or not it has a licence that is still current to do those things is a bit irrelevant, I gather, for the purposes of this measure.

The Hon. I.F. EVANS: I just wondered whether one could use the existing conditions on the licence to force some clean-up of the Mobil site. With respect to the Mobil site, in particular, I am wondering whether it has closed or ceased under the definition of the bill or the act because, as I understand that announcement, they have postponed any decision about closure until June 2006. So, really, it is postponed as distinct from ceased. I am just wondering how the bill and the act deals with the postponement of an activity. I think Mobil would argue that it has not ceased, and I do not know whether this measure deals with that.

The Hon. J.D. HILL: I understand exactly the point the member is making, and I was wondering that myself. But the advice is that it applies when it stops doing it. Rather than trying to tease this out now, I will have to take the question on notice to see whether I can obtain a more elaborate answer. The short advice is that it is when the activity ceases. That may well become an issue in a court of law when Mobil says, 'Well, we did not cease; we just postponed.' But the reality is that it has stopped producing petroleum; it has stopped refining on that site. The question is: if it was, in 2006, to begin again, would that be starting afresh or would a court consider those two or three years in the middle a hiatus? I am not sure. The advice I am receiving is that it has ceased now; that Mobil does not need a licence at the moment because it is not doing anything. Whether or not it is still licensed we are not sure, but it does not need a licence to sit there.

Clause passed.

Clause 45.

The Hon. I.F. EVANS: This clause deals with the registration of the environment protection orders in relation to the land, which, essentially, as the minister indicated in his previous answer, is the registration process, so that it is publicly identified through the Registrar-General, and so on. The way I understand this provision is that it is the responsibility of the land owner who ceases to own or occupy the land to notify the EPA or the administering authority of the new owner and occupier. I am just wondering why that is not automatically done through Land Titles and why it is a requirement of the land owner and why, when the documents are filed with the appropriate government authority, it is not automatically transferred across rather than put some requirement on the land owner.

The Hon. J.D. HILL: The advice I am given is that there is no particular magic in doing it this way: it is just the way it is done in the existing legislation, and they are simply building on what is in the current legislation.

The Hon. I.F. EVANS: Do they suffer a penalty if they fail to do it within X number of days? Is there a penalty against the landholder or occupier for not notifying?

The Hon. J.D. HILL: Under section 5, dealing with the owner or occupier, 'a person who fails to comply with section 4(d) is guilty of an offence. Division 6 fine applies.'

The Hon. I.F. EVANS: I assume that both the owner and the occupier are advised at the time of licensing that they need to advise the authority of that issue, because how would an occupier know that they are meant to notify? Indeed, how would the owner know? If I am the owner of a building and I have tendered to a factory, how do I, as the owner, know that I am meant to notify the authority? How does the occupier know? Is it on their licence conditions?

The Hon. J.D. HILL: I am advised that it is not automatically put on the condition of licence, but it can be put on it. However, if the member thinks this is a matter of concern I am happy to look at tightening up that provision between here and the other place to ensure that it is put on the licence.

The Hon. I.F. EVANS: I would appreciate that, if you could; it just protects them.

Clause passed.

Clauses 46 to 48 passed.

Clause 49.

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

Page 24, lines 25 to 27—delete clause 49 and substitute:

49—Amendment of section 98—Admissibility in evidence of information

(1) Section 98(2)—after 'a person' first occurring insert:
(being a natural person or being a body corporate acting in prescribed circumstances)

(2) Section 98—after subsection (2) insert:

(3) For the purposes of subsection (2), a body corporate acts in *prescribed circumstances* if—

(a) the regulations specify a scheme under which a licensee may apply to the Authority to be accredited as an accredited licensee in respect of a particular prescribed activity of environmental significance carried on at a premises occupied by the licensee (the *relevant activity*); and

(b) the body corporate is an accredited licensee under such a scheme; and

(c) the body corporate is acting in compliance with an information discovery order issued in relation to the relevant activity or a condition of the environmental authorisation granted in relation to the relevant activity.

Business SA requested that the government did this, and the amendment continues to protect information. If a company obtains an accredited licence this amendment provides an incentive for businesses to improve operations and apply to become accredited. Regulation 11(a) of the Environment Protection Fees and Levy Regulation prescribes the process of applying for an accredited licence.

The Hon. I.F. EVANS: In relation to the Business SA amendments, during your second reading reply the minister indicated that I should have been aware that there was a deal between the government and Business SA to delay the introduction of civil penalties for 12 months if I had read my amendments. I took that comment to mean that there must have been an amendment that delayed the implementation of the civil penalty clause by 12 months. The advice to me now from the officers is that there is no such amendment and,

therefore, the opposition should not have been aware of that until you told us. Can you correct the record there?

The Hon. J.D. HILL: Indeed, I apologise to the member. I thought that had been in the amendment, so I do apologise to the member—point taken.

New clause inserted.

Clause 50.

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

Page 24—
After line 28—Insert:
(a1) Section 99(1)—after 'authority' first occurring insert:
or another administering agency
(b1) Section 99(1)—after 'authority' second occurring insert:
or other administering agency
Line 32—After 'authority' insert:
or other administering agency
Line 35—After 'authority' insert:
or other administering agency
Page 25—
Line 1—After 'authority' insert:
or other administering agency
After line 5—Insert:
(2a) Section 99(2a)—after 'authority" insert:
or other administering agency
(2b) Section 99(5)—after 'authority' insert:
or another administering agency
(2c) Section 99(6)—after 'authority' insert:
, another administering agency
After line 7—Insert:
(3a) Section 99(7)—delete subsection (7) and substitute:
(7) Where a clean-up order has been issued to a person by the authority or an other administering agency, the authority or other administering agency (as the case may be) may, by written notice served on the person, vary or revoke the order.

These are various amendments such that after the term 'authority' is inserted the words 'or other administering agency'. It is due to a better understanding of the use of clean-up orders. The previously held position that it was easier to issue an environment protection order than a clean-up order has been dispelled. Accordingly, the EPA considers that the administering agency should also have the power to issue clean-up orders. The LGA, I understand, does not oppose this amendment. It is really to expand the things that an administering agency can do. The EPA has had better technical advice in relation to this compared to when this legislation was first drafted.

Amendments carried; clause as amended passed.

Clauses 51 to 53 passed.

Clause 54.

The Hon. I.F. EVANS: In relation to clause 54, the minister is inserting new subsection (23) to section 104, which, from the way I read it, gives the court a discretion to make an order in relation to costs, and they may have regard to 'whether the applicant is pursuing a personal interest only in bringing the proceedings or is furthering a wider group interest or the public interest'. The only way in which I can interpret that introduction to that provision is that an argument that is put forward by a wider group interest or public interest will be treated differently from an argument put forward through an individual interest.

Why is an individual being treated differently from a group or public interest? Surely, if they have an interest, the interest should be equally treated by the court. I cannot see any reason why, on the matter of costs, that if I represent a group with a group interest I am treated differently from if I am representing an individual's interest or a public interest. Why is there a different treatment of costs under those circumstances?

The Hon. J.D. HILL: The main amendment proposed in clause 54 is the addition of section 104(23) to which the member has referred. It directs the ERD Court in deciding whether or not to award costs to have regard to the nature of the litigation. Section 104 of the act allows the ERD Court to make orders for a range of civil remedies upon application by various parties, including any person with the leave of the court. The offences and penalties discussion paper, which I understand was put out during the term of the former government, indicated that the consideration of costs had the potential to influence accessibility of the courts.

I understand that 86 per cent of the responses received in relation to that recommendation supported the amendment. In other words, a paper put out by the former government canvassed the notion of having this measure included in legislation, and 86 per cent of the respondees said they agreed with it. In recognising that the awarding of costs may be a barrier to public interest cases, the bill proposes that section 104 of the act be amended so the court may take into account the purpose of the action being taken when determining whether or not to award costs. In particular, the court must have regard to whether the issue is public or private, with the aim of encouraged public interest litigation, particularly regarding significant issues. Through the reduction in cost disincentives, the benefit of the proposed amendment is, first, through increased access to justice by community groups and, secondly, better enforcement of environment protection law.

The Hon. I.F. EVANS: I can remember when Dorothy put out that discussion paper, now that the minister draws it to my attention. The 86 per cent could well be made up of 100 per cent of groups and therefore the 86 per cent could be a corrupted figure because, if all the environmental groups got together and submitted submissions positive to that point, then naturally the submissions will reflect that. I am not sure the farming or business community would necessarily have picked up on the ramifications of that point in such a unified manner. I am interested in how the person making the argument knows whether they are arguing a private matter or a public interest test matter. If I was mounting the argument I would want the court to instruct me early on in the case whether the court was going to treat my argument as a matter of private interest or public interest. As a matter of private interest the argument could be a lot shorter if I were paying expensive lawyers than if it were in the public interest. How does the person mounting the argument get an indication from the court? I have not been to court on these matters. Is there a process where the court says to the person making the argument, 'Bear in mind the court will treat this as a public interest test or a private interest test'?

The Hon. J.D. HILL: I can only suggest that the court will be bound by the provisions put in the act. Section 22 provides that 'the court may in any proceedings under this section make such orders in relation to the cost of the proceedings as it thinks just and reasonable'. Whether it were to do that or whether it would give an indication beforehand, there is nothing in here that says it cannot do that. The provisions really just give guidance to the courts and do not say that the courts have to award costs in any matter where the public benefit or public issue is claimed. It is really a discretion that the court has, ultimately. It is about trying to allow through the legal process a better understanding of what the law is about and to allow some public interest cases

to be pursued so that the whole community understands exactly what is going on and tests the boundaries of the law. The court is capable of giving advice earlier on. It is really at the discretion of the court. It is not obliged to do it, but I am sure normally it would let people know.

The Hon. I.F. EVANS: I understand that civil penalties will be negotiated on a grid of penalties. The matter will be negotiated between the offending party re business and the administering authority re council or the EPA, as I understand it. The only way I can interpret this clause is that there must be an ability to join the action—read Friends of the EPA (for want of a better group)—because they will be able to mount a public interest case during the negotiation of a civil penalty. How does the third party become involved in the action? The clause provides:

(a) whether the applicant is pursuing a personal interest only in bringing the proceedings or is furthering a wider group interest. . .

Does this clause give third parties an entrée into the matter of civil penalties?

The Hon. J.D. HILL: This area is to do with civil remedies, not civil penalties. It is nothing to do with the next section: it is to do with the existing remedies regime.

The Hon. I.F. Evans: The same question applies.

The Hon. J.D. HILL: Well, whatever the current arrangements are. I am advised that third parties cannot join civil penalty applications, but they can seek standing in the court and it is at the discretion of the court whether or not they are heard.

The Hon. I.F. EVANS: That does raise some opposition concerns in relation to the different treatment the court can apply to costs. One will be a private citizen, I dare say, trying to defend and the other could be a funded public office, a taxpayer funded office—it could be the Environmental Defenders Office or a range of other organisations that get government grants—up against the private citizen. Why should a private citizen have a different cost remedy in court? Why should the court be able to have that discretion? I do not see why the private citizen should be at a disadvantage. You will have resources and a private citizen will have limited resources.

A government funded agency with lawyers does not have to engage special counsel; they can represent the agency or office and, therefore, do it relatively cheaply. I do not see the justification for the difference. I know it will be attractive to those groups that seek to have their costs differentiated by the court, but, as a public cost issue, surely, if the argument is based on the merits, the costs should be based on the same merits. This clause automatically gives the court a hint that there should be a weighting of lesser cost to those seeking a wider group interest than those seeking a private interest. I do not accept that argument. This puts the private citizen at a disadvantage against those groups that seek to use this clause.

The Hon. J.D. HILL: I will clarify my earlier statement. It is not primarily about third parties. I was wrong when I said that. I am not sure whether you were the minister at the time when there was a discovery of cadmium in the soil at West Lakes.

The Hon. I.F. Evans: Yes, I was the one.

The Hon. J.D. HILL: That could be a good example of where a body, for example the West Lakes Residents Association, was to take a joint action against the developer, the council—whoever it decided was the responsible party—on behalf of a broader group to try to establish some principles about who would be liable in those circumstances. As you would recall, it was unclear who was responsible for what. It was a fairly messy circumstance. This would allow a court to hear from the residents group which, potentially, had had their houses devalued, their children poisoned and a bunch of other stuff. The court could say, 'Yes, we think that there is a public interest issue here and we will award costs in a way that allows you to come forward.' I think that is the kind of example that this measure is designed to address.

The Hon. I.F. EVANS: But is it restricted to those with a direct interest, or does the third party adjoining make it open to the Environmental Defenders Office (EDO), the conservation council or the Friends of Belair Park? I can understand the example the minister gives, but I think that those people have a direct personal interest in the matter because their house has been valued. Will you get Green Peace, the nuclear disarmament party or whatever the group may be to seek special treatment under this clause? If it does allow that, it should be narrowed down to those who have a direct personal interest in the issue before the court.

The Hon. J.D. HILL: If it were the EDO, for example, which is probably the most likely group that would do such a thing, it would probably be the EDO acting on behalf of the West Lakes residents as a body. It is really up to the court. The court must hear from the authority or a person whose interests are affected—so the people who are directly affected—or any other person with the leave of the court. The court would have to determine whether the EDO, the conservation council or whoever should have leave. It is a kind of hypothetical situation.

It is much more likely to apply when it is primarily a residents group (perhaps with the assistance of the EDO), or some other body of that nature that is trying to establish something. For this provision to apply to a third party they must pass two tests: first, they must get standing in the court. However, as I understand it, the court is not terribly generous about giving standing to third parties. Normally you would have to establish a special interest. You would have to explain why that were the case. I think that an ACF case in Queensland was given some standing. It is unusual to get standing. You would have to demonstrate something special.

Secondly, the court would have to use its discretion to find that there was a public interest issue that needed to be pursued. In the light of those two barriers, it is unlikely that this provision would be abused. In any event, the court is supervising it. It could assist community groups, such as the West Lakes residents or, perhaps, the Belair anti-railway noise lobby, or some such group who wanted to take on the commonwealth government over the squeal of railway track noises or something like that—where there was a public issue and where the citizens, if you like, are at a disadvantage taking on a big corporation, or a big body.

Clause passed.

Clause 55.

The Hon. I.F. EVANS: As I understand it, the civil penalty regime will be established on some form of grid. The process of how that will work is yet to be established. Will it be brought in by regulation, by some disallowable instrument, or will the EPA have the ability to set the penalties and the grid structure going forward on the basis of all the negotiations in relation to civil remedies? Where is the oversight of these penalties?

The Hon. J.D. HILL: The determination on how that will be finalised is yet to be made. What the EPA will do is put

out a discussion paper and canvass the options. It may well be by regulation, or by reference to a parliamentary committee. We can go through those processes. Generally speaking, what we are trying to do with this measure, which has created some controversy amongst certain elements, is to bring into play a measure that allows issues to be resolved rapidly and without the need for a lot of legal expense. Currently, a prosecution through the EPA takes something like 16 or 17 months. In many cases, the company being prosecuted is quite happy to put its hand up and cop the fine. They just want to get it done. But, because we have to prove it, and it has to go through a court, it can involve a lot of expense for the company and for the EPA and also a lot of bad publicity for the company, which regularly has to address why the matter is still before the court and still has not been resolved.

The Minister for the River Murray has an amendment to this clause, which this government will accept, which makes it plain that the decision to have a civil penalty is absolutely at the discretion of the business. So, if the EPA believes that it is a matter that could be dealt with by civil penalty, it can say to the corporation or the company, 'We're happy to enter into negotiations for a civil penalty in relation to this. Do you want to be in it?' If the company says, 'Yes; we want to be in it,' it can proceed. If the company says, 'No,' it cannot proceed, and the EPA has to determine whether or not it will proceed through the courts for a criminal penalty. If the minister's amendment is accepted by the committee, it has an extra advantage for the company, if you like, because it is absolutely at its discretion.

The Hon. G.M. GUNN: What the minister is saying is that, whatever happens, if a company is involved in a course of action that is a mistake, it is not done deliberately, and it is not done with any ill intent, we have now reached a stage in our society where we will punish these people come what may. Is that the exercise? That is how it appears to me, namely, by this sort of process, we are saying to business operations, and people who may want to come here, 'If you have a slight hiccup, we will go after you'. There are other parts of Australia and the world where this sort of deliberate antagonism towards anyone with an element of success about them does not occur and they are not penalised. Is it the aim to penalise and prosecute as many people as possible?

The Hon. J.D. HILL: Well, no; it is not. I came across this method in America, where it is the primary measure used in some states to deal with the issue. There are huge advantages for business.

The Hon. J.W. Weatherill: That great socialist paradise—the United States!

The Hon. J.D. HILL: That's right. If business has done something that results in a pollution event, the EPA can determine whether or not to take it to a criminal court or, as an option, it can say, 'We think you've done it. Fess up, pay the agreed amount and the matter is over.' That is a much better system. They do not get a criminal conviction, they do not have to go through the expense of the court and they do not have their name in the media for the 17 months or something that it can go on. And they have a choice. If they do not want to go down that track, they can say to the EPA, 'It's up to you: if you want to take us to court, fine. We will defend ourselves in court and fight the matter.' It is absolutely up to the company whether or not it goes ahead with this. It is something the company can choose. It is not something that can be imposed upon it if the amendment is accepted.

The Hon. G.M. GUNN: The minister seems to have missed the point that I raise. It appears that he and the EPA are obsessed with penalising people. I put the situation where someone has made a minor mistake. If you know anything about running a business, whether large or small, from time to time unavoidable mistakes take place. Is it the aim of this parliament to go out and penalise those people and thump them? They did not try to do it. They are trying to get on, in many cases under the most difficult circumstances, trying to battle forward under tremendous international competition. Is the aim to force them to have a civil penalty, to take them before the courts?

I will give an example a bit later on of another case of the stupidity of the EPA, but these conditions that we have raised during these days of debate are a direct result of the actions of the EPA. This debate has not taken place because we want to sit here hour after hour. It is a direct result, and we would be failing in our obligation if we did not pursue these issues. As I have said earlier, you have compromised the board, in my view. The board is not widely representative of industry and commerce. It does not include anyone from the mining industry or even the mining union; you have no-one from the Farmers Federation; you have no-one from the extractive industries people. You have public servants and others.

It is a narrowly focused board, and what I want to know is whether the objective is to ping people and not use the caution process, saying, 'Look: you've made a mistake; you shouldn't have done it, but make sure it doesn't happen again or we'll ping you.' Is that going to be the philosophy or are we going to send these nasty little apparatchiks around with their books to ping them?

The Hon. J.D. HILL: I make the point to the honourable member that the EPA legislation has been in place since about 1995, so we have had about 10 years of experience in South Australia. In that time I am told that there have been about 15 or 20 prosecutions, something of that order. So, we have to keep this in perspective. There are 4 000 or 5 000 complaints to the EPA each year, so over 10 years there might be 50 000 complaints, and over that time there have been 15 or 20 prosecutions. Twice that number may have been launched, I do not know, but there would not have been very many.

The Hon. I.F. Evans interjecting:

The Hon. J.D. HILL: And some of them have been government agencies, as the honourable member said. So, it is not the first choice of the EPA. The EPA basically tries to fix the problem, and that is done primarily through the licensing provisions. If there are minor offences, they are warned or counselled or whatever language is used, and the EPA can give environment protection orders, which basically say 'Okay, there's a problem: fix it up.' So, there is a hierarchy of tools that can be used to get compliance, but prosecution is the last of them. As I say, there are very few cases.

What this does is make it easier on both sides of the argument, because you do not have to go through a long and protracted legal battle. Take the case of somebody who was being prosecuted for a pollution event, an event that everybody would recognise was something that should be pursued in a court of law. Say it was a small business person who may have put into the water system some chemicals that ended up poisoning a river. They have may have affected the health of someone. That may be more serious than this would be, but say it was something of that order—they polluted a river system so they are liable to be charged with an offence—and they say, 'Yes, we acknowledge that we did it.' What the member is saying to me, if this does not go ahead, is that we

have to employ lawyers, the small business person has to employ lawyers and we have to go through all the legal processes of a court and, a year and a half later, that person is prosecuted. At the end of that prosecution they probably—

The Hon. I.F. EVANS: That is only when they plead their innocence. If they plead guilty, the court would deal with it very quickly.

The Hon. J.D. HILL: This is a criminal offence that they are being charged with and they may choose to plead guilty first up, but it still has to go through that long process of investigation. They would be very unwise not to get a lawyer, and they end up facing a criminal offence. Tell me that that is better for them than what we are providing here where they say, 'Yes, we did it, we will cop it', there is an agreement with the EPA, they pay their fine, it is all finished and they get a civil penalty—it is not a criminal penalty. I know what I would prefer if I was in that situation. That is what this is really about.

The Hon. K.A. MAYWALD: I move:

Page 26—
Line 20—Delete 'If' and substitute:
Subject to this section, if
After line 31—Insert:
(2a) The Authority may not make an application to the Court under this section to recover an amount from a person as a civil penalty in respect of a contravention—
(a) unless the Authority has served on the person a notice in the prescribed form advising the person that the person may, by written notice to the Authority, elect to be prosecuted for the contravention and the person has been allowed not less than 21 days after service of the Authority's notice to make such an election; or
(b) if the person serves written notice on the Authority, before the making of such an application, that the person elects to be prosecuted for the contravention.

I think these amendments will alleviate some of the concerns raised by the member for Stuart, in that they provide the opportunity for the person accused of a breach of the act to have the matter determined in whichever court they would like to have their case heard. Currently, with the amendment proposed by the minister, there is the introduction of civil penalties whereby a negotiated outcome can be determined, or the EPA may choose to take action in the District Court against the perpetrator of the alleged pollution.

The amendment that I am proposing enables that person to say, 'No, I still do not agree that we have done anything wrong and the standard of proof within the criminal court will be applied.' So they can say, 'No, hang on a minute, I do not want to go to the District Court and have this heard as a civil case: I would prefer the highest standard of proof to be applied', and it can therefore be taken as a criminal action. That would mean that the EPA would have to prove beyond reasonable doubt that the offence occurred. If it remained as it was put forward by the minister, the EPA could take it through the civil process with the standard of proof being reduced to the balance of probabilities. This allows for the opportunity for the highest standard of proof to have to be achieved for a prosecution to be attained.

This amendment is based on the concerns raised with me, and many other members, by the Engineering Employers Association, which was concerned about the reduction of the standard of proof—the introduction of civil penalties without the option to elect to take it to another court. The Engineering Employers Association wrote to me, and other members, stating the following:

The association does not support the introduction of civil penalties into the act. We believe that as a matter of principle the EPA must be able to provide the highest standard of proof required in the criminal penalty system of beyond reasonable doubt rather than being able to prosecute on the basis of the balance of probabilities. We do not believe that a civil prosecution, environment and the resulting lowering of the burden of proof required is appropriate for the important area of environmental protection as it relates to the ongoing efforts of companies in the metals and engineering manufacturing sector to improve environmental outcomes.

My amendment enables the civil option to be explored and negotiated between the EPA and the company in addition to the current process of taking action through the criminal penalty system. I think that that is important, and that the choice remains with the company that has been accused of an alleged breach. I commend the amendments to the committee, and I understand that the Engineering Employers Association is happy with the amendment as presented.

The Hon. J.D. HILL: I thank the minister for that amendment and I am certainly happy to accept it on behalf of the government. It clarifies what this provision was about, and it takes out that unnecessary option which clouded it, in my view. It makes it a superior provision. This was recommendation 9 of the ERD Committee under the former government, and it was recommended to parliament that we adopt it. I think that this is a sensible provision and, as I have already told the committee, we will not be proclaiming this for 12 months after the matter has been put through. Business SA asked for that period of time to give us an opportunity to properly educate the business community about how it might work, and go through that process of developing guidelines and so on. I am very confident that this will be a good addition which will help both sides of the argument deal with these issues. I commend the amendment to the committee.

Amendments carried.

The Hon. I.F. EVANS: While we are happy to support the amendment of the Minister for Small Business in relation to this clause, I would like to put some concerns on the record. The Engineering Employers Association has written to us saying that it is not happy with this provision. The minister has told the house that Business SA supports the introduction of civil penalties as long as it is delayed 12 months. That is my understanding of the minister's comments. So, it appears on the face of it, at least, that Business SA has a different view to the Engineering Employers Association in relation to this matter. The minister quoted some statistics—about 4 500 to 5 000 complaints a year. That is 50 000 complaints over 10 years and there have only been 20 or 30 prosecutions.

The concern from the business community, I suspect, is based on the fact that the stats that the minister quotes relate to the old act, and one of the reasons why the EPA has only had only 20 or 30 prosecutions might be that it did not want to proceed with prosecutions for a whole range of reasons. We already know that, on the lower level environmental nuisance provisions in this bill, the minister has sought to remove two of the tests in relation to proving environmental nuisance; that is, the intention and reckless provision, and the knowledge provision, so now it is a strict liability offence. That means for South Australia's small business community that most of the offences would be minor environmental matters in their nature; few of them would be major. A lot of the bigger organisations would cause the major environmental issues, and they would be caught by the upper end of the hierarchy of offences.

I suspect that what will happen, and I think that this is the business community's concern, is that as a result of all the collective changes in this bill it will be far easier for the EPA to fine businesses for small-end offences and they will have no choice. It will become an expiation notice style scheme, except that there is a choice between attempting to (at the lower end at least) fight the matter in a criminal court, or paying an amount through civil penalty.

We can look at that in two ways. Some would argue that it is a good thing that the minister proposes. The business community would have concerns about where this will end up in relation to how it is going to be administered to that small end of town because, if we look at the number of penalties issued for the small end of town, I think the advice was that there have been two successful criminal convictions on environmental nuisance in 13 years. I suspect that, in 13 years' time, we will not be saying that there have only been two civil penalties in the environmental nuisance section of the hierarchy of offences. So, in reality, where this is heading is I think that, once the matter is enacted, a large number of civil penalties will be issued to that smaller end of town.

I think it is cute that a deal has been done for this provision to be delayed until after the next state election. The government has had three years to bring in this provision. It has delayed it until now, and lo and behold, just like the natural resource management levy, the nasty bit is going to be delayed until after the state election. If the minister thinks that there is an environmental positive in this particular section, then one would have thought that the minister would have stuck to his commitment and brought it in. The minister has the numbers through both houses to do what he wants, but what the minister has done—

The Hon. J.D. Hill: I don't think that's true.

The Hon. I.F. EVANS: Yes; it is. The minister has made an arrangement based on the advice of Business SA that, if they delay it for 12 months, Business SA will support the introduction of civil penalties. I am not sure whether that would reflect the broader business view. I am not sure how widely the very small business community would have been consulted about that particular matter. We support the Engineering Employers Association's view and concerns on this matter, and we will vote against this provision.

The Hon. G.M. GUNN: The member for Davenport has hit the nail on the head. These provisions are not brought in at the request of industry or commerce: they are brought in because the EPA wants to be able to make things easier for its arrangements. It is not concerned about these small business or rural people who have very limited resources and do not have the ability to defend themselves and they will be faced with a set of circumstances basically beyond their control. They are not aware how these provisions are going to affect them. I put this to the minister.

Take one of these small organisations employing, say, five or six people; the EPA imposes a civil penalty on them, but they will not pay. What are you going to do? Are you going to bankrupt them? Are you going to throw these people onto the streets? That is why I say that the whole process is so wrong. Those people do not have a voice on the EPA board. The AWU does not have a voice because it would not put up with their members being thrown onto the streets, nor should they, because they are practical people. You do not have practical people on your board and yet you are asking us to wear this.

The minister and his officers would have hopefully come to the conclusion that there are some problems in what they have tried to do because this has been a long debate. Over the previous break we had New Year and Easter spoilt by the NRM legislation and studying that jolly thing. This break has been spent studying this jolly act. I have better things to do with my time. But as a diligent member of—

The Hon. J.D. Hill: Retire then, Graham.

The Hon. G.M. GUNN: It is those sorts of comments that will keep me going.

The Hon. J.D. Hill: That is great; that is fine.

The Hon. G.M. GUNN: I do not want to see ordinary, hardworking people victimised. It appears that there is always a failure to understand that the average citizen is at a tremendous disadvantage when they are confronted by organisations and government agencies and instrumentalities. The minister got really stroppy with me when I said that we would have to target these people, but that is the only defence some of these people have. Where is the right of appeal for the average person? I ask the minister to tread carefully and to understand what he is doing, and to be aware of the ramifications. When industry and finance understands what is involved, the minister will not be able to sweep it under the carpet at the next election. The minister will make it a real election issue with small business. We will have no alternative but to tell them, because they have no representation on the board.

The Hon. J.D. HILL: Interesting contribution! Strangely enough, my job as the Minister for Environment and Conservation is to consider ways in which to protect the environment. As an entity, the Environment Protection Authority has a duty to balance the issues. It has to take into account the social and economic consequences of its actions, as well as the environmental consequences. The authority is not just a one-eyed body: it takes all these things into account. Prior to the last election, the Labor Party went to the people with a platform, and one of the things we promised was to strengthen the EPA. We recognised that the EPA did not have the teeth it required to do its job properly, and I think that was a common view in the community.

I know the member for Stuart does not want the EPA to have the teeth to do its job properly, and that is a reasonable position for him to take. Three per cent of his electors vote Green and Democrats, so it is not a big issue in his electorate. However, for a lot of people in our community, environmental protection is a substantial and significant issue. It is something to which this government has turned its mind, and this is the second piece of legislation which I have introduced which attempts to give the EPA teeth.

I have looked at legislation in other jurisdictions in Australia, Europe and the United States of America, and I have brought together some measures which I think will do the job. The particular measure we are dealing with at the moment is the introduction of a negotiated settlement, which I believe offers significant advantages to business. I will not go through them again, but I believe it offers significant advantages to business. It means that they avoid having criminality on their record, which I would have thought is a significant thing in this instance.

The member for Stuart has said that the board is not made up of practical people, and I think that is highly offensive and defamatory. The board is made up of practical people. I am going to invite the chair of the EPA and members of its board to come down to Parliament House and sit in a room and talk to members of parliament about the issues they may have,

and I hope the member for Stuart will take advantage of this opportunity. I want the member for Stuart to explore with them what they consider to be their practical skills, and for them to talk to the member about how they go about their duties as members of the board. I think they have been maligned in this place by members opposite, and they should have an opportunity to talk to members directly about their views, and members should have an opportunity of telling them what they think and listening to their answers—not just doing it as a bit of rhetoric in this place during debate, but actually engage in proper discussion with people.

The issue about the one year delay was raised by the member for Davenport. It is true that this would delay the matter until after the election, but I assure the member that that is not the purpose for doing it. Unlike the member for Davenport, I think this is a good thing. I would like to have the legislation in action before the election. However, in the process of consultation with Business SA, Business SA said, 'We will not oppose this measure if you give us some time to consult and for there to be education on these new measures.' I said, 'Well, if that's what it takes, we will do that.' I suggested a shorter period of time: they wanted 12 months. So, I am happy to do it.

In any event, it would probably take the EPA six months or so to get the arrangements in place to bring these new measures into action. But both the EEA and Business SA were thoroughly consulted. We spent a lot of time with the EEA: I met with the head on at least one or perhaps two occasions to talk through these issues. We made a whole range of adjustments to take into account its concerns. On the one hand, I am pilloried for taking on a suggestion by Business SA and, on the other hand, I am attacked for not taking on all of what it wants. What governments do (and I am sure governments on the other side did the same) is enter into negotiation with the interested groups and try to come up with something about which there is a general consensus. At the end of the day it is your call and you say, 'Right, we can't reach agreement, so we're going to proceed with it.' We reached a pretty good consensus, I think, with the business groups. There was this issue for the EEA, and I think the amendments made by the Minister for the River Murray will substantially allay the concerns of the engineers association.

The CHAIRMAN: I would like to explore the issue of civil penalties. I can see the logic in it in the fact that you would probably get an outcome much quicker. But the minister might like to respond to the proposition that, if someone damages the environment, it is a crime in the sense that it is against the wider community, in the same way that, when someone robs a bank, they offend against the whole of the community. Civil action is normally where someone has offended against an individual, or the equivalent. I can understand the logic, but the paradox of this is that, if you destroy the environment or a species or something, the whole community suffers. So, in a sense, it is a criminal act. I can see the logic of going down the civil path, which the Americans have put a lot of effort into developing. However, people should not underestimate the fact that, if you damage the environment, you offend against the wider community in the same way as you offend in a criminal action that threatens the wellbeing of the whole community.

The Hon. J.D. HILL: The point I would make is that these are at the lower level of offence. They are not for what you would call the greater pollution events. It would be a discretion that the EPA has. It would make a decision whether or not it was in this category. I think that, through the guidelines it wants to produce, it will be able to make it pretty plain what kinds of events would be covered. And, indeed, under some circumstances, for egregious acts that very severely damage the environment, it would still have the capacity—and, indeed, I would say the duty—to pursue criminal charges against polluters.

The Hon. I.F. EVANS: Can the minister flesh out for me proposed new section 104A(5)(b) where, in determining the amount to be paid by a person as a civil penalty, the court must have regard to 'detriment to the public interest resulting from the contravention'? How will a court put a value or a judgment on that?

The Hon. J.D. HILL: The advice (and it makes commonsense) is that this is what courts do. They bring into account all those kinds of issues when they are determining penalties. That is what they do every day of the week; that is their job. The legislation sets up the framework and then says to the courts, 'You take into account these matters when determining the penalty.' Over a period of time, of course, with matters coming before the courts, they will establish what is the most serious offence and what is the least serious offence. What happens in a particular case will then be compared against that range of cases.

The Hon. I.F. EVANS: Why does the system allow for proceedings to be brought 10 years after the event if the Attorney-General thinks there is a valid case? As per clause 12:

> Proceedings for an order under this section may be commenced at any time within three years after the date of the alleged contravention or, with the authorisation of the Attorney-General, at a later time within 10 years after the date of the alleged contravention.

What would the Attorney-General know about environmental matters to make that sort of judgment? And why 10 years? It could be smoking on a Sunday in your backyard.

The Hon. J.D. HILL: I think it is unlikely that this would cover smoking on a Sunday in your backyard. The 10 years matter is consistent with other elements in the act. The advice I have is that section 131 of the legislation, part 2, provides:

> Proceedings for a summary offence against this act may be commenced at any time within three years after the date of the alleged commission of the offence or, with the authorisation of the Attorney-General, at any time within 10 years after the date of the alleged commission of the offence.

As was pointed out to me, it has to do not so much with environmental protection but rather with justice and what would, in the circumstances, be seen to be a just thing. There is a discretion for the Attorney-General to apply any period up to 10 years if, based on advice, he believed that it was fair and just in those circumstances.

The Hon. G.M. GUNN: The minister seemed to take some umbrage in relation to my comments, and I take some umbrage at the minister having the EPA officers going through counting up how people voted in elections. First, let me make it clear that he does not frighten me a bit; second, I think it is—

The Hon. J.D. Hill: It was not the EPA officers, Graham; for goodness' sake.

The Hon. G.M. GUNN: Well I sincerely hope not, because it would be improper and unwise. Those sorts of comments do not frighten me one little bit, but what does concern me is that the minister said he had a responsibility for the environment's protection and so forth. He can have the best environmental policy in the world, but if he does not have a good strong economy it is not worth anything. He will not have the money to fund it, and that is what the real

argument is about here. The activists and the others can have all their dreams but, if you do not have a soundly based expanding economy, if you do not have job creation, if you are not encouraging capital to invest, then all this is superficial and it is going to pass into oblivion, because when you get economic downturns and difficulties people lose all regard for these other things and only think of survival. I suggest that there needs to be a little reality check and a little economic thought given to some of these proposals, and that consideration be given to the long term effects and how some of these proposals are going effect communities both large and small.

The committee divided on the clause as amended:

AYES (25)

Atkinson, M. J.	Bedford, F. E.
Breuer, L. R.	Caica, P.
Ciccarello, V.	Conlon, P. F.
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.	Thompson, M. G.
Weatherill, J. W.	White, P. L.
Wright, M. J.	

NOES (18)

Brindal, M. K.	Brown, D. C.
Buckby, M. R.	Chapman, V. A.
Evans, I. F. (teller)	Goldsworthy, R. M.
Gunn, G. M.	Hall, J. L.
Hamilton-Smith, M. L. J.	Kerin, R. G.
Lewis, I. P.	McFetridge, D.
Meier, E. J.	Penfold, E. M.
Redmond, I. M.	Scalzi, G.
Venning, I. H.	Williams, M. R.

Majority of 7 for the ayes.

Clause as amended thus passed.

Clause 56 passed.

New clauses 56A and 56B.

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

After clause 56 insert:

56A—Substitution of heading to Part 13

Heading to Part 13—delete the heading and substitute:

Part 13—Appeals and reviews

56B—Insertion of section 105A

Before section 106 insert:

105A—Review by Minister

(1) If the Authority makes a decision or order under Part 6 or Part 10—

(a) the person to whom the decision or order relates; or

(b) a council whose area is affected by the decision or order,

may, within 2 months after the making of the decision or order or such longer time as the Minister allows, apply to the Minister for a review of the decision or order.

(2) the Minister may, for the purposes of a review under this section, make any investigation that the Minister considers appropriate and may confirm the decision or order of the Authority or direct the Authority to vary or reverse its decision or order and take necessary action to implement that variation or reversal.

(3) Subject to subsection (4), an application to the Minister for review of a decision or order of the Authority does not affect the operation of the decision or order or prevent the taking of action to implement the decision or order.

(4) If the applicant for the review is a council, the applicant may, by notice in writing to the Authority, require the decision or order to be stayed until the determination of the review under this section (and in such a case the decision or order will be taken to be of no effect until the Minister notifies the applicant of his or her determination on the review).

These proposed new clauses give the aggrieved person the ability to request the minister to review the decision or order. In a fair and reasonable society—

The CHAIRMAN: Will members please leave the chamber or take a seat as it is hard to hear the member for Stuart.

The Hon. G.M. GUNN: In a fair and reasonable society ministers are given these discretions because they are answerable to the parliament and subject to question by, comment on and resolution of this parliament. It is fair and reasonable that, in a democratic society, people who believe they have been treated badly, unfairly or unwisely and are subject to arbitrary decisions can have this last resort. It gives the minister wide discretion in dealing with these matters. The minister has sufficient time to make a considered decision. In some of these issues we are dealing with very important matters.

A constituent of mine, who is well known to the member for Morialta, built an excellent development at Port Augusta and then wished to proceed and build a marina, which in itself was to be a great development. However, the EPA and its hierarchy in their wisdom knocked it back. This particular gentleman, who had spent millions doing the right thing, was going as to put in a development that the community and council wanted and was in the long-term best interests of the people of this state. If any part of South Australia is suitable for boating and water sports it is the top of the gulf—where else? We have safe waters, the right climate, available land and accommodation for people to come and stay. It would create opportunities but, no, this band of people took upon themselves to say that the people of Spencer Gulf should not have a marina. We can have them in Adelaide, at Outer Harbor, at Wallaroo, but not at Port Augusta. That is what they said. Why? Because someone might spill a bit of fuel in the water. Has it happened at Wallaroo, Port Lincoln or Tumby Bay? That is the reason. It is an outrage.

If this provision was in the act that constituent would have the power to go to the minister and say, 'Listen, these fellows have lost it. They got out of bed on the wrong side on Sunday morning. They are not with it.' This particular gentleman has wiped his hands of it and said that he wasted his time; fancy dealing with these people. We want investment. The city up there has gone through a tremendous downer; it is now on the way up. Why not help them? Why get in their way? If there is a problem why not put forward a suggestion? But do not get in the bloke's way. That is what happened.

As a result of this amendment, the thing would end up in cabinet and the wise heads around the table would say, 'Look, minister for the environment, we will give you a chance to save face, so you better fix it.' We know how the system works. That is exactly what would happen. This is a good provision. If the government opposes it, it does not believe in parliamentary control: it believes in bureaucratic insensitivity. That is the alternative. It is parliamentary control and the ability for parliament to exercise its rights in a democracy or bureaucratic insensitivity and bureaucratic dominance and thumbing their nose at what is right for the people of South Australia.

There is a clear choice and the minister is now placed in a situation where he has to prove whether he is a democrat or whether he supports bureaucrats. Is it Sir Humphry Applebee and his merry band of bureaucrats or is it being accountable to the parliament of South Australia and the cabinet? We have a cabinet process and we have a parliamentary process, and they all should be subject to the will of the parliament. If the people of South Australia are unhappy with the decisions they can get rid of any one of us, they can organise campaigns, but they cannot get rid of the people who make these insensitive decisions. This is a chance to take the first step. There is another step coming. I call on the minister and this committee to support this fair and reasonable proposition.

The CHAIRMAN: The chair is looking at clauses 56A and 56B. They could be taken together.

The Hon. J.D. HILL: The honourable member is trying to do what he did the other night; that is, insert ministerial discretion into what ought to be independent regulatory approach. As I said to the honourable member the other day, it is akin to having a minister direct or influence what the Police Commissioner was to do or the courts system or the Auditor-General. They are independent officers who have processes in place to make appropriate decisions.

It is just bad policy to put a minister in a position to make those kinds of decisions. In most cases to which the member was referring, the EPA gives advice to either the DAC or the council. As I understand it, there are only a limited number of places where the EPA has effectively a right of veto or can give direct refusal. Those areas are in the regulations so it is up to the parliament as to whether or not it accepts the EPA's right to have refusals in those circumstances. The parliament already has that kind of control. If it were so inclined it could say no to the EPA's doing that. There is a range of mechanisms in place to supervise the EPA. As I said, I have an amendment in the bill to allow the ERD committee to regularly review what the EPA does.

Of course, the Ombudsman and judiciary review are also available if the EPA acts out of line. I do not support putting a minister in the position of making decisions about environmental protection and environmental regulation. I think that it is fundamentally wrong. It would be like the police minister deciding whether someone would be prosecuted and overturning the police commissioner's decision about who he says he is going to arrest, or the DPP being involved in those kinds of processes. There was a lot of discussion, as the honourable member would know, when the government made a direction in relation to the DPP under a very curious set of circumstances. It is not a power, I think, that should be given to the minister. I support the arrangements as they are already.

The Hon. I.F. EVANS: With respect to these amendments moved by the member for Stuart, as I have advised the committee previously, they are a conscience vote for the opposition, as we have not gone through the party room. For all the reasons put forward by the minister, I indicate to the committee that the shadow minister does not support these amendments.

Mr VENNING: I am rather amazed that the minister can say, 'Leave it to an independent decision.' Heavens above! I have watched the *Yes, Minister* television program and often I could not laugh at the program, because it was true. You cannot blame a public servant, bureaucrat, whatever you like to call them, for fighting strongly for what they are trained to do. I just cannot believe that there is no right of appeal to anyone. I was the chair of the ERD committee, and I have noted an absolute change of operations within the EPA today. I believe that the EPA is confrontational today, and we have heard all these matters. I did hear the minister's invitation earlier this evening about bringing in representatives of the EPA, and I am happy to talk to them on a one-to-one basis. I have been very constructive. I am not as strong as the Hon. Mr Gunn, but I can understand his frustration, because I have seen it for myself. This affects people close to us and our constituents. They are good people and they have a very strong land care ethic. They have done the right thing. When I was chair of the ERD committee I dealt with the Chairman of the EPA (Mr Stephen Walsh) and the CEO, Mr Rob Thomas.

I had no difficulty at all working with these people. A problem would come in and it would be dealt with straight away. Max Harvey has just retired, but I got on all right with him. He would deal with things. I am not blaming the current incumbents; I am not personally having a go at them, but when we make rules such as this, the people who are employed to do the work will work within those guidelines. I have a lot of concern that, if a person is aggrieved (particularly when they have done the right thing and invested a lot of money), surely that person has a right of appeal to a higher authority, and there is no better authority than the minister.

I will certainly support this amendment. I cannot understand why we are running away from this. The minister can appoint a person to assist him in these appeals if he gets overloaded. As I said, I will accept the minister's invitation to meet with representatives of the EPA at any time and speak person-to-person to them. They have a job to do. However, I note on the public record the change of attitude that has occurred in the last three or four years. We now have this attitude of confrontation where it used to be conciliatory. Today the answer is no, and it is up to the applicant to prove otherwise. I have quoted only one instance on the record. I can think of three or four, but I would take up a lot of time of this parliament. One particular instance involved a person trying to do the right thing with wine effluent.

He was carting it out to a waste area. I could talk for hours on that person doing the right thing. There was a conflict of interest and all sorts of hanky-panky. Surely, if you read the transcript, you would know that there would be only one forum—that is, let the minister be the ultimate umpire. I think that we are running from our responsibility. I believe that we are not doing the right thing by saying that we will stand aside. It is ridiculous for the minister to compare the chairman or the CEO of the EPA with the Police Commissioner. That is a joke. The two are entirely different and to compare them is not reasonable or proper. I am certainly happy to support the member for Stuart's amendment. I think it only reasonable and fair that the highest appeal should be lodged with the minister.

The Hon. J.D. HILL: First, Max Harvey has not retired. He is still there and is the Deputy Chief Executive, and he would be happy to work with you. I refer the member to part 13, section 106, Appeals to Court, which highlights the matters on which people can appeal to the ERD Court. For example, paragraph (a) provides:

> (a) a person who applied for a works approval or licence may appeal to the court against a decision of the authority—

Paragraph (b) provides:

> (b) an applicant for the transfer of a works approval or licence may appeal to the court against a decision of the authority to refuse to approve the transfer;

So, there is a whole appeals regime in place. I think that it is bad policy, when you have an independent authority, to have the minister as the subject, as the minister of the day would be subject to enormous pressure from a range of people to make decisions, and you know that they will make decisions that are not necessarily in the best interests of the environment or the community. The minister will be subject to a whole range of pressures, which would create an attitude in the community that justice was not being seen to be done.

The CHAIRMAN: I point out that 56A is the heading and that 56B is the substance of the amendment.

New clauses negatived.

Clause 57.

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

Page 28, line 30—Delete all words in this line and substitute:
(1) Section 106(1)—after paragraph (c) insert:
(ca) the holder of a licence may appeal to the Court against a decision of the Authority to renew the licence of its own initiative and without application by the holder of the licence;
(2) Section 106(1)(d)—delete 'by the Authority or an authorised officer'

This amendment arose out of discussion and consultation with the Local Government Association, which sought an amendment to clarify the appeal process for the holder of a licence that has been renewed after closure pursuant to section 43(6) of the act. What this provision says is that a holder of a licence may appeal to the court against a decision of the authority to renew the licence of its own initiative and without application by the holder of the licence.

Amendment carried; clause as amended passed.

Clauses 58 to 60 passed.

New clause 60A.

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

After clause 60—Insert:
60A—Insertion of section 112A
After section 112 insert:
112A—Review by Economic and Finance Committee
The Economic and Finance Committee of the Parliament may, of its own initiative or at the request of a person aggrieved by a decision or order of the Authority, inquire into, consider and report to the Parliament in relation to any decision or order of the Authority under this Act.

Having failed to give the people and the parliament the ability to have their decisions properly, fairly and reasonably adjudicated, on a third occasion I attempt to bring democracy to this process by moving the amendment standing in my name to insert new clause 60A, Review by Economic and Finance Committee. In my experience, that committee has acted wisely and properly in relation to considering other important regulatory matters, such as water catchment plans, when people are given the authority to impose conditions, collect levies and carry out public works. Their decisions are subject to the will of this committee. I believe that, if people are aggrieved by a decision, the parliament should have the role to review them.

The argument is simple: if elected members are not considered to be reasonable or wise enough to review decisions of the bureaucracy, then what are we here for? Are we here to rubber-stamp the bureaucracy or are we here to ensure that fairness takes place? With these amendments that I have moved I advised my colleagues exactly what I proposed to do. There have been no secrets on my behalf in relation to this matter, and I did it a considerable time ago. I thought the Liberal Party stood for parliamentary control. I thought the Liberal Party stood for the rights of the individual and for people of meagre means not to be disadvantaged.

That is what I have always stood for, and these proposals were done to give people a fair go. Surely, a person of meagre means who is dealt with by this large body now consisting of over 200 people and obviously growing like Topsy—

Ms Chapman: Two hundred?

The Hon. G.M. GUNN: Two hundred people, I am told. It was 80 three years ago and is now 200. As a last resort they can appeal to a committee of elected members of this parliament who can consider it and then report to this parliament. What is wrong with that in a fair and reasonable, decent society? What is wrong with that concept? If you oppose that concept, you must be very insecure. You must believe that your decisions will not stand up to scrutiny and cross-examination by practical people: not people ensconced in their own little domains or there as agents for environmental pressure groups and others, but by a cross-section of the parliament.

If you do not agree and you knock this out, what you have said is that you do not trust in the parliament. That is the only conclusion you can come to: you do not trust the parliament. Therefore, my final amendment tonight is to give the parliament an oversight of this process. I came into this parliament a long time ago, and one of the first great debates I had here was when I saw a person being divested of a block of land on, I think, Burbridge Road. It was a disgraceful act. But earlier than that, as a very young person living a long way from Adelaide, I was home on our family farm one afternoon, working in the shed servicing a tractor, because there had been a couple of heavy thunderstorms. A fellow drove up the road, pulled up and got out of his car, which was a Highways Department vehicle.

He introduced himself and I was pleasant to him. I was only about 20 years of age and I did not have a father to advise me in those days. He said, 'You people have this large mountain on your property', and I said, 'That's right.' He said, 'We want to go and quarry it.' I said, 'I don't suppose there is a great problem, although I would like to think about it.' He said, 'If you don't agree we'll declare it a stone reserve and you won't have any say.' I thought a minute and said, 'Hang on a minute.' I was taken aback: I was not used to that sort of treatment. But I was fortunate enough to think and I said, 'I know Mr Dudley Octoman. He is a member of the Legislative Council. I will go and phone him and see what he says.' And you ought to have seen the change of attitude in this character.

I never forgot that experience. As I have gone around, I have seen some things happen to my constituents and I have occasionally been talked out of pursuing cases. I never forget the disgraceful way that poor Mrs Kerry Manuel was treated in Streaky Bay by bureaucrats who are now living on the hard-earned fruits of taxpayers in their superannuation, and she was nearly put out on the street. I will never forget what happened, and the same thing will happen here. So, I say to this committee that there is nothing wrong with this proposal. This is the safety valve. This is the opportunity for the parliament to make a decision to ensure that people are fairly and reasonably treated and that justice prevails. This parliament is the highest court in the land: let it do its job.

The Hon. J.D. HILL: I am sorry to disappoint the member for Stuart but I do not support his amendment. I guess there are two or three points I would make. First, I have just moved an amendment to clause 60 requiring that the annual report be presented to the ERD Committee of the parliament—the appropriate committee, I think, would have been the ERD Committee. But, in any event, my advice is

that this clause is not required. The ERD Committee—or, indeed, at least on one reading, the Economic and Finance Committee—could do these things if they chose, in any event, so I think it is redundant.

It perhaps sets up an expectation—and this might be in the minds of the public—that the Economic and Finance Committee will have some sort of quarterly review which will overturn decisions of the EPA, and that would not be the case: and I think it would be dangerous to set up that kind of expectation. I am half tempted to support the idea that all of those persons who are aggrieved by decisions should contact the Economic and Finance Committee rather than me, because there is a handful of people (and I am sure the member for Davenport is familiar with them) who contact the minister's office on a very regular basis on a range of issues—usually, I have to say, not because of something the EPA has done but because there is something the EPA has not done to their satisfaction (such as not stopping a company from making a noise, or odour or pollution of some sort).

They ring regularly and say, 'The EPA still has not fixed that problem, the EPA still has not done this and the EPA still has not done that.' So they are usually the aggrieved persons who contact the minister's office. Very rarely do I have people complaining about decisions made by the EPA because they have other remedies that they can pursue. The Ombudsman is one avenue, and also the courts, under certain circumstances, as I have described. So, I do not feel that this is necessary, and I oppose it.

The Hon. I.F. EVANS: I understand the reasons the member for Stuart might move this amendment, but I put this to him. He and I are members of the Economic and Finance Committee. That committee is traditionally dominated by government members and is rarely dominated by non-government members. The party that would not want an investigation into aggrieved persons would be the government of the day: that is generally the rule. The member for Stuart is aware that there have been attempts to get up a number of issues in the Economic and Finance Committee and we have not been successful—matters of great importance.

The most likely committee that would look into these matters that is not government controlled and, therefore, more likely to look into people's grievances on environmental matters, would be the parliament's ERD Committee. In fact, it was through the recommendation of that committee, which was not government controlled at the time, that some of these measures that have been floated tonight gained life.

So, while I understand the intent of the member for Stuart, my strong recommendation to him is that the Economic and Finance Committee is not the appropriate committee because it concentrates on, as the name would suggest, economic and financial matters. It is government controlled and far more difficult to get a motion up that the government agrees with.

The parliamentary ERD Committee is the specialist environment committee. It is never government controlled because of the construct of the committee and, therefore, the public will get a far better hearing from that committee than it would under the Economic and Finance Committee. So, I would not support the amendment in its current form but the member might like to look at it between houses, and look at putting it as the ERD Committee. I say to the member for Stuart, and to the committee, that any parliamentary committee, by its own motion, can look at issues if it is within the act. So, to have a clause that provides that the Economic and Finance Committee may, of its own initiative, look into issues, is stating what the Economic and Finance Committee can do already under its act—although I accept that there may be some constraint if it is not an economic and finance issue, and that is why the member may have moved it in its current form. I would prefer this to be an ERD Committee issue, not an Economic and Finance Committee issue.

The Hon. G.M. GUNN: In response to both the member for Davenport and the minister, let me say from the outset that we are talking about decisions made by the EPA that affect the economic viability of particular individuals, corporations or companies, and if this provision is in the act then the committee will be obliged to consider it. As the member rightly put it, except in the last parliament, the government of the day has had the numbers on the Economic and Finance Committee. In the last parliament the government did not and the committee did all sorts of things, but if this provision is in the act then there is more than an expectation, there is a requirement, in my view, for them to at least consider it.

I can imagine the advice that has been tendered to the minister, and people getting alongside the member for Davenport saying, 'Look, you are acting responsibly. Do you want to go along with this?' I know how they work because, if there is one thing that bureaucracy does not like, it is these blasted backbench members of parliament interfering. I do not go to many government functions, but on the occasion when I do, I get the cold shoulder properly from time to time when I have stuck up for someone, and in some way made life difficult for a senior public servant. I understand that they do not like it. They do not like parliamentary committees. They ask questions and they have to answer the questions.

The minister was a member of the select committee on water in the South-East on one occasion when the committee was of the view that we were not getting correct or proper information, and I took the decision to direct the Sergeant-at-Arms to go to the minister's office and get the information, and to send the secretary to Mount Gambier to get the information. Of course they did not like it but we got the correct information. It was not the easiest decision to make; however, the committee was charged with the responsibility of investigating, and we did it without fear or favour. This is the same thing here. If they have to come before the committee they do not know what questions they are going to get asked.

For an individual person of limited means, it would be their last resort. We know in any organisation that is not subject to independent appeal, that it is very well to say that people can go to the highest court, but if people are of limited means, it is beyond their ability. These organisations, with all the resources of government behind them, are in a privileged position. Therefore, I say to the minister that I will certainly think about this between houses but there is nothing wrong with this, and I cannot understand why his advisers are so frightened to let the parliament have some involvement in it. Why are you, minister, so frightened? To talk about the Commissioner of Police is a nonsense.

The Commissioner of Police actually can be directed by the government of the day, if you want to table a motion, table the thing in the parliament. The Commissioner of Police and police officers are subject—they have to go to court and all those decisions are subject to appeal. So you cannot compare. I rest my case. I have done my best to try to stick up for hardworking, decent people who have had the unfortunate experience, as the member for Schubert indicated. The minister got so cross with me when I indicated what

would happen and the minister now places us in the situation where the only recourse we have is to get up in this place and say, 'Well, officer so and so,' and go through it. And that is what will happen. The only other resort will be to have to move a censure motion. The minister has now forced us, if that is what he wants, but do not think that we are going to back off and that some of the rural members are going to back off.

We are not going to do it, and I do not care personally whether it brings me in confrontation with some of these people. At the end of the day, I am elected, and I am going to stick up for those people. The EPA board is appointed. You have compromised the parliament, and foolishly compromised the board by having the one person as chief executive and chairman. That is wrong in principle and no-one could think otherwise. The minister does not have a broadly based experience on the board which is supposed to supervise the operation. So therefore this has all been a culmination of events which has ended up with this lengthy debate, which some of us would have preferred not to have, but which has been necessary in the interests of democracy.

New clause negatived.

Clauses 61 to 70 passed.

Clause 71.

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

Page 33, after line 7—Insert:

(5) If, in proceedings against a body corporate for an offence against this act or for the imposition of a penalty in respect of a contravention of this act—

(a) information or a document was admitted in evidence against the body corporate; and

(b) an officer of the body corporate had been required to give the information or produce the document under a provision of this act; and

(c) the information or document was such as to tend to incriminate the body corporate of the offence or make the body corporate liable to the penalty (as the case may be),

the officer of the body corporate will not be guilty of a contravention of this act as a result of the body corporate having been found guilty of the offence, or liable to the penalty, in those proceedings.

This amendment comes from the member for Enfield. When this matter was raised, the member for Enfield made some suggestions about how we could clarify the rights of the directors to protect themselves against self-incrimination; so, accordingly, separate proceedings would need to be initiated for a director of a company if evidence produced to incriminate the company also incriminated the director. In the second proceedings against the director the self-incriminating evidence could not be used. That is a greater protection against self-incrimination, and I am happy to commend this to the committee.

Amendment carried; clause as amended passed.

Clause 72 passed.

Clause 73.

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

Page 35, after line 8—Insert:

(5a) A notice served on the holder of an environmental authorisation under this section in respect of a contravention of a condition of the authorisation—

(a) must not require the payment of a fee in respect of action taken, or costs and expenses incurred, in investigating the contravention unless the contravention has been established, or is taken to have been established, against the holder of the authorisation; but

(b) may require—

(i) the payment of a fee in respect of the issue of an order under Part 10 in respect of the contravention; or

(ii) the payment of reasonable costs and expenses incurred—

(A) in taking action to ensure compliance with requirements imposed in relation to the contravention by an order under Part 10 or by an order of a court under this Act; or

(B) in taking samples or in conducting tests, examinations or analyses in the course of taking such action,

whether or not the contravention has been established, or has taken to have been established, against the holder of the authorisation.

(5b) For the purpose of subsection (5a), a contravention of a condition of an environmental authorisation has been established, or is taken to have been established, against the holder of the authorisation if—

(a) a court, in criminal proceedings or in proceedings under section 104A, has found that the holder of the authorisation committed the contravention; or

(b) the holder of the authorisation, by negotiation with the authority under section 104A, has agreed to pay a civil penalty in respect of the contravention.

This proposes to limit the ability of the EPA to recover costs of investigating a contravention of a licence. The EPA will only be able to recover costs if it undertakes a successful criminal prosecution or civil penalty court order or civil penalty negotiation in which case the EPA may recover the costs of investigating leading to that action. The amendment recognises that a licence fee covers the costs of investigating minor breaches; however, it should not cover the costs of investigation for a prosecution or civil penalty.

The Hon. I.F. EVANS: Would a schedule of costs be given to those being charged prior to the decision being made under the member for Chaffey's amendments?

The Hon. J.D. HILL: I am advised that a cost schedule will be in the regulations, so I would imagine that would happen as a matter of course. It would certainly be available to the person involved.

The Hon. I.F. EVANS: But will it be brought to their attention prior to them having to make a decision under the member for Chaffey's amendments?

The Hon. J.D. HILL: We are setting up a set of guidelines. I think that is a sensible proposition, so I will request that that is put into the guidelines.

Amendment carried; clause as amended passed.

Clause 74.

Ms CHAPMAN: During the course of the debate on this matter, in the contribution I made on the limited aspects of concern I had that had been particularly addressed by the lead speaker in relation to the question of costs generally, I referred to a number of sections in the current act which make specific provision for cost recovery, technical expenses and legal fees generally.

Almost without exception, in the sections to which I referred, only the authority and/or the third party making the application are entitled to recover costs. Section 136 of the act is a general provision, which provides:

For the purposes of this act, the reasonable costs and expense that have been or would be incurred by the authority or some other public authority or person in taking any action are to be assessed by reference to the reasonable costs and expenses

Again, even in this catch-all section, there is no provision for the party who is ultimately affected by either a determination or imposition of a condition, or under the appeal process, to recover costs. Whilst I appreciate the ambit of the amend-

ment, as there has not been any reference in the debate to date, or in the minister's response, I would appreciate some explanation as to why, whilst we continue to tighten protection for the authority, and, indeed, no doubt well intentioned third parties who effectively have the right to come into these proceedings and to join with the authority in the prosecuting of either a civil or criminal offence or the enforcement of the imposition of an order where the third party becomes involved, we still find no provision (from what I can see) for the affected party.

It does touch on the point raised by the member for Stuart. On a number of occasions, his amendments have provided effective safeguards for what I what would call the impecunious party who is severely affected by either licensing rejection or imposition of conditions or contravention proceedings, where there is no opportunity for he or she to recover their costs. I believe that one of the reasons why the member for Stuart so passionately puts to this committee that it is important for other bodies (that is, the minister or the committee) to take up some of this responsibility is that it is simply not a serious option for a party in this situation to proceed with an appeal, or to seek some redress against what may be an arbitrary and inappropriate decision by the authority and to then face the consequences and a large debt with no capacity whatsoever to recover costs.

There may be some historical justification behind this. There are other tribunals that have been established in the past 20 or 30 years that do not subscribe to the cost following the cause philosophical base and therefore take the view that it ought not be automatic. However, I find that to have no provision whatsoever for the court to even have a discretion to make some provision for the party in this situation is quite unjust and unequitable. It makes me very concerned when the minister has refused to even consider some other options which have been presented tonight—which, for the record, I do not favour as the best option, but I do think there needs to be some redress. I would appreciate the minister's comments on that matter.

The Hon. J.D. HILL: Clause 74 is really about how one assesses costs, which I think is the point that the member acknowledged. I refer her to clause 55 and the new section that we introduced, 104A, which provides:

> Authority may recover civil penalty in respect of contravention.

Proposed new section 104A(14) provides:

> The court may, in any proceedings under this section, make such orders in relation to the costs of the proceedings as it thinks just and reasonable.

I assume that allows the court to award costs to either of the parties. I am not too sure whether there is anything else in addition to that that I am required to say. I have already mentioned, in relation to statements made by the member for Stuart, that there is a whole range of mechanisms by which people can seek redress if they feel they are being unfairly treated by the EPA, the Ombudsman being one, and the court system for a whole range of matters in relation to which the EPA may make a decision.

Ms CHAPMAN: I agree with the minister in relation to the amendment. In fact, under current section 104 in relation to civil remedies there is provision. Section 104(22) provides:

> The court may, in any proceedings under this section, make such orders in relation to costs of the proceedings as it thinks just and reasonable.

That has simply been replaced by the amendment to which the minister has referred in proposed new section 104. But that, of course, is confined only to civil remedies. I am talking about the opportunity for an appeal that relates to part 13 of the act and section 106. That is the remedy that the minister says is open, in addition to the Ombudsman, for some redress by a party. There is no similar provision for that. That is why I have moved to the miscellaneous part 15, under which we are now looking at section 136, which the minister is proposing to amend. It is that, I suppose, which we sometimes find in the miscellaneous provisions of acts, which enables there to be some catch-up power or provision to enable the appeals tribunal to have the opportunity to provide redress. But throughout the rest of the act the authority and third party interveners, as such, have the opportunity to recover their costs, and they are very specifically provided for—and, indeed, I note that the minister has tightened up some technical costs notices under the amendments here tonight. But there is no provision for them to have easy access.

It is a very important aspect. The minister will appreciate that, if someone does take the appeal process under part 13 they, of course, must be referred, in the first instance, to a conference. So, having consulted with legal advisers and instructed council, they do not have immediate relief in an appeal court. Under the provisions of section 106(5) there is a requirement of a mandatory conference—so, there are costs associated with that—and then, subject to that provision, an appeal to the Environment, Resources and Development Court is an option. I do not want to dwell on the fact, but I would like some explanation as to why there is not some remedy for that.

The Hon. J.D. HILL: I guess part of my hesitation is that this matter we are dealing with has nothing to do with what the member has been talking about. She has been referring to whether or not costs are provided in appeals. The advice I have is that costs are not provided to any party through the appeal process. This is really about another matter. I have just asked for advice. I am happy to further consider this matter between this place and the other place to see whether it would be a reasonable thing to do, and whether there are precedents around that that could give us some clues about how it would go. I have no policy position in relation to it: it has not been raised with me before. I will have a look at it and, if it is reasonable, we will consider it in the other place.

Clause passed.

Clause 75.

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

Page 35—
Line 19—After 'Authority' insert:
or another administering agency
Line 22—After 'Authority' insert:
or other administering agency (as the case may be)

This is just a correction that makes it consistent with the rest of the legislation.

Amendments carried; clause as amended passed.

Remaining clauses (76 to 80), schedule and title passed.

Bill reported with amendments.

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

That this bill be now read a third time.

I thank the house for its participation in what has been an interesting debate. I know there is a lot of passion around this legislation amongst some members, and I guess the onus is on the EPA on the way it manages the legislation to demonstrate that it is a fair-minded body that is trying to balance the

various environmental, economic and social issues, which is their duty. I am sure they will take on board all the comments made by members. As I said, I have invited the EPA representatives to come to the parliament to talk to members and I encourage all members who do have concerns about the operations of the board to attend, talk to them and get to know them.

There have been a number of amendments made to the legislation which have improved it, and I have accepted a couple of amendments which have clarified a number of points and I think that has helped strengthen the bill. I have undertaken to look at two or three—or it might be more—matters before the legislation reaches the other place and I will do that in a conscientious and fair way.

While I am on my feet, and having thanked all members on both sides for their contributions, I would also like to thank the parliamentary counsel who have prepared the legislation, Mr John Eyre and Ms Aimee Travers; my EPA officers, particularly Ms Sally Jackson, Mr Tony Circelli and Mr Tim Giffen; and all other officers who have helped as well. I would like to thank all of them because it has been a lot of hard work and I appreciate the assistance they have given me.

The Hon. I.F. EVANS (Davenport): I wish to place on record the opposition's thanks to parliamentary counsel and the minister's officers, through the agency, for their briefing and their advice during the debate. During the second reading contribution and during the committee stage there were comments made by some members of the opposition in relation to the EPA and its officers. I wish to point out that, from a personal perspective, having been minister of two policing agencies during my time—that is, the police itself and the EPA—I recognise the difficult task those in policing agencies have. It is a difficult job to strike a balance between the powers that the act gives you and the way they are applied. Personally, I have always found those officers within the EPA to be acting in the genuine best interests of the state as they see it and I have no criticism of the officers for doing just that.

In my view, they always give frank advice, but whether or not the government of the day takes it is always up to the government of the day. I do not necessarily support some of the comments made by my parliamentary colleagues in relation to the officers of the EPA, and I do distance myself from them in that respect because, as I am the shadow minister for the environment, I deal with the office on a reasonably regular basis and accept the fact that there will be conflicts on the ground from time to time, as there are in any policing agency. The Police Complaints Authority has been set up for the police. That indicates the level of complaints that have arisen over many years about that agency.

The environmental legislation enacted by Australian parliaments is relatively new in comparison with the general policing laws, and parliaments and agencies are largely still dealing with many new arguments and new ways of dealing with what are quite complex issues. It is important that the officers brief everyone on the issues and that people then make their judgments, and that is the process we have gone through. I place on record my personal thanks to the officers. I will continue to advocate on behalf of the environment, as is my role as the shadow minister. We may have different views about how we get to a better environment, but certainly the opposition has a keen interest in this matter.

Bill read a third time and passed.

CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES)(TYPES OF CLASSIFICATION) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 24 November. Page 1060.)

Ms CHAPMAN (Bragg): This bill was introduced by the Attorney-General on 24 November 2004. It is a bill to amend the Classification (Publications, Films and Computers Games) Act 1995 and essentially has two effects. The first is to change the categories and symbols of classification which apply to computer games. They will now be the same as those applying to films. The second is apparently to simplify the classification of letters and symbols to make it easier for parents to identify particular classifications. The opposition supports this bill. It is a bill which follows similar legislation passed earlier this year by the commonwealth parliament. All censorship ministers have agreed to adopt this new system.

One reason for the changes is the fact that research by the Office of Film and Literature Classification has shown that the existing classifications for computer games are not well understood by parents. New classifications for film, in ascending order, will be: G, general; PG, parental guidance; M, mature; MA, 15+ (it sounds like a sunscreen); mature, accompanied; R, 18+, some restricted; X, 18+, restricted; and RC, refused classification. The following classifications for computer games will be: G, general; PG, parental guidance; M, mature; MA, 15+; mature, accompanied; and RC, refused classification. I understand the new commonwealth act will come into effect on 26 May this year, and accordingly the government wishes to have the bill passed by then.

As indicated, the Liberal Party supports the bill without amendment. However, I cannot let this bill and the enthusiasm with which the government has presented it, championing the importance for parents to have a clear understanding of the classification of both film and computer games and to have some similarity in their classification to ease the burden for parents in their being able to understand them, without making the following comment. In the very same week of the introduction of this bill, this government (through the Minister for Education and Children's Services) pleads the case for not even allowing parents to have a copy of the SHine sex education questionnaire. I think everyone in this house acknowledges that this information is important to children and that we have to balance the educative and informative benefit to children against either age inappropriate or excessive material which could cause them some harm.

I find some inconsistency in the government's enthusiasm for providing for parents this easy reference, because it fails to deal with any openness on sex education currently trialing in our schools, and in particular the haste to hide from parents a copy of the questionnaire to which I referred. As a brief example, last year the government was enthusiastic to announce a code of practice in relation to the censorship and classification of literature in school libraries. A code of practice was to be introduced early last year—I have not seen it yet, but the government announced it would have one—to ensure that literature in school libraries is identified for the purposes of ensuring that inappropriate sexual or excessively violent material is not exposed to children in those circumstances. Whilst the Liberal Party supports this initiative, I would only hope the government would be a little consistent in some other areas of child protection and ensure that the literature and educative programs they are receiving, even on a trial basis, would have the same protection. Perhaps the Attorney ought to look at those matters and cast an eye over

the shoulder of the Minister for Education and Children's Services to see what is going on in the other direction.

Bill read a second time and taken through its remaining stages.

ADJOURNMENT

At 9.57 p.m. the house adjourned until Tuesday 15 February at 2 p.m.