HOUSE OF ASSEMBLY

Thursday 11 May 2006

The SPEAKER (Hon. J.J. Snelling) took the chair at 10.30 a.m. and read prayers.

STANDING ORDERS SUSPENSION

The Hon. J.D. LOMAX-SMITH (Minister for Education and Children's Services): I move:

That standing and sessional orders be so far suspended as to enable Orders of the Day: Government Business to be taken into consideration forthwith after the completion of other motions today.

The SPEAKER: There not being an absolute majority of members present, ring the bells.

An absolute majority of the whole number of members being present:

Motion carried.

WINE INDUSTRY

Mr VENNING (Schubert): I move:

That this house notes the difficult economic climate facing the Australian Wine Industry and urges the state and federal parliaments to adopt the four recommendations of the Senate report into the wine industry.

It is certainly an honour to lead the first private member's motion in this 51st parliament. I hope that members will utilise this time to bring issues such as this to the house in their capacity as private members. The Senate report into the wine industry was released on 13 October 2005. I think it is very appropriate that we deal with this motion first, because it is a very important industry for the state, and one in which we lead Australia and the world. We are experiencing difficult economic times at the moment (I note that the minister is in here, and I hope that he makes a contribution later). The Australian wine industry has expanded enormously over the past 10 years, driven by strong growth in exports. Plantings of vines increased greatly in the late 1990s and peaked at 16 224 hectares in 1998. As the new plantings of the late 1990s have come on stream grape prices, as we know, have fallen. Wine production has increased faster than sales and the stock ratio, therefore, has increased.

The Australian wine industry faces a major challenge, and there is a threat to the future of the entire industry. Figures from the Wine Export Approval Report of April 2006 show a dramatic fall in the monthly export of wine. In April 2005, wine was being exported for roughly $4 per litre (which is a figure that I find hard to justify, but we checked the graphs and it is correct). In April 2006, it has fallen to roughly $3.70 a litre (this, of course, is the average). This is far below that of May 2002, when it was approximately $5 per litre.

These figures are very disturbing. If the trend continues, and we are looking at another fall in price in April 2007, it will be devastating for the Australian wine industry. Export volumes for the year ended April 2006 grew 8 per cent to 714 million litres. A new volume record was not achieved for the first time in four months on a moving annual basis. The value of exports grew marginally to $2.77 billion, despite a 7 per cent decline in average price to $3.89 per litre. Growth has slowed in the past 12 months. In the corresponding period last year, volume growth was 17 per cent and value growth was 11 per cent, volume versus value, and the average price declined by 5 per cent.

If export sales increase to 20 per cent and domestic sales by 3 per cent (which we would love to achieve), we would have an accepted stock ratio of 20 per cent. If export sales increased by 15 per cent and domestic sales by 3 per cent, it would take until 2011 (five years) to get to an acceptable level and get the industry back on track. If export sales increased by 10 per cent and domestic sales by 3 per cent, we would see very little improvement in the situation. At the present time, export sales are 8 per cent and domestic sales are 1 per cent, so we do not have a hope in hell of improving the stock ratio situation. It is very easy to become very pessimistic about our prospects.

Over a 12-month period, 9 per cent of our exported white wine is bulk wine and 40 per cent of our exported red wine is bulk red. This means that 23 per cent of our exported wine is bulk wine. This may not seem like a problem but, when wine is exported in bulk, it does not have a label, and this means that there is no way for people to know that the wine they are buying is from Australia. In other words, people can buy any wine and not know that it is Australian. It also means that accurate record-keeping is very difficult. A trend I have seen since looking over the report is that the currency rate is normally low in June, with sales up in August and September for the Christmas orders. However, when the currency is higher, sales are much lower than expected.

To replace the sales last year, 1.7 million tonnes were required. The Wine and Brandy Corporation forecast is that the vintage will be 1.9 million tonnes this year. If this is realised, the industry will have a surplus of 150 million litres—a total of 1.150 million litres. It is estimated that 150 000 tonnes or more of grapes will remain unharvested in some form or other—in other words, left on the vine to rot. Of course, this has other ramifications for the industry, especially disease control. So, there are problems all over and, as I say, it is very easy to become pessimistic.

The report makes only four recommendations. The first is that the Department of Agriculture, Fisheries and Forestry should consult with state authorities and peak bodies with a view to establishing a national register of vines. I know that the minister has had briefings on this subject; no doubt he will have some comments to make, and I will be interested to hear them. I believe that this first recommendation is so that we can accurately forecast movements on volumes and variety in the industry. I think that is essential and totally non-contentious. The second recommendation is that the government should give priority to amending the Trade Practices Act to add unilateral variation clauses in contracts to the list of matters a court might have regard to in deciding whether conduct is unconscionable. In other words, it is widening the powers of the court in making its decisions. Again, I do not think that is a difficult or controversial recommendation.

The third recommendation is that the government, in consultation with representative organisations for wine grape growers and winemakers, should make a mandatory code of conduct under the Trade Practices Act to regulate the sale of wine grapes. This recommendation also states that the bargaining position of growers may be improved by collective bargaining. The committee supported amendments to the Trade Practices Act currently before parliament to make this easier. This is more controversial. I have no problem with the collective bargaining of growers, because, after all, the Australian Wheat Board does it when it markets under a single desk. This is not the same, but it is a similar principle.

Certainly, I support that recommendation. The fourth recommendation states:

> The committee recommends that any national wine industry body should be separate from a wine makers' representative body.

I found this recommendation slightly confusing. I see its being a new body but with equal numbers—as simple as that. There should be no attempt by anyone to dominate. It should be a new body but with equal numbers. That has been the argument for many years. Governments have been listening to the winemakers and not the grape growers, and that has been the single area of contention; and that was well highlighted in the report as well as in evidence given to the Senate committee. That has been our single problem. I also support the South Australian Farmers Federation (SAFF) in its endeavours to add an extra recommendation, No. 5, which states:

> In its submission, SAFF suggests that a wine/grape industry advisory committee be established to inform the minister of changes occurring in the industry from time to time. The committee would consist of an equal number of growers and wine makers and state and federal governments, meaning that they would be able to offer a far higher level of contribution and a balanced approach [and I underline that]. An assessment could potentially eliminate problems that have occurred over the last 10 years.

There would be no need for a Senate inquiry at all if we did not have the tax incentives. The bane of all this is tax law 75AA, which was introduced into tax law in the federal parliament in 1993. This incentive enabled people to plant grapes with a 100 per cent tax write-off, but it has been a disaster. Even though it was cancelled (I think, two years ago), it is still going on because people got into contracts. They are still planting vines, particularly superannuation companies and other bodies, because of the tax incentive that was offered. This is the prime reason the industry is in so much trouble.

One person in particular has been telling the federal government for sometime (in fact, seven years), 'You should immediately modify tax law 75AA and take away the incentives because it is causing an overplanting of vines.'

Mr Piccolo: Why don't you tell your federal colleagues to do that?

Mr VENNING: I am playing an apolitical ball here, sir. The voice was not heard, and the honourable member knows why. This is dangerous ground for me to enter into, but it was because the winemakers had the ear of the parliamentarians and the grape growers were the voices in the vineyard.

The Hon. R.J. McEwen interjecting:

The SPEAKER: Order!

Mr VENNING: If you read it, the motion states both governments. I have been hearing the same message, particularly from one person, that tax law 75AA has got to go. People said, 'He is speaking only from a vested interest.' This person was right back in the time of the wine pull, and he is right again now. I will not name him, but, certainly, we know who he is. People said, 'Oh, it's not him again?' He is on the radio, and he has been very active in SAFF. He has always had the wine industry at heart. Even today we see thousands of hectares still being planted under this iniquitous 75AA tax incentive.

Tax incentives are there only to promote industries that have a tremendous capacity. Well, we have no capacity in this industry. It should not be there. I am very concerned that the government has not done that. I think that this report is a reasonable attempt to say, 'Hang on, we should do certain things, and also set up a committee that gives equal numbers'; because we do need our grape growers, our winemakers and our wineries. We need them to get on and to cooperate to get through this impasse in which we find ourselves. I will not be political about this at all. I am happy to take any instruction or leave from the minister.

I believe that he has been briefed more than once on the matter. We have a problem on our hands. I do not know what we do. Unless the currency falls so that our sales improve it is unlikely that we will see anything happen, and this industry will not pick up in the near future until at least 2010, which is a fair way down the track. The question is: how many of our grape growers—and these are families—can afford to sit out vintages, continually run at a loss and leave the grapes on the vine? We are seeing this particularly in the Riverland where two-thirds of the fruit is probably being left on the vine. That is a damn shame. We are now seeing other areas looking hard at what to do.

We do not want to see premium grapes left on the vine. It is a pretty sad situation. I look forward to the contribution of other members on this matter. I think it is very serious. South Australia has led Australia and, indeed, the world, in relation to premium wines and, indeed, table wines, as well. I do not know what the answer is, particularly when we have a floating Australian dollar. It is very difficult when your dollar is hovering around 70¢ or better to know—

The Hon. K.O. Foley: Last thing at night and first thing in the morning.

Mr VENNING: I don't know what the Treasurer meant by that interjection.

The Hon. K.O. Foley: You were the last person I heard last night and the first person I see in the morning—a sad reflection on my life.

Mr VENNING: I thought you were having a drink last thing at night and the first thing in the morning. I was going to reply to the Treasurer's interjection by saying: yes, if we all had an extra half a bottle a week, it would certainly go some way to solve the problem. Domestic sales of 1 per cent are not very high, in fact it is one of the lowest levels in the developed world in relation to wine consumption. It ought to be 5 or 6 per cent. If we increase domestic sales from 1 per cent to 5 or 6 per cent, it would certainly not solve the problem but it would certainly be a move in the right direction. I hope other members will join in this debate. I will listen with great interest. If there is an answer, I am all ears. If I have to go anywhere or speak to anyone, I will be in it. This is the key industry in my electorate and it is hurting, and we are all bleeding.

The state will feel this because the government will have to become involved, particularly the welfare section of government, because we will have families with no income at all and they have these costs, particularly the people who have invested in things such as the BIL water schemes. They have an annual cost, whether or not they grow the grapes and pick them. They have a bank arrangement to pay the money. These families would be very concerned right now. We in this parliament have to understand that there is a problem and, if we can do something, we should and, in this instance, at least agree to these recommendations. I certainly hope the minister will enlighten the house as to what is the government's position. I urge members to support the motion.

Ms BREUER secured the adjournment of the debate.

TRAMLINE EXTENSION

Mr HANNA (Mitchell): I move:

That this house calls on the state government to abandon the proposal to extend the tramline from Victoria Square to North Terrace.

The proposal to extend the tramline along King William Street to the Adelaide Railway Station is not accepted by the community. We have not had a detailed account of the benefits of the proposal. The obvious disadvantages outweigh the cost: it is as simple as that. There is strong public opposition to it. Everyone is coming up with suggestions about how the $30 million (or more) could be better spent, whether on public transport initiatives or other areas. We already have the 99B bus, which is well patronised. It is a free bus service running every 15 minutes during the day from Victoria Square to North Terrace.

It might be convenient for some tram patrons to remain in the tram if they are going to Rundle Mall or North Terrace, but it is a very high price tag for the convenience of those few commuters, when you take into account that they could wait a short time at Victoria Square and then catch the bus without charge to the same destination. There has already been a blow-out in the estimate for this project. The initial figure we were quoted by the government was $21 million. After looking at the cost of replacing service lines for ETSA, Telstra, SA Water, Origin, etc., the cost is so much more. Now we are talking of quotes of over $30 million, which is a lot of money to impress a few tourists.

There are also the environmental costs, with some 18 significant trees to be chopped down in Victoria Square to make way for the tram. That is not to mention the median strips, the flower beds, the lawns, the shrubs and flagpoles uprooted and replaced with unsightly overhead lines strung along King William Street. The powerlines were put underground at much expense to the taxpayer to beautify the street, and now the government wants to spend more money putting cables back above the ground. Then there is the question of the traffic down King William Street, which is another obvious disadvantage and will considerably add to congestion in the city, which is not what people want.

When the proposal was first put forward by the Premier, it received such a lukewarm reaction that the spin doctors in the Premier's office went into overdrive with a series of speculations about where the tramline might end up—maybe in Norwood, at Port Adelaide or at North Adelaide—but we have had nothing more than media speculation. If the government is going to put forward a project like this, it has to come clean with a vision for where the tramline is to end up. There may be a benefit in creating something to a worthwhile destination. Certainly we need courageous leadership if we are to make a success of public transport in Adelaide. We need big and bold schemes, but this is not it. Unless we can have a guarantee that the tramline will go to some worthwhile destination, certainly beyond North Terrace, then the proposal itself should be abandoned. The costs, not only financially but in terms of the other details I have mentioned, are obvious and the benefit is far from obvious. That is the view of the community and, if the government was listening to the people, it would abandon the project now.

Ms BREUER secured the adjournment of the debate.

CRIMINAL LAW CONSOLIDATION (THROWING OBJECTS AT MOVING VEHICLES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 2 May. Page 45.)

Mrs REDMOND (Heysen): I am the lead speaker for the opposition on this bill. We will be supporting the bill, albeit with a few comments and some misgivings as to reasons for it. The bill creates and adds a new offence into the Criminal Law Consolidation Act, namely, the offence of throwing objects at moving vehicles. As the act stands, it has a series of offences in section 29 which, in many people's view, already covers the situation contemplated sufficiently well to mean that this piece of legislation is not really warranted. However, there are some arguments that there is a basis for arguing that it is necessary.

The Law Society has written to the Attorney-General about the issue, and, in essence, the letter states that it does not see a justification for the introduction of this new offence. I guess at its highest it could be said that the offence is slightly different from the offences under section 29, which provides three separate offences. First, if a person does an act or makes an omission knowing that it is likely to endanger the life of another and intending that it do so, or being recklessly indifferent, that is an indictable offence with a maximum penalty of 15 years' imprisonment. If a person does an act or makes an omission knowing that it is likely to cause grievous bodily harm to another and intending that it do so, or being recklessly indifferent, it is an indictable offence with a maximum penalty of 10 years' imprisonment.

At the lowest level, if a person does an act or makes an omission knowing that it is likely to cause harm—as opposed to grievous bodily harm—to another, or intending that it do so, or being recklessly indifferent, that is an indictable offence with a maximum penalty of five years' imprisonment. One would think that those offences, therefore, would be sufficient to encompass the possibility of people throwing rocks.

The Hon. M.J. Atkinson interjecting:

Mrs REDMOND: Not necessarily rocks, of course. It is intended to cover the area of people who throw rocks, or, as the Attorney-General rightly interjects, hard missiles of any kind from overpasses, for instance. We have had several instances of people being on overpasses above the freeway, the expressway and the O-Bahn throwing objects at moving vehicles passing along beneath them. There is not only the possibility but also the real incidence of endangerment of life. Thus far, we have been lucky that no-one has lost their life in that sort of activity.

In addition to the provisions of section 29, there is also a provision in section 51 of the Summary Offences Act, which provides:

A person who discharges a firearm or throws a stone or other missile, without reasonable cause and so as to injure, annoy or frighten, or be likely to injure, annoy or frighten any person, or so as to damage, or be likely to damage, any property, is guilty of an offence.

That is at the lower order, again, in terms of the maximum penalty, which is two years' imprisonment. Given the combined effect of section 29 of the Criminal Law Consolidation Act and section 51 of the Summary Offences Act, one would think we have to feel covered in terms of this particu-

lar offence. The government's proposal, in essence, is to put into the legislation a provision that provides:

> A person who throws a prescribed object at, or drops a prescribed object on, a moving vehicle is guilty of an offence.

I want to make a couple of comments about that. First, it includes the provision for dropping the object, rather than throwing it. I expect that I have correctly appreciated the significance of that in that someone throwing an object has to actually have a positive force in what they do. Therefore, that is slightly different in its concept, and therefore slightly different in terms of proving the offence, from one simply dropping it. It is conceivable to the lawyers in this place that someone under the present provisions, were they charged with an offence of throwing an object, might argue that they did not throw it but, rather, simply dropped it. Although the consequence of that dropping could be catastrophic, they are not technically throwing it. However, in section 51 of the Summary Offences Act the requirement is that a person must discharge the firearm or throw a stone or other missile. If they simply drop it they may be able to argue that they did not throw it but merely dropped it, and I suspect that is part of what the government is trying to achieve in the wording of this section.

Another thing to note is that the legislation talks about a prescribed object, and I know from the second reading speech that what was referred to was, in fact, 'a rock, stone, piece of concrete or other hard missile'. It seems to me that making this a prescribed object that has to be decided by regulation is really an unnecessary technicality in the drafting. We know, from the second reading speech, that they refer to a new offence of:

> . . . throwing a rock, stone, piece of concrete, brick or other hard missile of that kind (but not, say, eggs, tomatoes and other fruit) at a moving vehicle.

I think that is perfectly clear, and it seems to me that it would be better to put 'throwing a rock, stone, piece of concrete, brick or other hard missile' in the legislation, because the term 'other hard missile' really encompasses everything we want to talk about. That hard missile could be a chunk of wood, or a piece of iron, a crowbar or all sorts of things; however, I would argue that the term 'other hard missile' is sufficiently broad to encompass the intention.

As a former practitioner, I have to say that it was always a nuisance to deal with things where, instead of it all being encompassed in the legislation so that you could simply read that and know what it meant, you had to look at the legislation, which said that we were talking about something prescribed by regulation, and then you had to go to the regulations to find out what it was. I accept that the government is trying to ensure that we do not have to come back if there is some new trend; however, given that we are specifically trying to deal with throwing or dropping hard missiles—whatever they may consist of—I believe it would be better to put that definition in there. Then, having said what you are talking about in the legislation, a proviso could be included that there could be a prescription to add something else later on.

I am not going to move an amendment to the legislation at this time, but I do indicate that we may consider it between the houses and may seek to move an amendment in the other place to encompass the essence of what the government wants to achieve but make it simpler, without trying to change it in any way. That is, so that we actually refer to things and then add at the end, 'or other item as prescribed by regulation' rather than having to prescribe everything by regulation.

The Hon. M.J. Atkinson interjecting:

Mrs REDMOND: I am glad to hear that the Attorney intends to be accommodating about any proposal that we might put up.

The next point I want to make is in relation to the fact that the new offence is intended to be a type of mid-line offence. The maximum penalty is that of imprisonment for five years, so it sits alongside that of a person under the third provision of section 29 of the existing legislation—that is, that a person who does an act or makes an omission knowing that it is likely to cause harm to another, and intending to do so or being recklessly indifferent, is guilty of an indictable offence with a penalty of a maximum of five years' imprisonment. This new piece of legislation will sit alongside that in terms of the maximum penalty and, therefore, above the provisions of section 51 of the Summary Offences Act.

Of course, one of the other things to note is that it is, in a sense, an offence which does not rely on the police prosecution having to prove anything about intent, about whether someone intended to cause harm or whether they were recklessly indifferent. It is simply an offence to throw or drop the object on a moving vehicle.

The Hon. M.J. Atkinson: Throwing implies intention. You do not throw unintentionally.

Mrs REDMOND: The Attorney says that you do not throw unintentionally but, if you read the whole sentence, I think you could have circumstances where particularly a youngster might throw an object without intending anything to happen as a consequence. The essence of what we are talking about is having to prove any sort of intent under the current situation. We do not have to prove, for instance, under this new offence, that the act is likely to endanger life, likely to cause grievous bodily harm, or likely to cause harm, because this offence could occur simply by the person throwing something at or dropping something on the moving vehicle. The opposition agrees that if there is any slight gap in the current legislation that is where it is.

As I said, the Law Society has written a letter indicating that it considers that the current legislation does not, in fact, need any adjustment to encompass this particular problem, but we are not here to stop the government. If it believes that there is a shortcoming in the legislation, then we will allow this—we do not have any choice but to allow this to go through but we will not be trying to stop the government closing what it considers a loophole. I note, however, that the Law Society was not even aware of this legislation's being proposed. Until I told it, it had no idea it was even on the agenda, so I was very happy to provide the Law Society with a copy of the bill and the second reading explanation and was pleased to receive its comments, as was the Attorney also, I am sure.

One of the other things I want to raise in respect of this legislation is that in most of the incidents that I have been aware of through media reports in relation to this sort of activity of throwing rocks from overpasses (be it the O-Bahn, the South-Eastern Freeway or the Southern Expressway) where the offender has been caught, the offender has been, for the most part, a very young person. It seems to me that this bill does not address any aspect of the problem that is created by the age of the offender. Under the Young Offenders Act, of course, if a person is under the age of 10 years, the act specifies that they cannot commit an offence, and I wonder what the answer is to that and I wonder whether the

Attorney has applied his mind as to how to address the problem of a 9 year old dropping a rock—because they are capable of doing it, most certainly, and I think on at least one occasion on the O-Bahn it was very young offenders.

The other thing, of course, is that under the same piece of legislation section 14 provides:

> The law of the state relating to criminal investigation, arrest, bail, remand and custody. . . applies, subject to this act, to youths with necessary adaptations.

So, once they are over the age of 10 years, the law applies to them, so they can be charged and convicted under this new proposal just as they can under the existing sections 29 and 51. There are limits about custodial sentences, of course—because obviously they cannot be imprisoned in an adult prison—and there are some limits as to the maximum. Whilst I am not here to suggest that the government has to, for instance, look at providing five years' imprisonment in a detention centre for young people as the maximum offence here, it was something I noticed missing from the second reading explanation of the Attorney-General, and this issue of how we deal with these youngsters who commit this offence I think is at least worthy of comment by him because that seems to me to be where the real crux of the matter will lie. I am referring to where these people are so young that they are too young to be found guilty of a criminal offence and cannot be charged, or where they are over the age of 10 and therefore able to be charged. What will be the outcome in terms of those offences for those young people?

The other comment I want to make is simply that clause 5 will introduce new section 32B—Alternative verdicts—which provides:

> If at the trial of a person for murder or manslaughter the jury is not satisfied that the accused is guilty of the offence charged but is satisfied that the accused is guilty of the offence constituted by section 32A—

that is, the original offence that is being inserted by this bill—

> the jury may bring in a verdict that the accused is guilty of that offence.

That is the section 32A offence. There are a couple of things I want to know about that. First, why is it only in the case of the trial of a person for murder or manslaughter that we are thinking about that? Why would it not be in any other circumstance? One of the other comments made by the Attorney-General in the second reading explanation was that this is to be an alternative offence. Therefore, the intention of the parliament—and it is a good thing to place this on the record—is that it will not be simply another charge on the charge sheet but that it will be an alternative offence. I see the Attorney-General nodding, and I know that is the intention.

I have already had a briefing on this matter, but I would like to see on the record an explanation as to why it is argued that this will not become simply an additional charge, because my experience in the criminal sector—limited though it was—was invariably that the police charged everyone with every offence they could think of when they were charging them. Then it was usually a matter of negotiating with the police, so that, by the time the matter came on for hearing in a court, an appropriate charge (or charges) was there. You might start out, for instance, with five or six different charges, and then it would be negotiated down on the basis that you would only proceed on one of the charges. That is the habit of the police, in my experience—limited though it was, as I said. I did get a convoluted explanation, but I cannot see, on the face of the law, any reason why the police would—

The Hon. M.J. Atkinson: 'Reason' is sufficient; 'reason why' is a tautology.

Mrs REDMOND: The Attorney is correcting my grammar. I cannot see any reason for the police not to lay this charge in addition to an appropriate section 29 offence and in addition to a section 51 of the Summary Offences Act offence, and then allow the processes that normally take place to occur later. I would like to see an explanation on the record as to why the government says that this will not just add another charge to the charge sheet and that it will be there as an alternative to a section 51 or a section 29 offence. That creates some difficulty for me in my understanding of how the government intends to arrange that to occur.

However, that said, the opposition is not here to stop this bill from going through if the government believes that it is necessary to fill an existing loophole. I can see some arguments to suggest that there is some justification for this provision.

I believe that the government is trying to address a problem that clearly exists. As I said, I have some difficulty about how we deal with the youngsters and the very young people, particularly, who have been guilty of offences in relation to this activity, but if it will help to prevent that, then all to the good. I recognise that in the past two or three years an increasing number of people has been found to be behaving in this way, which is at the very least, I would have thought, reckless endangerment. In any event, the government takes the view that there is a need to fill a small gap in the legislation, so the opposition will assist the bill through the house. I support the bill.

Mr HAMILTON-SMITH (Waite): I rise as shadow minister for transport to comment on the bill. I agree with the points made by my colleague the member for Heysen and I will not go over some of the points of law that she has raised. I agree with her that there is a question about whether the existing legislation adequately dealt with this matter. I think it is arguable that the existing legislation did so deal with it but I acknowledge the point that the government feels that this will better deal with the concern about rock throwing and, therefore, I will be supporting it. However, a few points need to be made.

The government seems inclined always to seek a legislative solution to problems. It always seems to want to change the law, assuming that that will necessarily solve the problem. It may not, and I am specifically making the point that there may need to be some investment in infrastructure to help prevent rock throwing at moving vehicles. For example, in the Eastern States there has been quite an investment in caging over overpasses, particularly in regard to freeways, so that it is not possible to drop or throw solid objects onto vehicles. A lot of our freeways, and I am thinking particularly of the South-Eastern Freeway, Southern Expressway and numerous others, including work that is going to be conducted through the city where underpasses and so on are planned, may need to take into account the need for some investment in infrastructure to prevent rock throwing.

Changing the law to increase penalties is not the only way of dealing with the issue. Similarly, there may be some implications on some roads and freeways for investment to be made in improving and clearing the edges, getting trees and cover further away from the road. If the evidence is such that it is not only from overpasses that these objects are thrown but also from the side of the road, from behind trees and objects too close to the carriageway, then in its plans the

government might need to consider improving that space between the side of the carriageway and any cover, so that drivers can see clearly what is at the side of the road and so that it acts as a deterrent from any potential object thrower in that they cannot get too close, particularly at night, to throw an object.

Similarly, and depending on how the problem develops from here, there may be some implications for the metropolitan bus fleet. Perhaps there is a need for some protection of windscreens. How that might be effected is something the government might like to consider, whether it be through some sort of metal stone screen or through looking at the thickness and resilience of the windscreen itself. If it is judged by the government that buses or O-Bahn vehicles are at risk through the front windscreen, which seems to be the most lethal arrival point of such objects, then it might need to consider an investment of that kind. I agree with the issues raised about the legislation by my colleague the member for Heysen.

I am making the point that it is not just a matter of law. I think the government needs to look at other solutions to the problem that involve investment and infrastructure, and, indeed, may involve education and training, particularly for young people, through the school system, or through other devices, so that the awareness of this lethal problem is raised, and so that there are in place deterrents, both of a physical and non-physical nature, to prevent such issues arising in the first place. Hopefully, as a result, people will not be charged with these offences because they either do not commit them or they cannot commit them because we have made the right decisions. I think it is in the interest of all motorists and commuters for that to be so. Let us not just assume that, by passing this bill, we are going to solve the problem. At budget time, we will be looking at a signal from the government that it is going to do more than simply change legislation and hope that everything will be hunky-dory.

Mr PISONI (Unley): I do not claim to be an expert on legal matters: quite the opposite, in fact. I do not intend to cover points that were raised by the two previous speakers, but I do agree that the member for Waite has certainly raised some very practical points. It is quite surprising that the government has not brought together the transport minister and the Attorney-General to not only look at addressing this in the criminal courts but also to address it in a practical sense. In my first speech in this house I said that I hoped to bring a practical point of view to this house. My practical point of view on the situation, I suppose, is that I see it as simply another example of a reaction to the situation.

In a changing world the government needs to overview laws on a regular basis. I understand that and I can see that, but I am not sure that you need to overview the law on every single situation that pops up. Our laws should be comprehensive enough to cover these specific instances without waiting for a reaction because of a newspaper headline. I think that the Attorney-General could perhaps consider that as a long-term look at our laws, how they can be proactive and effective for crimes that do not even exist yet and that no one has even thought of committing. Perhaps it could cover placing a tax on bar stools in hotels; that could be one. If that hits the front page of *The Advertiser*, I am sure the Attorney-General will draft legislation to cover that one as well.

However, our laws should be broad enough in the first instance to cover that, but that takes some work. I suppose that, if the Attorney-General is not capable of doing that on his own, he should then take a leaf out of the Treasurer's book and get some outside help. The Treasurer has conceded that he is having trouble balancing the budget; he has brought in some outside help. Perhaps the Attorney-General can look at doing that in constructing laws for South Australia. I support the legislation.

The Hon. M.J. ATKINSON (Attorney-General): In response to an earlier exchange between me and the member for Heysen, the member for Mawson made the point that the Sri Lankan bowler Muralitharan throws unintentionally while attempting to bowl. I think it is a good point. The question of the use of regulations raised by the honourable member is a question of balance. I appreciate what the member for Heysen has to say, and pluses and minuses are canvassed in the second reading explanation. The approach that we have taken was recommended by parliamentary counsel.

On the question of alternative verdicts, the honourable member and the government are of one mind on the policy. The answer to the question lies in clause 4. Clause 4 amends what will be section 21 of the principal act, the Criminal Law Consolidation Act, to make the new offence, section 32A, a lesser offence to offences in division 7A, which includes section 29, namely, reckless endangerment. And then the alternative verdict's provision in what will be section 25 of the principal act will apply. I hope that allays the member for Heysen's concern.

On the question of doli incapax—namely, the incapacity of children under the age of 10 to commit a criminal offence—the principle has existed for centuries without much controversy. I do not think this bill is the place to deal with a general issue. For example, very young people under the age of 10 have committed murder—namely, the Bulger case in the United Kingdom—and more generally constitute a significant subgroup of car theft and illegal use offenders, just to take one example. I thank the member for Heysen for her thoughtful canvassing of the issues about this bill, and I wonder why the member for Unley spoke at all.

Bill read a second time.

In committee.

Clauses 1 to 4 passed.

Clause 5.

The Hon. I.F. EVANS: I want to make some comments before asking the Attorney a question in relation to this. I support the motive of the proposed law, which is obviously safety, but I am intrigued as to why the government has made the proposed law so narrow. I listened with interest to the member for Heysen's contribution, and others, and made the point about an existing law that has a broader application. My understanding is that the Law Society believes there is no hole in the law, in essence. I am wondering whether the definition of 'throw' includes things like a slingshot, where something is not thrown, as such, but fired. That would cause as much damage as a rock thrown and so—

The Hon. M.J. Atkinson: Is this bill bringing back memories?

The Hon. I.F. EVANS: No, but I will tell you where I am heading with this, because it is quite a serious matter. A volunteer in a campaign office was missed, by a matter of centimetres, being hit by a ball bearing fired through the window from a slingshot. It just missed her. I am wondering why the government has made this such a narrow offence if there is a hole in the law. Why just 'throw'? Why just narrow it to a throwing action if you are serious about dealing with people's safety? The other question I raise is: why just a

moving vehicle? If I walk up and throw a rock into your face, as a pedestrian, why is that any less an—

The Hon. M.J. Atkinson: That is covered.

The Hon. I.F. EVANS: If that is covered, how is throwing a rock at a person in a vehicle not covered? This is the point I think the Law Society is making. The other issue is that of the placement of an object, and I refer specifically to railway lines, tramlines and roads, where kids place something on the—

The Hon. M.J. Atkinson: Children.

The Hon. I.F. EVANS: Children—kids. They might place a brick or something on the railway line. How is that a lesser offence? I am interested in why the government has made this such a narrow offence in regard to that issue. Maybe the Attorney can enlighten the committee on that.

The Hon. M.J. ATKINSON: I refer the member to section 51 of the Summary Offences Act.

The Hon. I.F. EVANS: With all due respect, that does not enlighten the committee one bit because the act was written before the government made its decision to make this amendment to the act so narrow. My question was: why has the government made this provision so narrow? What is missing in the law that necessitates this provision? If all the other examples I have given are covered, explain to the committee how throwing an object at a moving vehicle is not covered.

The Hon. M.J. ATKINSON: The government was trying to deal with a particular evil—an evil which had rightly outraged the public. We were dealing with an act that was inherently dangerous and we believe that the prosecution should not have to prove, as it does in cases of reckless endangerment, that the act was calculated or likely to cause damage, because we believe that dropping rocks or lumps of concrete onto roads from overpasses is inherently dangerous and should be punished by the law without the need for the prosecution to prove intention to cause harm beyond reasonable doubt. Dropping those things onto our public roads from bridges and overpasses is inherently dangerous and should in and of itself be punishable without proof of intention.

The Hon. I.F. EVANS: Why then narrow it to only moving vehicles? How is it a lesser offence if I throw a brick at a person in a parked vehicle as distinct from a moving vehicle? How is it is a lesser offence in the government's eyes?

The Hon. M.J. ATKINSON: I would have thought it would be obvious to any lay person that a moving vehicle, struck by an object, is at greater risk of harm because the driver may lose control of the vehicle or the vehicle may be diverted into a Stobie pole or stanchion or crash into another vehicle more so than if a stone were dropped on a stationary vehicle. A moving vehicle can do more harm to others and its driver because it is going at speed than if it is parked. I would have thought that would be obvious to the member for Davenport; perhaps I am wrong.

Mrs REDMOND: Does the Attorney wish to make any comment on the issue raised by the Law Society on that issue of moving vehicles? I read from its letter as follows:

> The 'Note' to the new provision 32A purports to pick up the definition of 'motor vehicle' as inserted into the principal act by section 4 of the Statutes Amendments (Vehicle and Vessel Offences) Act 2005. That provision defines a number of things but does not define 'moving vehicle'. It defines a motor vehicle as a vehicle that is propelled by a motor and that is a standard definition but also then purports to define 'vehicle' as including an animal. That definition of 'vehicle' may be seen to be inconsistent with the definition of 'motor vehicle'. It would therefore seem that section 32A in the Bill is also aimed at throwing or dropping an object on a moving animal.

I wonder if the Attorney would care to comment on that particular aspect of the Law Society's letter.

The Hon. M.J. ATKINSON: The clause note was in error and, with great humility, we have removed it.

Clause passed.

Title passed.

Bill reported without amendment.

Bill read a third time and passed.

INSTITUTE OF MEDICAL AND VETERINARY SCIENCE (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 3 May. Page 80.)

Ms CHAPMAN (Deputy Leader of the Opposition): This bill was introduced to the parliament about one week ago with a view to giving the institute the legal authority to provide services outside South Australia (which it has done in the past, and which it currently does) and also to change the composition with respect to the appointment of the members of the IMVS Council to reflect restructures in the health system.

The Institute of Medical and Veterinary Science has a number of areas of responsibility. It has been operating in this state since 1938 in the provision of diagnostic services. I note that it remains the largest provider of public and private pathology in South Australia, in addition to providing assistance interstate and also to the world health authority and other notable bodies. The Hanson Institute (which is an integral part of the IMVS) coordinates research at the IMVS and the Royal Adelaide Hospital campus, it provides laboratory facilities and it manages clinical drug trials. I note also that Medvet Science Pty Ltd is a company owned by the Institute of Medical and Veterinary Science. I understand that that company's responsibility is to commercialise the intellectual property of the medical and science staff of the IMVS and the Royal Adelaide Hospital and to market products and services in laboratory medicine.

It is interesting to note that the IMVS receives an overwhelming amount of its income (over $60 million a year) from its pathology work. In 2004-05 it received about $9.8 million in grants from external sources to support research. I was heartened to hear the announcement in the federal government's budget on Tuesday night of a very substantial increase in funding for research, particularly in the area of cancer research; perhaps I should not say 'particularly', but it was an area highlighted. Under the current federal government, research funding that is available for medical and health research has now doubled. From memory, I think that the current total funding is $700 million a year. Such a monetary allocation is very important for the Institute of Medical and Veterinary Science, as a leading provider of research work, to secure future revenue both by its reputation and through the substantial submissions it makes when presenting its case. So, that is also an important and growing area in which the institute operates.

It is probably well known to members of this house that the Hanson Institute has undertaken extraordinary research in this state, and its continued work in the area of cancer has been well published. There is probably no-one in this house who has not had family or friends who have not suffered from

significant illnesses, which are often terminal and for which this research is so valuable. Last week, I visited a family friend, Marion Buckland, in the Royal Adelaide Hospital, who has just undergone stem cell treatment and will be in hospital for a number of weeks. As all members of the house will appreciate, these illnesses are indiscriminate in whom they attack, in age or gender. Marion Buckland has given love, care and guidance to her family. She is now of a more mature age and has done much for the community and other families, including my own, yet she is struck down with this illness and has to suffer the pain and indignity that comes with its treatment. So, the valuable work done by the medical profession and those at the Hanson Institute continues to have my support and, I am sure, that of others in the house. Some people are not so lucky, and my own husband passed away after treatment for cancer. That is the way it is. It is very important that we make sure that future generations are relieved of what is, for many cancers, very intrusive treatment.

The work undertaken by the IMVS has taken my attention when considering the bill. I note that there has been some extraordinary extra work for which the IMVS been called upon to provide its support and expertise. In January last year, when the devastating tsunami occurred in Indonesia, Emergency Management Australia asked the IMVS to provide laboratory services for the area. Certainly, it came to the fore and provided those services. It set up a microbiology laboratory for the whole of the province. The laboratory helped inform major clinical decisions, particularly with the treatment of aspiration pneumonia and unusual organisms. In addition, the diagnosis of dengue fever, malaria, melodises and tuberculosis were also made. The laboratory also functioned as a screening laboratory for the World Health Organisation in the surveillance of camps that had been established for those people who had lost their homes. Its work included surveillance for cholera, salmonella and other communicable diseases.

When called upon at this devastating time, the IMVS provided its services. As is reported in its annual report, the IMVS undertakes a considerable educational program with our general practitioners in South Australia, including all those in the country. I note that it has held sessions to assist in the education of general practitioners, holding sessions at Whyalla, Port Augusta, Port Pirie, Berri, Victor Harbor, Mount Gambier and Port Lincoln, to name a few. It seems that the medical profession, quite properly, holds the IMVS personnel in high esteem, and its reputation is such that it appreciates the work that is done to enable it to be fully educated on these matters.

In his second reading explanation, the minister said:

> For over two decades, the TB Reference Laboratory at the IMVS has worked with the World Health Organisation to provide microbiology services for tuberculosis in Indonesia.

On 9 May, in response to a question by the member for Mitchell, I was stunned to hear the minister attempt to deflect this off to the federal government by announcing to the parliament that, in relation to the cases of tuberculosis discovered in South Australia and what support was being provided to the recent arrivals from African countries to ensure that all those cases of TB came to light promptly to optimise treatment, 'This is an area of health service provision that is the responsibility of the federal government.'

Of course, we know that these medical practitioners are here in South Australia. They are regulated, disciplined, trained and up-skilled in South Australia, and they are the direct responsibility of the state government. After attempting to deflect it to the federal area, the minister further said:

> One of the big problems is that doctors who have been trained in South Australia do not have the skills and experience at identifying what are essentially tropical illnesses.

I was absolutely stunned to hear the minister report that to the house when we have what appears to be and what we are told (and what I readily accept) is a world-leading authority on the research of and training in not only tropical diseases generally but also a number of other diseases, particularly tuberculosis. As I am sure the house would appreciate, tuberculosis is a condition which is not confined to tropical areas. In fact, I understand that, at the moment, England has a problem with a high level of tuberculosis.

Obviously circumstances prevail with this illness (which is highly contagious) which enable it to flourish in all climates and countries if there is not appropriate immunisation and treatment to ensure that it is contained. I was quite amazed that we have on our doorstep a world-leading authority which the World Health Organisation calls upon for advice and support, and this authority sends its special division to other areas of distress in the world to help treat communicable diseases, including tuberculosis, yet the minister tells us that our own doctors are not up to speed with and do not understand these diseases to enable them to deal with the African immigrants whom we are currently bringing to South Australia and who are suffering from tuberculosis.

I would expect, as I am sure others in this house would expect, that members of other African communities will migrate to South Australia. Not only are they welcomed here as part of the some 13 000 humanitarian refugees who come to this country but they also form a significant percentage of the number of students who come here to undertake secondary and tertiary education; and, of course, those who are skilled can come to Australia under our skilled migration program. They are here, they are coming and more will come. It is very important that, as we deal with this bill in relation to providing better protection and a proper structure for the IMVS, a world leader, the minister get his act together and ensure that we utilise these best resources in the world and that our doctors are up-skilled and ready to treat, assess and identify illnesses properly in relation to these immigrants and any other people coming to Australia with any other diseases.

It is the minister's direct responsibility to ensure that not only they are protected but also the South Australian community is protected. This legislation is being introduced to ensure that the Institute of Medical and Veterinary Science has the legal authority to provide services outside South Australia. It seems that, for some 60 years or so, it has been routine business for members of the IMVS to be called upon to provide a second opinion or a pathology report. I understand, as I have been briefed, that there may be occasions where someone from another medical service, say, in Queensland, may contact the IMVS in South Australia and say, 'We have a rather peculiar sample or specimen. We would like you to look at it. We value your advice.' That is done on an ad hoc basis—and I do not mean that with any disrespect.

I am not sure whether or not a fee is charged or whether or not there is any compensation, but, in any event, they provide that service. As we know from the minister's contribution, for at least two decades the World Health Organisation has called upon the IMVS to provide services in myriad areas. Interstate and international assistance has been provided, and apparently there are varying levels of

documentation supporting this. I suspect that some of it is via an email or a telephone call, and some of it extends to contracts for a continued service. I would expect that, in an emergency, there may be an exchange of correspondence, including letters of request and letters of confirmation, and they may be followed up with some contractual obligation. Obviously, in the field of medicine, there must be provision for the protection of these arrangements and agreements which are entered into.

I have asked whether any specific contract was at risk or whether there was any adverse effect for either party—that is, the IMVS or the other contractual party—which the government would be attempting to ensure was protected; or, if it adversely affects the IMVS, to protect the IMVS against that. It appears there are not any, but I note (and the person in his response may wish to identify what his knowledge of this matter may be) that the 2004-05 annual report from the Director of the IMVS, Professor Brendan Kearney, indicates in a number of highlights that agreement has been reached to establish a bone and spinal research centre and new facilities. He goes on to say:

> During the year the IMVS signed an agreement with a public company to commercialise intellectual property of the division of haematology that arose through its discovery of a methodology to enable the purification of mesenchymal stem cells and identification of their potential for cell-based therapies.

There is no identification in the report of the name of the public company, whether it is a national or international company or whether it would be affected or in need of protection by this proposed amendment. However, I seek confirmation as to whether that would apply, whether the contract has been signed and whether the minister is aware of any other contracts currently in existence, which this legislation would seek to protect, and ask that it be advised to the house. It is important, when the minister says that the government has properly consulted with the relevant stakeholders and parties. I understand that the IMVS is in that category. Of course it should be and it is important they be consulted, but so should others who are to be affected by these amendments.

It is important that they also be aware, and they may not at this stage. They may have signed a contract they think is perfectly enforceable and was with sufficient power and authority at the time and which may, apparently according to the Crown Solicitor's advice at least, be enacted without that relevant power or authority. We do not in anyway wish to leave exposed the IMVS so that it cannot enforce its rightful entitlement, particularly in relation to the sale of its intellectual property, which it works so hard to develop, and it ought to have the commercial benefits from it, but equally this parliament should not be engaging in legislation, if it is to apply where other parties have entered into arrangements, that is in any way prejudicial. I seek reassurance from the minister in that regard.

Finally, I wish to comment in relation to the appointment of council members. The current council, chaired by Mr Kevin Kelly, I understand (I do not think his term has expired) has a number of other eminent members of the board. Two of them, Mr Geoffrey Coles AO and Dr Leslye Long, are members of the board by virtue of their nomination from the Royal Adelaide Hospital. That hospital is the campus and home of the IMVS and provides a lot of the research work and receives the significant benefit thereof. I do not raise any concern about that in particular, but the minister quite rightly points out that we now no longer have a Royal Adelaide Hospital as such as a legal entity—we now have the new Central Northern Adelaide Health Service, an incorporated body within which sits the Royal Adelaide Hospital and a number of other health services.

In order to take into account the restructure, which has been attended to under the South Australian Health Commission Act 1976, the proposed amendment provides for that legislation and whatever body is incorporated under that legislation to be the body to, in future, nominate the representatives from that area. I note that Mr Geoffrey Coles has expertise in institutional management and marketing and Dr Leslie Long has expertise in patient care, hospital administration, health ethics, health sector communication and hospital problem-solving. They both make a valuable contribution to the board, and it will be important to maintain the services of those persons who have expertise in those areas.

It is my understanding that the board members were appointed for a certain term—until 2007—and that there is no intention under this legislation by the minister to exercise his authority in any way to remove the current members of the board. Obviously, they will come up for reconsideration at the expiration of their term in accordance with the proper process. I certainly hope it is not the intention of the minister to in any way act to remove board members (whomever they may be) through this new procedure, but I understand they are the two board members who will be directly affected by this legislation in the immediate future upon the bill being passed. With those comments, I indicate that the opposition supports the bill.

The Hon. J.D. HILL (Minister for Health): I thank the Deputy Leader of the Opposition for her contribution and her indication of the opposition's support for the legislation. A number of issues have been raised, which I will deal with at this stage. This bill is a very simple one. It attempts to do two things: first, it corrects an anomaly that legally would prevent the IMVS operating externally to South Australia—particularly externally to Australia. As the member said in her contribution, that is something it has been doing for about 60 years. Presumably, it has been doing that in a reasonable way over that time and there have been no legal issues, but it is a legal nicety that needs to be addressed. This legislation will do that and give comfort to the IMVS that it is acting properly.

The honourable member asked whether or not any contracts may be affected by the legislation. I am advised that there will be no impact on any contracts or arrangements that have been put in place. The honourable member raised the issue of the haematology research that has been conducted through IMVS. Recently, I visited that section of the IMVS to launch an entity there and met the researchers responsible for that work. I put on the record that they are absolutely brilliant young South Australians who have had significant breakthroughs in the understanding of stem cell matters, and they have sought to commercialise them. I understand they have entered into a commercial arrangement with a Victorian company, from memory. If that is not correct, I will arrange for the record to be corrected in the other place. My advice is that this legislation will not have any negative impact on any of those arrangements.

The second matter relates to the appointment of members to the board. Under the current arrangements, the Royal Adelaide Hospital board appoints two members. That board no longer exists, so it is appropriate that the board that looks

after the Royal Adelaide Hospital, the central northern board, take on the responsibility of appointing persons to the IMVS board.

The language of the bill is constructed in such a way that whatever entity is eventually responsible for Royal Adelaide in the future, that entity would appoint the two members to the IMVS board, which allows for changes in administrative arrangements. That is important, because during the election campaign the Liberal Party indicated that if it were elected it would get rid of the central northern board—in fact, it said it would get rid of all these boards. Presumably some other entity would have been established which would have run the hospital and then it would be the entity responsible for appointing members to the IMVS board. So, I think that clause is written appropriately.

Regarding the individuals who are appointed, I am advised that the people appointed to the IMVS board do not have to be members of the board which is doing the appointing, so it would be perfectly reasonable for the central northern board to reappoint the two people who are currently on the IMVS board. There should not, therefore, be any substantial change; they may not appoint those people, but it would be reasonable for them to do so.

They were the matters of substance in the legislation, although much of the member's contribution was not about matters of substance so much as about other matters. She spoke about a whole range of issues to do with the IMVS which were not relevant to the legislation but which, I guess, were of interest. I certainly support the tenor of her comments that the IMVS is a fantastic organisation that has provided a wonderful service to South Australians and others over its 60 years of existence. It is one of the great institutions that we have in our state and it is doing some wonderful things.

Research was one of the issues the member mentioned, and I support her comments in relation to the commonwealth government's announcement in the budget this week that extra money will be provided for research. I also note that the commonwealth did not allocate any money to any South Australian institutions, although it did indicate funds were going to particular institutions in other states. I am disappointed that none of our institutions—the Hanson Institute, for example—are to receive any of these research funds; however, a significant amount of money will go into a general fund which institutions in South Australia can apply to, and so I hope that some of our institutions are successful in gaining extra funds.

We need to strongly support research in the health sector generally for a whole range of reasons. It is important in its own right because it creates new ways of dealing with problems, but it is also significant because it is an important attractor to the best brains and the people with the best skills to work in our system. If we do not do research those people will go elsewhere and there will be a brain drain, and so it is important for us to maintain that activity so that we can keep the very brightest and best that we produce here and also attract those who want to come here from interstate and overseas.

My final point is in reference to an answer I gave to a question by the member for Mitchell the other day about tuberculosis, and I am sorry that the member took exception to my answer. I think there were three parts to it. First, I said that I did not have the information he required and that I would get it for him and, as I recall, I made the general observation that issues to do with refugee health were within the province of the federal government—and that is particularly so for the first six months of a refugee's time in Australia. I then made a point about general health issues, and not about tuberculosis in particular, and said that a lot of people who come to Australia from Africa have complaints and illnesses which are not seen in South Australia except amongst that population group. Therefore, doctors who work in South Australia are not familiar with those diseases and that creates particular problems and issues. That was just a matter of putting some observations on the record and I was not, in any way, trying to reflect on any of the great institutions in South Australia. I think it is a bit shallow of the member to try to draw that sort of conclusion from my comments.

Having said that, Madam Deputy Speaker, I am pleased that this legislation will be supported. I would like to thank parliamentary counsel, Sally Fisher, for her work on it and also departmental officers Lee Whiteman and Nicki Dantalis who worked on the bill.

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

[Sitting suspended from 12.12 to 2 p.m.]

GLADSTONE APPEAL

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

Leave granted.

The Hon. M.D. RANN: As the nation celebrated the survival of the two trapped miners and mourned the death of another in Beaconsfield, South Australia experienced its own tragedy with the Gladstone factory explosion in the Mid North. The tragedy has had a terrible impact on the families directly affected and on the local community. I am sure that all South Australians share the grief of this close-knit community, and our attention now needs to turn to the practical needs of the families of those killed or missing—Matthew Keeley, Damian Harris and Darren Millington—as well as the recovery of the surviving men, Damian John and Cameron Edson.

As a practical measure of support, a fundraising appeal is being organised to provide financial assistance for the families as they deal with their terrible loss. The Gladstone Appeal has been launched today with a state government contribution of $100 000. The appeal will provide a central point for people in the state to contribute to and support their fellow South Australians in their hour of need. Donations to the appeal can be made locally to the Northern Areas Council offices at Jamestown, Gladstone and Spalding, as well as through the Red Cross. The Gladstone appeal will have a local community member to oversee its operation. I am pleased to advise the house that the member for Frome (Rob Kerin) will play an important role, together with the Northern Areas Council, in managing the appeal and distributing the proceeds to those directly affected. The state government recognises that the decisions about how this assistance should be directed should come from the local community and that the appeal decisions are best undertaken by those who are from the community. So I am delighted that Rob Kerin has agreed to oversee this appeal on behalf of the families and the local people of Gladstone and in that area.

Grief and loss counselling will also continue as the Gladstone community deals with the tragic loss of its sons, fathers, brothers and friends. As I reported to the house

yesterday, the emergency services are on duty at the site and their work is continuing today.

HOSPITALS, MODBURY

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

Leave granted.

The Hon. J.D. HILL: Earlier this year, the Premier announced that the government will not renew or extend the contract to privatise Modbury Hospital. Modbury was the first in a series of privatisations that the then government planned for our hospitals. The contract was signed in 1995 and is due to expire in 2010, with a right of renewal for Healthscope to extend the contract for a further two periods of five years. I can inform the house that negotiations to return Modbury to public management well before 2010 have started. A project team led by the Department of Health has been established to prepare for this transfer. The project team started its due diligence work, including reviewing management agreements, contracts and records, and auditing plant and equipment. It is anticipated that agreement to end the contract will be reached and the hospital transferred to the public system by the end of this year. Modbury will join in the benefits of being part of the network of public hospitals. This will help us attract and retain staff at Modbury.

PAPERS TABLED

The following papers were laid on the table:

By the Attorney-General (Hon. M.J. Atkinson)—

Damien John Cook, Death in Custody of—Department Correctional Services—Report April 2006

By the Minister for Disability (Hon. J.W. Weatherill)—

Intellectual Disability Service Council
Report 2003-04
Report 2004-05.

QUESTION TIME

TEACHERS, SELECTION

Dr McFETRIDGE (Morphett): Will the Minister for Education and Children's Services advise the house whether principals will still have the final say regarding teacher selection under the new agreement negotiated with the Australian Education Union? During an interview on AM radio, on Monday 1 May, the minister stated:

This is the best way of guaranteeing that the principal actually has the responsibility of choosing someone who has the best fit, best experience and most enthusiasm for the school.

The Hon. J.D. LOMAX-SMITH (Minister for Education and Children's Services): It is normal to have a panel that comprises a group of people who work together to reach consensus—and that is the best way to deal with any decisions—but I feel very strongly that the system left in place by those opposite when they were last in government did not serve our teachers, our principals or our children well, in that there was not an optimal way of selecting staff. I think that some of the performance issues that occur in workplaces are sometimes brought about by selection processes at the beginning of the employment relationship. It is something like a marriage: you have to think about issues before you become joined legally and, once you have employed someone, you have made a very significant step.

Performance management in any workplace is a struggle, and I believe that having the principal better informed, better engaged and able to make decisions will lead to complexities, of course—when they performance manage there will always be issues—but I think that principals are professional and well-trained, and it will be important that they take responsibility for their appointments—by being well-informed when they make staff decisions. Notwithstanding that, a panel is a group of people who come together and make a decision. Where there is a dispute, a dispute resolution process has to take place, whereby the principal may not make the final choice because, clearly, in the best of panels there are disputes and disagreements, but one would hope that consensus will be reached, the best person will be chosen and that information will be available on which to make that decision.

INDUSTRIAL RELATIONS LAWS

Ms PORTOLESI (Hartley): Will the Minister for Industrial Relations advise what is being done to protect the working conditions of nurses in the public sector of South Australia from the federal WorkChoices Legislation?

The Hon. M.J. WRIGHT (Minister for Industrial Relations): I thank the member for Hartley for her question. The federal government's industrial relations legislation will rip the bottom out of the working conditions of ordinary Australians and place workers at risk of exploitation. Although the new legislation has been dressed—

Mr WILLIAMS: On a point of order, Mr Speaker: the minister is clearly debating this subject, and he is not answering the question.

The SPEAKER: I do not think the minister is debating at the moment, but I will listen to his answer.

The Hon. M.J. WRIGHT: The South Australian government has taken steps to protect its employees from the federal industrial relations changes. The South Australian government has immediately implemented a policy position that all existing terms and conditions of employment will continue to be provided for employees in public sector agencies, including nurses, who may be affected by WorkChoices. Agencies, including all public hospitals and health services, have been advised of the government's position and have been requested to adopt appropriate policies and administrative arrangements to give effect to the government's policy, to ensure that all existing employment entitlements and benefits will remain in place and that existing government employment policies will continue to apply. Policies will cover reasonable union access to government premises, right of entry, trade union training leave and requirements to negotiate agreements with the relevant unions.

Another longstanding policy position of the South Australian government is that it does not support Australian Workplace Agreements. This will continue, and South Australian public sector employees will not be forced to take up Australian Workplace Agreements as a condition of their employment. The South Australian government recognises the invaluable contribution to the wellbeing of our whole community made by nurses in our public hospitals, and will do everything in its power to protect the working conditions of nurses in the public sector from the attack from WorkChoices legislation.

Tomorrow, we celebrate International Nurses Day, when we acknowledge what the nursing profession has always

stood for—the care of individuals, families and communities. I look forward to meeting with nurses, their friends and families tomorrow at that celebration.

TEACHERS, SELECTION

Dr McFETRIDGE (Morphett): Can the Minister for Education and Children's Services advise the house, if principals do not have the final say, how it can be guaranteed that the principal is responsible for choosing the teacher? On AM radio on Monday 1 May, the minister stated:

> This is the best way of guaranteeing the principal actually has the responsibility of choosing someone.

The Hon. J.D. LOMAX-SMITH (Minister for Education and Children's Services): I thank the member for Morphett for his question. I think he has repeated the last question and, therefore, I refer him to the last answer.

THE PARKS, YOUTH EDUCATION AND EMPLOYMENT

Mr RAU (Enfield): My question (completely without notice), is to the Minister for Employment, Training and Further Education. What steps has the government taken to help long-term disadvantaged youth in The Parks (in my electorate) to re-engage with education and employment?

The Hon. P. CAICA (Minister for Employment, Training and Further Education): I thank the honourable member for his question and, indeed, acknowledge his commitment to the re-engagement of disadvantaged youth in his area. I am pleased to advise that the South Australian government, through its job creation program, South Australia Works, is facilitating a joint venture, youth employment and training project with Westwood Urban Pacific, BoysTown and the South Australian Housing Trust in The Parks area.

Through the South Australia Works program, the Western Adelaide Employment and Skills Formation Network has attracted BoysTown to The Parks Community Centre to assist long-term disadvantaged youth with hands-on learning in building and construction. The project will see Westwood developer, Urban Pacific, offer BoysTown the opportunity to undertake contracts to refurbish Housing Trust stock in The Parks region. From an initial South Australia Works investment of $30 000, the project's total value could be up to $800 000 in renovating contracts, with Westwood Urban Pacific helping the government to provide substantial economic and social benefits for the region.

Fifteen young people, the majority of whom are Aboriginal, are currently in training and will commence housing renovation in the near future. As the project gains momentum through the remainder of the year, it is envisaged this number will increase to approximately 20 participants. Training negotiated with BoysTown is aimed at assisting local, young, long-term unemployed people and young offenders to effect positive, sustainable change in their lives aided by one-on-one mentoring. The training includes green card and safety induction, prevocational modules in building and construction, first aid, work place communication and teamwork, industrial and occupational awareness and career planning. In addition, job search, training and employment placement services will be offered to young people to enter into paid work, while others may undertake employment opportunities directly through BoysTown's own commercial enterprises.

I acknowledge the involvement of the Minister for Housing, the Hon. Jay Weatherill, in advocating for this excellent project. He has told me about the success of a similar program undertaken with partners in Port Pirie, and I know he is delighted that young people in The Parks area will have the same kind of opportunities. Evidence gathered from the success of the Port Pirie program tells us that substantial benefits have come about for the individuals involved in their communities.

There is a growth in self-esteem and reconnection to their community, with a corresponding reduction in offending behaviour and in alcohol and drug use. About 70 per cent of those participating in the program are likely to move into employment in the open market. The benefits of this program will see the lives of many young people changed for the better. There are plans to expand the program to Salisbury and Playford North, which will result in BoysTown employing an additional nine training and youth support officers who will assist over 200 young people each year. The SA Works supported program is just one of the many that operate across the state.

Mr Venning interjecting:

The Hon. P. CAICA: I beg your pardon?

Mr Venning interjecting:

The Hon. P. CAICA: We would like to expand them across the state. These projects aim to create work and learning opportunities for young South Australians who are disadvantaged in the labour market. I look forward, as I know the member for Schubert does, to continuing to advise honourable members about the success of this outstanding program.

SCHOOLS, STAFFING

Dr McFETRIDGE (Morphett): My question is to the Minister for Education and Children's Services. Now that a new deal has been struck with the Australian Education Union, can the minister clarify for the house whether it is the Australian Education Union, the district director or the principal who now has the final say regarding teacher recruitment? When I raised this issue on 4 May, the minister was unable to clarify the situation, but that was before she had negotiated a new deal with the AEU.

The Hon. J.D. LOMAX-SMITH (Minister for Education and Children's Services): I thank the member for Morphett for his question. Members opposite seem rather keen to go back to the bad old days and not to take the wins that we have negotiated that are far better than they would have dreamt of—not to take those as better for children, teachers and parents to have properly selected staff. They would like to unravel the agreement by saying who has the final say. What they do not realise is that, under their system, the system they left, people went for jobs by filling in an application form using self-appointed ticks that were then put on a table and staff were selected. I put to you that anybody who goes for a job would rather be tested against their own interview techniques, their skills and nominate referees. I also suggest that every parent in our state would presume that that was the way teachers were appointed. It is extraordinary that this did not occur; in fact, most parents are surprised that teachers did not have interviews and reference checks when they were appointed.

Obviously, our reforms, which drive the changes to have interviews and reference checks, are something that those opposite do not approve of. They want us to go back to

another system. In fact, it is just unthinkable that they would want to have a system like the one they left rather than the reformed system that we have introduced where a panel—which is not substantially different from the panels previously—is constituted of people in designated positions who come together to make a decision by consensus. Where there is no consensus, one would not want one person to be denied an appeal or the ability to make a complaint, so we have an appeals process in place. It is about having a transparent policy and a transparent process. We have an appeals process if people are not happy with the results, but the reality is that when a principal has the chance to interview a teacher and review their references, they can make an informed decision.

PREMIER'S READING CHALLENGE

Ms CICCARELLO (Norwood): My question is to the Minister for Education and Children's Services.

Members interjecting:

The SPEAKER: Order! The member for Norwood has the call.

Ms CICCARELLO: Can the minister provide an update on the Premier's Reading Challenge?

The Hon. J.D. LOMAX-SMITH (Minister for Education and Children's Services): I thank the member for Norwood. I know that she has been involved in handing out certificates and medals for the Premier's Reading Challenge, and she knows what a popular program this is amongst children and teachers throughout our public and private schools. It is one of the most popular programs, whatever those opposite say about it. The community knows that our government makes reading a strong initiative and a great policy initiative for us because we know that literacy is the cornerstone of educational achievement and fulfilment. We originally set ourselves the goal of having 80 per cent of our schools involved in the Premier's Reading Challenge by 2006, but we were amazed that by 2005 we already had 81 per cent of schools involved, which amounted to 646 schools across the state.

In 2005, 71 249 students completed the challenge, which was an increase of 30 per cent on the previous year and, significantly, of the children in 2005, 33 229 were in their second year and had been retained in the system, achieving a bronze medal, with 38 000 receiving a certificate for first-year involvement. In 2006, we will be having silver medals up for grabs for those children who have been involved for three years. The incredible growth last year is being continued this year with, we suspect, more than 100 000 children participating, involving 88 per cent of our schools—699 across the public and private sector.

In order to provide the students embarking on the third year of the challenge with extra books to read—because some of the second-year students have already made such a strong lead—we have incorporated additional titles. Another 300 have been put on the Premier's reading list collection, bringing the overall selection now to 3 000 titles. As you know, we have had authors and sports stars as our ambassadors and this year they will again be visiting schools, talking about books and the role that reading has had in their lives. The new ambassadors for 2006 are: the former Ravens netball captain, Danielle Grant-Cross, the former Thunderbirds and Australian netballer, Rebecca Sanders, former Port Power captain and now assistant coach, Matthew Primus, and former Adelaide United and Socceroo, Aurelio Vidmar.

Literacy and numeracy skills are critical for the future of not just every child, but every industry and sector in South Australia and the challenge, together with our $35 million literacy strategy, is really making a difference.

Honourable members: Hear, hear!

TEACHERS, SELECTION

Dr McFETRIDGE (Morphett): Can the Minister for Education and Children's Services explain to the house why the government believes the Australian Education Union have a role on teacher selection panels, but not parents? The minister's media release on 1 May confirms that teacher selection panels will be made up of 'the principal or delegate and an Australian Education Union representative'. It is clear that parents are not included on the two-person selection panel.

Members interjecting:

The SPEAKER: Order! Minister.

The Hon. J.D. LOMAX-SMITH (Minister for Education and Children's Services): Can I thank the member for Morphett—

Members interjecting:

The SPEAKER: If the members for West Torrens and Schubert want to have a discussion, I suggest—

Members interjecting:

The SPEAKER: Order!

Members interjecting:

The SPEAKER: Order! When the Speaker calls the house to order I expect members to become silent, not to continue on with the banter from one side of the house to the other. The minister has the call. Minister for Education.

The Hon. J.D. LOMAX-SMITH: Thank you, sir. I will tell the member for Morphett that most reform is incremental and, in fact, the AEU representatives were there when his government was in office.

PRISONS, PROBLEM GAMBLING

Ms BEDFORD (Florey): My question is to the Minister for Families and Communities. Can the minister inform the house about measures the state government is taking to deal with the high incidence of problem gamblers in prison?

The Hon. J.W. WEATHERILL (Minister for Families and Communities): I am very pleased to inform the house that yesterday I announced an additional $100 000 would be given to the Offenders Aid and Rehabilitation Services (OARS). OARS is an organisation that has existed for over 100 years and is committed to meeting the needs of offenders and their families. This $100 000 will go a long way towards helping them deliver additional services to problem gamblers within the prison system and, of course, when they leave the prison and are in the broader community. Statistically, research reveals that about a third of newly sentenced prisoners are having problems with problem gambling or at risk of problem gambling. Moreover, about three-quarters of prisoners with gambling-related offending still gambled in the prison and it is highly likely that when they leave the prison they will continue to gamble. We know that it is highly correlated with problem gambling, so it is an excellent place to start—in terms of our rehabilitation—which focuses on problem gambling.

Yesterday, I was also pleased to launch a particular resource, which was an embedded message. The way in which that message was put across was through a pack of

cards, which allowed certain anti-problem gambling messages to be communicated to those prisoners. This is all part of an excellent endeavour by OARS, an excellent organisation which has a great track record of not only dealing with offenders but also working with their families and finding ways of strengthening those families and dealing with offenders' behaviour so that they get every chance of making a success of their life when they leave prison.

TEACHERS, SELECTION

Dr McFETRIDGE (Morphett): My question is again to the Minister for Education and Children's Services. If the selection policy is so transparent, will the minister advise the house who decides on a teacher's selection if the panel of two cannot agree?

The Hon. J.D. LOMAX-SMITH (Minister for Education and Children's Services): You know, it is peculiar. Our government actually had the courage to change the system so that we could have local merit selection. Those opposite never dreamt of it, never sought it, and never achieved it.

MEDICAL STAFF, RECRUITMENT

Mr O'BRIEN (Napier): Will the Minister for Health outline any preliminary results of the government's visit to the UK in a bid to bring more doctors, nurses and other medical staff to South Australia?

The Hon. J.D. HILL (Minister for Health): I thank the member for his question—a particularly important question for the member for Napier because he, like I and other members representing outer suburban seats, has issues in terms of the number of GPs available to service our constituencies. The state government launched a proactive campaign in October last year to recruit medical professionals from overseas to work in South Australia. This program was established as our state and, indeed, our nation faced serious pressures in attracting and retaining our medical work force.

South Australia was represented at the Opportunities Expo in London, and at a similar event in Dublin, in late October last year. SA recruiters were also at Migration Day at Australia House in London in late October and at the *British Medical Journal* Fair in London in December. The SA team included representatives from the Department of Health, a private medical recruitment agency and, of course, doctors and nurses. They were targeting general practitioners, hospital doctors, nurses and other professionals to try to attract them to move to South Australia. A very pleasing 739 registrations of interest were recorded either at the expos or through a dedicated internet site. Included in these registrations were 563 doctors and 45 nurses.

Unfortunately, the process to secure these professionals can be a lengthy one. Recruitment and employment has been protracted due to the migration process. Perhaps the federal government ought to look at the process of allowing the migration of interested people into South Australia or Australia. At this stage, the department has recruited three doctors, three nurses, two allied health professionals and one dentist, and there are ongoing negotiations with a number of other medical professionals interested in coming to South Australia. The Department of Health expects the true impact of this campaign to be realised in 2007-08 and beyond, when the registration will translate through to greater employment and migration.

TEACHERS, SELECTION

Dr McFETRIDGE (Morphett): My question is again to the Minister for Education and Children's Services. Will she advise the house what say non-union staff have in the new teacher selection process?

The Hon. J.D. LOMAX-SMITH (Minister for Education and Children's Services): I think that the system as far as the panel is concerned is unchanged—and you left it there.

Dr McFETRIDGE: As a supplementary question: will the minister explain how non-union staff were consulted regarding the new teacher selection process?

The Hon. J.D. LOMAX-SMITH: The member opposite seems to be somewhat confused about enterprise bargaining.

Dr McFETRIDGE: Again, my question is to the Minister for Education and Children's Services. Will she advise the house whether the numbers of permanent against temporary appointments (commonly known as PATs) will increase under the new agreement on teacher selection negotiated with the AEU?

The Hon. J.D. LOMAX-SMITH: I am very happy to give a briefing on it. I can see that the new opposition spokesperson is as fascinated by the detail as was his predecessor; and, as he knows, we have been advertising for a new CEO—he might like to apply.

Dr McFETRIDGE: My question is to the Minister for Education and Children's Services.

An honourable member interjecting:

Dr McFETRIDGE: Oh, not very well mate. No answers yet. We'll get an answer soon. Will the minister advise the house whether the number of permanent and long-term teacher vacancies in the state schools will still be up to 2 500 under the new agreement with the AEU? In her media release of 1 May, the minister stated:

> We anticipate that the new selection arrangements will apply up to 2 500 permanent and long-term vacancies in state schools each year.

The Hon. J.D. LOMAX-SMITH: I think that the honourable member answered the question by reading my press release.

The Hon. I.F. EVANS (Leader of the Opposition): My question is to the Minister for Education and Children's Services. Under the new teacher selection criteria, if the Australian Education Union delegate—which is one of a two-member panel—does not support the application, does that then veto the application?

The Hon. J.D. LOMAX-SMITH: I think that the panels are set up in the way that they were set up previously, and—

Members interjecting:

The SPEAKER: Order!

The Hon. J.D. LOMAX-SMITH: The panels are set up comprising the same individual identified positions as before, and the panel would seek to reach a consensus. That would by far be the best way of reaching a decision. But there is an appeal process and, in the case of a dispute between those people on the panel, a very formal process has been set up through the department with external input to mediate. The details of that are still being worked out, but it is very important for both teachers and principals that that process be completely transparent. Of course, everything goes well when people agree, but the major problems occur when there

is a dispute. The dispute resolution process will be brought into place if there is a dispute of that sort.

The Hon. I.F. EVANS: As a supplementary question: if the two-member panel cannot agree and there is an appeal as the minister outlines, who makes the final decision on whether or not the teacher wins the job?

The Hon. J.D. LOMAX-SMITH: This is the sort of hypothetical detail about dispute resolution that is being nutted out still. I think that the dispute resolution process—

Members interjecting:

The SPEAKER: Order! The minister has the call.

Members interjecting:

The SPEAKER: Order!

The Hon. J.D. LOMAX-SMITH: The detail of dispute resolution is something that is dealt with industrially, and it is not really the main issue here. The main issue is that, for the first time, teachers will be chosen on the basis of—wait for it—interviews. Goodness me! This is revolutionary—interviews and reference checks. Members opposite never dreamt of it, never attempted it, never achieved it and never had the courage, because when their government was last in power there were industrial disputes, strikes and all sorts of problems with the AEU continually. What have we done? We have argued, we have disputed, we have compromised and we have done a deal and got a change. We have introduced a reform that you would only have dreamt of.

EDUCATION, VOLUNTARY SEPARATION PACKAGES

Dr McFETRIDGE (Morphett): My question is to the Minister for Education and Children's Services. Will the government be offering targeted voluntary separation packages to teachers who are surplus to requirement?

The Hon. J.D. LOMAX-SMITH (Minister for Education and Children's Services): I have no plans to do that, but who knows in the future?

The Hon. I.F. EVANS (Leader of the Opposition): As a supplementary question, does the government have any plans to do that?

The SPEAKER: I think essentially it is the same question. You cannot distinguish between individual ministers and the government. The minister is, for the purposes of the question, the government.

The Hon. I.F. EVANS: On a point of order, Mr Speaker, do I take it that you are instructing the house to interpret that answer to mean that the government has no intention of doing it because the minister said 'I had no intention of doing it'? You are instructing us that that is the government: is that as I understand your ruling?

The SPEAKER: That is exactly what my ruling is, yes.

DNA LEGISLATION

The Hon. I.F. EVANS (Leader of the Opposition): Does the Attorney-General agree that the dismissal of the charges of aggravated robbery against Antony Alan Dean has revealed inadequacies in the DNA legislation and, if so, what does the Attorney-General intend to do? In March this year in the District Court, Judge Marie Shaw ruled that Dean's arrest on a charge of aggravated robbery of a supermarket was unlawful under the state's DNA legislation because the sample of the DNA was taken four months before he was charged and the arbitrary limit is three months.

The Hon. M.J. ATKINSON (Attorney-General): I am concerned about the ruling of Judge Shaw and we will consider amending the legislation accordingly.

CHILDCARE ACCREDITATION

Dr McFETRIDGE (Morphett): When will the Minister for Education and Children's Services raise the minimum—and inadequate—family day care service requirements set by the Children's Services Act to comply with the National Childcare Accreditation Council standards? One hundred and sixty services under the supervision of the Department for Education and Children's Services lost their accreditation after inspections by the National Childcare Accreditation Council last year.

The SPEAKER: Before I call the minister, I am not sure whether the member for Morphett was here yesterday when the member for Heysen asked a question that contained argument. I explained to the house yesterday that it is difficult for the chair to pull up ministers engaging in debate when the question that has been posed to them has contained debate, which is also out of order. The Minister for Education and Children's Services.

The Hon. J.D. LOMAX-SMITH (Minister for Education and Children's Services): I realise that there was some recent accreditation. The accreditation processes work on a continuous improvement scheme, if you like, whereby suggestions are made and checks are followed. These processes go through this pattern regularly. All these locations where there are family day care currently reach minimum standards, and the process of changing those standards would not be embarked upon without proper consultation with the industry.

NATURAL RESOURCES MANAGEMENT LEVY

Ms CHAPMAN (Deputy Leader of the Opposition): My question is—

Members interjecting:

The SPEAKER: Order! I cannot hear the deputy leader.

Ms CHAPMAN: I will repeat that, since there was such noise. My question is to the Minister for State/Local Government Relations. Will the minister protect any local council that objects to being forced to charge its ratepayers for the cost of collecting the Natural Resources Management Levy on behalf of the state government? The Natural Resources Management Levy is currently collected by local councils for the state government and councils have been able to charge a fee, primarily to ensure that the community did not have to pay for this tax collection. Now the Adelaide and Mount Lofty Ranges Natural Resources Management Board wants to pass it to the property owners, that is, the ratepayers, and add a charge of $161 000 for all those in its area.

The Norwood Payneham St Peters Council has written to me confirming that it has no objection to the Natural Resources Management Levy increasing with CPI for the 2006-07 year but stating:

> . . . in respect of the board's proposal to pass back to property owners the cost that may be charged by councils to collect the levy, the council has confirmed that it opposes this proposal.

The Hon. J.D. HILL (Minister for Health): I am happy to take this question for my colleague in another place, the Minister for Environment and Conservation, because it is her

legislation that is being referred to, not the legislation within the responsibilities of the Minister for State/Local Government Relations. As the member probably recalls, when this legislation went through the house a couple of years ago (the Natural Resources Management Act), I made it—

The Hon. I.F. Evans interjecting:

The Hon. J.D. HILL: Good. I made it plain to the house that the arrangements in relation to the levy collection were similar to the arrangements put in place by the former government when the Water Resources Act was put in place. Under that legislation, when a levy is collected, the council which collects the levy on behalf of the board is able to charge a reasonable rate for the collection of that levy. Those arrangements are in place. As a matter of fact, very few councils sought to collect that cost. They did not pass it on and that was their contribution to the process. But there were a number of councils, a number of local government authorities, that put in a request to have those payments made, and those payments were made to them and they came out of the levy that was collected.

So, the arrangements put in place through the Natural Resources Management Act were those which were negotiated with the local government authority on behalf of all the councils, and it was a more codified system which determined how much the council could take as its share of the collection. That is the process that has been played out. I am not sure what Norwood and other councils the member referred to did in relation to the Water Resources Act, but it would appear that in the past they did not request payment for the costs but now are doing so. As a result of that, the money has to come from somewhere. Of course, it comes from the people who pay the rates. Where else does it come from?

TEACHERS, MUSIC

Dr McFETRIDGE (Morphett): My question is again to the Minister for Education and Children's Services. Are secondary schools allowed to use merit selection for specialist music teachers?

The Hon. J.D. LOMAX-SMITH (Minister for Education and Children's Services): I know that the member for Morphett's constituency includes a specialist music school, and I suppose he is referring to Brighton High School.

Members interjecting:

Ms CHAPMAN: I rise on a point of order. We are entitled to at least hear what the minister has to say. There is much noise and frivolity happening on the government side, and I ask you, sir, to bring them into order or remove them.

The SPEAKER: I uphold the deputy leader's point of order, but I point out to her that she has been the most constant interjector on that side of the house and she would best serve the house by giving a good example to other members about how a member behaves.

Members interjecting:

The SPEAKER: Order! The Minister for Education and Children's Services has the call.

The Hon. J.D. LOMAX-SMITH: Thank you, sir. I was saying that the member for Morphett has a specialist music secondary school in his constituency, and no doubt he is referring to that school when he asks his question.

Mr Koutsantonis: And a very good one, too.

The Hon. J.D. LOMAX-SMITH: It is a very good school, a very good public school, and I know that he supports public education. The issue of appointing specialist teachers clearly is that often we have difficulty finding them. The change to our appointment system, on merit, which was introduced by the government after our new enterprise agreement, is that there will be a phase-in process, and next year we will be starting in some regional schools and hard-to-staff specialist areas. So, I cannot tell him exactly when the change will affect specialist teaching areas like music, but I know that there is an incremental introduction, and incremental change. I can get the exact date for him because I realise that it will be important for his school and, because I am sure that his school, Brighton High School, would want merit local selection, even if those opposite do not support it.

SCHOOLS, WORK PLACEMENT PROVIDERS

Mr WILLIAMS (MacKillop): Mr Speaker—

The Hon. M.J. Atkinson: The man who lost Millicent South.

Mr WILLIAMS: I happen to be the member in the seat that used to be held by the former Labor premier, Des Corcoran. Can the Minister for Education and Children's Services explain to the house what benefit there is for school students undertaking work experience in that the school principal must inform the United Trades and Labour Council of the business name and address of the work placement provider? On the work placement provider forms, the employer must indicate whether their details can be sent to the United Trades and Labour Council. Principals of government schools must then forward a list of those workplaces and details onto the union.

The Hon. J.D. LOMAX-SMITH (Minister for Education and Children's Services): I thank the member for his question. Clearly that form is absolutely out of date because the UTLC does not exist any more, and I will get it reprinted.

Mr WILLIAMS: I have a supplementary question. The minister obviously did not hear the relevant details of the question. What benefit is there for the school students in having that information forwarded to the union movement?

The SPEAKER: Order! That is out of order: it is the same question that the member asked before.

ADELAIDE AIRPORT

Mr WILLIAMS (MacKillop): My question is to the Minister for Agriculture, Food and Fisheries. What is the government doing to assist exporters of frozen goods from Adelaide Airport? The freezer section of the cold store at the airport is currently closed, and stakeholders have advised me that a cold storage facility is a vital link for niche South Australian exporters that send fresh, high-valued produce to overseas markets. Stakeholders have advised that they are forced to send their frozen products direct from the factory to coincide with the departure times of airlines. Any delay or cancellation of the flight has a significant impact upon the business in terms of additional costs, paperwork, and potentially lost produce.

The Hon. P.F. CONLON (Minister for Transport): This issue arose from one exporter who went out and complained before talking to us. We have since had discussions and, I think, led them on the right path. It is true that the cold stores offer a business to their customers that the customers request and pay for, that is, a cold room. There not being a freezer, means that they need to deliver their goods at a certain time—and I must say that it is really cheap to talk about stakeholders and not name them. One of the things that

I know from being in this place over the last four years is that, whenever you hear a question like that, you know that they do not have a stakeholder, they are hearing voices again. They are always hearing voices on that side. As I told them the last time that they did it, I was seeing dead people, and I was absolutely right. They have all gone now.

The truth was that this particular exporter did not want to pay overtime to deliver on the Sunday, so he delivered on the Friday for a flight leaving on Monday and got into difficulties. I am further advised that it is not clear whether this particular exporter had a problem with, what I believe, was frozen abalone. We have had some discussions with the cold store and they are now talking to these people to see whether they want to pay to re-open some freezer rooms.

You have to understand that this is a business. What I find amazing in this house is how little those on that side understand about businesses. Businesses are not charitable organisations run by the government. They are out there in the marketplace operating according to the rules of the invisible hand, that those opposite probably have not heard about. I remember when this cold store had some difficulty earlier, and we were in the midst of negotiations which were ultimately successful, that the solution for those opposite—from their shadow minister—was to go down and give the cold store some free government money, and that that would fix everything—the opposition's solution every time. Business succeeds by competing in the market: business does not succeed by being propped up by people on that side who do not know any other answer.

I am happy to say that the cold store is now operating without the taxpayers' money that they wanted us to go down and give them. If those exporters—and I have only heard of one so far, but no doubt he has some stakeholders somewhere; he probably has some imaginary friends as well; who knows—want to talk about converting some rooms into freezers and pay for it—that is the nature of business—then they can do that. But, the simple truth is, rather than not being able to get freezers, the people are happy to pay for a cold room service, not for freezers, if they are going to do it on the basis they need to deliver frozen produce at a similar time as the plane. I have not heard it suggested by anyone—I am happy to hear from the member who these people are—that, in fact, they deliver goods, flights are delayed and they have spoilt it. That has not been brought to our attention but, again, I stress that, if that is the case, they need to negotiate with the company that operates the cold store and pay it to operate freezers, if that is what they want. I think that the member for MacKillop has been somewhat led up the garden path by the voices of stakeholders he has been hearing.

LOWER MURRAY REHABILITATION SCHEME

Mr PEDERICK (Hammond): My question is for the Minister for the River Murray. What is the target date for the completion of works for the Lower Murray rehabilitation scheme and the swamps in that area? The Long Flat and Burdett irrigation areas still have not signed up for the rehabilitation scheme, so the proposed target date of July 2007 will be difficult to meet. Irrigators want a commitment from the minister that their issues will be addressed and resolved before they will commit financially to the scheme and funding deed.

I have been advised that Burdett irrigators wrote to the minister last year and still have not received a response. I too wrote the minister on behalf of my constituents four months ago, and I also have not received a response.

The Hon. K.A. MAYWALD (Minister for the River Murray): I thank the member for Hammond for his very important question. The project for the rehabilitation of the Lower Murray reclaimed irrigation areas is a very large project. We have had very good uptake rates from most of the districts. We still have two outstanding districts that have not signed up as yet because of some issues that they are still endeavouring to negotiate. There has been a lot of correspondence going backwards and forwards, and there have been a number of meetings. We are continuing to have discussions with the irrigators from Long Flat and Burdett, and we will continue to work through the issues.

Unfortunately, this is more complex than being able to give everyone exactly what they want. We have to work through it so that it is fair and equitable for everyone and that it is fair and equitable from the point of view of those who have already signed up, as well as the South Australian taxpayers and the other funding partners involved in this project. We have a commitment to the irrigators that we will work through these issues with them, and we will endeavour to have that finalised. As to the exact date for when they need to sign up, I will bring that date back for the member.

SCHOOLS, TECHNICAL STUDIES

Mr PISONI (Unley): My question is to the Minister for Education and Children's Services. Will the minister explain why rainforest timbers are being supplied to students for use in their technical studies projects in public schools? On a recent tour of a school within the catchment of my electorate, I was horrified to see that meranti was being used for technical studies. The rapid depletion of rainforest that this causes is contributing to land degradation, loss of life through landslides and, of course, global warming.

The Hon. J.D. LOMAX-SMITH (Minister for Education and Children's Services): I am sorry; I was just a bit shocked by the question. It sounded as though we had a Green opposite, so I am very pleased to hear that question from the member, because the member for Unley clearly has a keen sense of social justice and international fairness. I can presume from his question that he sells none of these rainforest woods in his shop. He is clearly able to identify rainforest materials, and I will accept his advice, as he obviously can recognise these sorts of materials. If he can tell me where they are being used and provide evidence of what has occurred, I will look into it.

SCHOOLS, POLITICAL LOBBY GROUPS

The Hon. G.M. GUNN (Stuart): Will the Minister for Education and Children's Services assure the house that animal rights groups will not be allowed to peddle their material in schools in South Australia?

Members interjecting:

The SPEAKER: Order, members on my right!

The Hon. G.M. GUNN: The Minister for Transport does not think it is a serious question, but many others do. I point out that these animal rights groups are aiming to write to school students to encourage them to eat less meat, boycott eggs and pork from what they call 'factory farms' and switch to soy milk instead of milk from dairy cows. They also make other unfounded attacks on the rural community in South Australia.

The Hon. J.D. LOMAX-SMITH (Minister for Education and Children's Services): I thank the member for Stuart for his marvellous question. Following on from rainforest protection, it is a rather novel—

The Hon. P.F. Conlon interjecting:

The Hon. J.D. LOMAX-SMITH: It's a broad church over there. I must confess that I have a deep and abiding prejudice in this debate, because I admit to being the patron of the Adelaide Poultry Club and, therefore, a great proponent of the eating of eggs—of course, free range eggs and organic chickens.

The Hon. K.O. Foley: Where do you keep chooks in Adelaide?

The Hon. J.D. LOMAX-SMITH: We won't get into that. I think that the crux of the question is: do we allow political lobby groups to write to students in our schools? I assure the member for Stuart that we keep their home addresses confidential. We do not release information about home addresses. I do not know if that is reassurance, but I cannot guarantee that children in our schools will not be exposed to radical ideas like healthy nutrition or the issues of rainforests, because I think that some sorts of political debates might well be carried on usefully in educational settings.

TRAMLINE EXTENSION

Mr HAMILTON-SMITH (Waite): My question is to the Minister for Transport. Is the government confident that it has fully and properly costed the $21 million development of tram infrastructure through the city of Adelaide? Can taxpayers be guaranteed that the project will be delivered on budget?

The Hon. P.F. CONLON (Minister for Transport): I can certainly tell you that we have properly costed it, but, as a man who is halfway through a renovation, I know there are no guarantees in life. I am glad of the opportunity to answer this question, because I notice that the Hon. Rob Lucas in another place has been hearing voices recently, too, and came up with a figure for a blow-out on the tramline that existed only in his red-letter fevered imagination.

Ms Chapman interjecting:

The Hon. P.F. CONLON: Yes; that is the costing. I do feel sorry for the Deputy Leader of the Opposition because, despite forever practising, she is still bad at interjections. I feel very sad for her. She is to interjections what Equatorial Guinea is to Olympic swimming. She is the Eddie the Eagle of interjections, but I shall leave it there. Those are the most recent numbers that I have been advised of, which was some time ago. In particular, the furphy put about, about a blow-out in the cost of utilities, was not confirmed to me when I asked the question. We are still a bit puzzled about where that information was obtained.

In an environment where steel and concrete have gone up as they have, I cannot guarantee that every project can come in on cost. No-one in the private sector around Australia, with the exception of Plenary, which did our police station and courthouses for us, has got projects in on budget. We were very pleased to deliver those, but I did not hear anything from that side because they do not like good news. As for my renovations, sir, just ask me what is wrong with it today. Don't ask me what is wrong with it: what is wrong with it today? I will leave it there.

The member for Waite has a great track record for making mistakes in this place. His most recent contribution, both in the media and here, was about the national highway. I think he referred to the Princes Highway; 90 per cent of it was under 3.5 metres as required for a national highway. Actually 60 per cent of it is above that. I do not know which measure he brought down, but, even more importantly—

Mr Hamilton-Smith interjecting:

The Hon. P.F. CONLON: No, wait for it, Marty—it is not a national highway. It is one of our state arterial roads which has a requirement of 3.3. The member for Waite has a very long track record of getting on his motorbike and riding off into a big mistake somewhere. Whenever a number is raised, we are going to have to take it with a lot of scepticism when it comes from the member for Waite.

HUTCHISON 3G

Mr HAMILTON-SMITH (Waite): My question is to the Minister for Infrastructure. What action does the government now intend to take as a consequence of the recent High Court decision in the case of Hutchison 3G and the City of Mitcham, to which the state government was a party? The High Court case dealt with widespread concerns within the community about the erection of telecommunications devices upon ETSA infrastructure, without planning approval. Local government argues that Hutchison 3G is using a loophole in state legislation which exempts ETSA from planning processes when erecting large Stobie poles so as to construct what are, in effect, telecommunications towers. The High Court recently found in favour of Hutchison.

The Hon. P.F. CONLON (Minister for Infrastructure): The truth is the High Court recently protected John Howard and the federal government—your federal colleagues; it is their law that allows ETSA to do this. We actually fought that. The Solicitor-General fought it. Can I indicate to the member for Waite that appeals to the Privy Council were in fact abolished in 1977. We do not have any further court of appeal. If he likes, perhaps the member for Waite could join with us in writing, in a bipartisan way, instead of trying to shift the blame to a state government, and I do not really think he is interested in anything else. Instead of doing that, perhaps he would like to write, or he and I could sign a letter together to the commonwealth on these issues. It is either extremely ignorant or it is basest politics to attempt to put this at the feet of the state government.

Mr HAMILTON-SMITH: Will the Minister for Infrastructure take any action on the matter, in particular, will he seek crown law advice on whether amendments to the South Australian Development Act 1993 would remedy community concern about telecommunications structures on ETSA infrastructure following the High Court decision?

The SPEAKER: I think it is essentially the same question but, if the minister wants to respond, I will give him the call.

The Hon. P.F. CONLON: No, sir.

TEACHERS, SELECTION

Dr McFETRIDGE (Morphett): My question is to the Minister for Education and Children's Services. What selection protocols do schools in the disadvantage index range from 4 to 7 have to go through before they can advertise a vacancy and use the new merit selection process?

The Hon. J.D. LOMAX-SMITH (Minister for Education and Children's Services): I do not understand the question. The member wants to know how a school advertises. The advertisements, as far as I know, are really put in

place through the department. There is a whole range of deals with media outlets for advertisements. I presume they fill out a form, but I have never actually learnt how they put in an advertisement. I imagine they either telephone, fax or write to a media agency, and then it appears in the advertisement columns.

ARMSTRONG, Mr S.G.

The Hon. K.O. FOLEY (Deputy Premier): I table a ministerial statement made in another place by my colleague the Minister for Police.

GRIEVANCE DEBATE

MEMBER'S REMARKS

Mr HAMILTON-SMITH (Waite): I draw the house's attention to attacks made in the house by the Treasurer (and I invite him to stick around) upon the RAA under parliamentary privilege—false accusations and innuendo directed at that organisation by him under parliamentary privilege which, in my view, were a cowardly attempt to browbeat and bully an industry or community group to intimidate it into silence. I did not note the Treasurer's bashing the AMA when it came out in support of the government during the election campaign. I did not notice the Treasurer's accusing it of being a Liberal Party lobby group, because it was supporting the Labor government. Instead, he has revealed himself as nothing more than a schoolyard bully, puffing out his chest and attempting to throw his weight around the playground in the business community.

The comments made on 3 May falsely asserted—falsely asserted—under parliamentary privilege, without the slightest foundation or evidence offered, that the RAA was 'a mob' and a 'Liberal Party lobby group' that 'discussed its policies at the Adelaide Club'. These comments diminish the character not only of the Treasurer but also of the government. They are made without the slightest foundation. They sound like the comments of a thug; insulting and offending thousands of RAA members is not smart, Treasurer. As I mentioned, no evidence or sound argument has been offered to justify the claims which, I note in a watered-down version, were repeated on ABC Radio 693 during another arrogant display with the interviewer. It is simply conduct unbecoming of the government of the day.

I can tell the Treasurer that the RAA was a very fierce critic of the Liberal government when it was in office from 1993 through to 2002. I can tell the Treasurer that we were lobbied hard and fast, in writing and in person, and the RAA took its arguments to the media. I can remind the Treasurer that it thumps the federal Liberal government, quite fiercely and without favour, on a regular basis during elections and at budget time. I can tell the Treasurer that the RAA, from our observation, has done nothing but fight on behalf of its members and stakeholders, regardless of who happens to be the government of the day. It has a record of lobbying very hard, particularly in regard to AusLink bids.

In case the Treasurer has missed the point, industry is saying that the state government is dragging the chain on leading our AusLink bids. The Treasurer and the government would do better to find some more money for roads and some more money for public transport than to bash industry groups like the RAA. First we had the quote 'bloodsucking power companies'; now this cowardly attack on the RAA. It seems that any group or individual in the community who has the temerity to disagree with president Rann or vice chancellor Foley is to be bullied and demonised under parliamentary privilege. It is typical bullyboy style criticism, not levelled face to face but through parliamentary privilege, of industry groups and not of those who agree with Labor.

This intimidation and bullying is clearly meant to dissuade industry groups from having their say. I actually commend the RAA for being as tough on Labor as it was on us when we were in government. I hope that other industry groups that are being bullied and thrown around by this government, arrogantly and under parliamentary privilege, are not intimidated from having their say. It reflects very poorly on this government and very poorly on the Deputy Premier that it is necessary to come out under parliamentary privilege and have a whack on the record at any group that is equally hard on whoever happens to be the government of the day.

I know what the government's problem is: it wants to throw its weight around and act like a pack of thugs and bullies. That is fine, but it will cop it back, believe me. We will find a way to give it back in dollops. I suggest that the government desist and start conducting itself more like a government, with a bit of dignity, instead of throwing around this sort of rubbish at industry groups in a totally uncalled for way.

FAMILY BUSINESS AWARDS

Ms BEDFORD (Florey): It was my privilege last night to attend the 2006 Family Business of the Year Awards and the Hall of Fame dinner. The dinner followed a seminar which, from all reports, was both informative and a rewarding experience for all participants. Family business is a cornerstone of Australian life. I believe that 80 per cent of businesses are family based, so that statistic alone will go some way to informing members of the importance of this sector. I first became aware of the Family Business Australia Group through my happy association, first, with Mr Ray Michell, and then other members of that well known South Australian family company, G.H. Michell, which is located within the Salisbury council area.

Ray explained to me the various stresses businesses face from generation to generation, with both the hand over of control and direction along with the day-to-day running of affairs. Ray's work was, I believe, a driving force in getting the University of Adelaide involved with research in this area. More recently, Mr Steven Marshall, now of the Jeffries Group, has kept me informed of the vital work of Family Business Australia's South Australian membership and the wider national activities it undertakes. The Jeffries Group has another happy association for me, as Ms Leah Jeffries is the daughter of John and Dianne Hall of Newman's Nursery, which is a Tea Tree Gully family business of very long standing.

No doubt Newman's Nursery will be very busy this weekend, which includes Mother's Day. Its lovely Topiary Tea-house (which is part of its beautiful nursery, rightly famous for camellias, among other things) will be very busy for the many families who have made visiting there with their mums an annual highlight. Steven's family business was started by his father Tony and, now that I have had a chance

to meet him, I very much look forward to speaking about the many pioneering initiatives he took when setting up his business, Marshall Furniture.

The awards night was adjudicated by Dr Jill Thomas of the University of Adelaide. I understand from speaking with her at the end of the dinner that, whilst challenging, the task resulted in some clear choices. The winner of the second generation category was Acquista Investments Pty Ltd, the Borelli family business that operates, among other things, IWS near Port Wakefield. It was a pleasure to speak with the family at length and to learn of their dedication and commitment. Mr Borelli senior and his two sons have worked very hard, and deserve both the award and success they are experiencing.

The fifth generation award went to the Coopers family. So many accolades have been rightly given to this iconic South Australian company. One thing that I learnt last night is that Coopers is now the world's leader in home brewing—a staggering fact when one considers the European and American appetite for beer, arguably South Australia's first choice when quenching one's thirst. Dr Tim Cooper was the guest speaker who gave a fascinating account of the recent hostile take-over bid by Lion Nathan. All present understandably were interested in every detail as both a learning and, perhaps, preventative exercise. As background, Dr Cooper gave an account of the work that went into the brewery's move from Leabrook to Regency Park—an operation of substantial logistical magnitude.

The Hall of Fame inductee this year was Nangwarry Pastoral Company, the family business of the McLachlan family. Of course, that family is well known to all in this place through our former parliamentary colleague. I was also able to meet family members of previous Hall of Fame inductees: the Medlow and Johnston companies. I look forward to getting to know them all a lot of better. So many of the products associated with these family companies are synonymous with South Australian life. A question and answer interview organised by the MC, Mr Rod Martin, allowed entertaining interaction with award winners, which was favourably commented on in the discussion at the end of formalities.

Many sponsors were involved in fostering the conference as part of the wellbeing of family businesses in this country. The principal sponsor was Mellor Olsson. A national gold sponsor was the ANZ Bank and national silver sponsors were KPMG and Horwath. There were also a large group of South Australian sponsors and supporting sponsors, in particular Bremerton Wines, which supplied wines for the evening's dinner; and a particular favourite of mine Haigh's chocolates, which supplied all the after dinner extras.

I was able to tell everyone present what the little decoration on the top of each chocolate meant, having eaten a substantial amount of them over time! All in all, I commend the work of Family Business Australia and thoroughly look forward to having a lot more to do with them. There are many family businesses in Florey. As I said, Newman's Nursery is one nearby but a lot of the traders at Tea Tree Plaza are family businesses, and the work they do in employing people cannot be underestimated.

NATIVE VEGETATION AUTHORITY

Mr PENGILLY (Finniss): I would seriously question where some government departments are coming from; in this instance, the Native Vegetation Authority. I have an owner of property in my electorate, an elderly lady in her mid-seventies with a block at Goolwa, who is attempting to get this block cleared. She has owned the block since 1984, is getting rather elderly and unable to do all the work on the block herself so wishes to have it cleared by a contractor as early as possible. It is a residential block that abuts the main beach road, and she is meeting a consistent stone wall from bureaucracy. She has made nine calls to government departments and two to different ministers, including the Minister for Local Government, without any answers whatsoever, and has called me in desperation.

She has called the Native Vegetation Authority and I have followed up and called the authority on her behalf, and I was told that it was going to inspect the block this week. On ringing the authority yesterday, I was told that no longer would it talk to me; that any inquiries I wished to make will have to go through the minister, and I got a stone wall on it. Mrs Davis is totally fed up with this. She followed up today and was told by native vegetation officers that they could not give her a decision on the block. She has had to stand down two contractors until she gets an answer. She has requested an entry onto the road from the local council and I think that, in due course, it will oblige her by doing that.

When the two officers of the Native Vegetation Authority visited and inspected the block on Tuesday, they would not speak to her at all. They disregarded her and, in fact, told her that she could stand to one side, they walked straight down the middle of the block and then walked off, giving her no information whatever. The only thing they told her was that there was bridal creeper in there and she could get down and grub it out with a hoe. This is a woman in her mid-seventies on a pension, who lives in Adelaide with a block in Goolwa. If that is not the most disgraceful thing I have heard in this place in the short time I have been here, I do not know what is. She is extremely anxious, and it is starting to affect her health. She is having to spend a considerable amount of money on phone calls and travel, and she feels as though she is being discriminated against. I concur in that.

I think that she has been treated extremely badly. The Native Vegetation Act was never put in place to discriminate against elderly ladies with blocks of land in the town and a residential block. She has neighbours at the back in housing authority houses who are continually throwing rubbish over the fence into her block. She has to clean it up herself, and is totally fed up with the whole thing. She feels as though she has been bullied. She is finding an intransigent, dictatorial attitude coming from the Native Vegetation Authority and a complete feeling of self-righteousness from it that is causing her a great deal of concern.

This matter will not go away. This lady is anxious to follow it up and it will be followed up by various means. I draw it to the attention of the house. I think it is despicable, and it is high time that these officers in the Native Vegetation Authority got their head around the fact that real people exist around there, in this case elderly people, ladies in their mid-seventies who should not be told to go and grub out bridal creeper with a hoe, and ladies who should be spoken to at length by the officers about their particular problem. It is just about unheard of for this to happen in South Australia and it is totally disgraceful. It is not the first time that such actions have been taken by officers of this authority in different matters around the state, so I would urge that members hear what I say, if anyone can have any influence through the department or through the minister to get some resolution of this ridiculous situation. They should have this elderly lady

put in a situation where she can have her block cleared. It contains a host of rubbish such as box thorns, wattles that are dying, bridal creeper, boobialla and all sorts of things, none of which are precious. So I feel very happy that I can stand here and speak on her behalf today, because she is getting absolutely nowhere with the South Australian bureaucracy.

VOLUNTEERS

Mr PICCOLO (Light): I speak today about volunteers. This week I have had the honour to represent the Premier and Minister for Volunteers at the annual Co.As.It Volunteer Recognition Ceremony. Co.As.It is an umbrella peak organisation for many groups involved in providing support to Australians of Italian descent, particularly those who are older. The Co.As.It president is well led by Mrs Franca Antonello and they, like other volunteer organisations, provide invaluable support and service to the South Australian community. This week, and next week, the work of volunteers will be recognised and celebrated across Australia through a range of activities, functions and ceremonies.

In South Australia, 600 000 people do volunteer work, the highest percentage in Australia, and this work has been estimated to be worth about $5 billion. If you wish to fully understand the importance of the voluntary effort in our community, as distinct from the impact on our economy, imagine all of the services and activities that would disappear if we did not have volunteers. For example, we have amateur or community sports, service clubs, cultural events and festivals. So, members can see that, without volunteers, our community would be the poorer.

In my own community of Gawler we boast over 300 community groups ranging from the service clubs such as Rotary, Lions, Zonta, Kiwanis and Apex to sporting groups such as local soccer, football, netball, and basketball, etc. In fact, the local soccer club has over 30 teams in the competition, which is quite an achievement for a community such as Gawler. We have a senior citizens group, the pensioner association, Gawler Care and Share and Meals on Wheels which provide support to our elderly members of our communities. We also have the University of Third Age which provides community members with an opportunity for ongoing life-long learning. We have the Gawler Environment and Heritage Association which is very active in rehabilitating our river banks and carrying out other environmental projects. The Gawler council has its own volunteers who help with a range of activities which council provides to the community, and they are well coordinated by Sheila Willox who is the council's volunteer coordinator. The community is well supported by organisations such as GABYS, the community services forum, UCare and St Vincent De Paul, all providing services to people who are disadvantaged in our community.

In my previous role as the mayor of the town of Gawler, the Gawler council recognised the importance of volunteers and, with the support of the previous minister for volunteers (the Premier) and also the current Minister for Volunteers, established the first Volunteer Resource Centre in South Australia to be run by a local council. I also acknowledge the support of the Office of Volunteers in establishing that centre in Gawler. The Volunteer Resource Centre provides practical support to volunteers. I urge all local governments to work with the state government to provide greater support for volunteers and coordinate that support between levels and spheres of government. Let us remember that, for some in our community, the volunteer is the only contact they have with the community at large. During South Australia's Volunteer Week next week, let us spare a thought for those volunteers who work selflessly in our local communities.

SAMM, Mr A.

The Hon. I.F. EVANS (Leader of the Opposition): In my contribution today I wish to pay tribute to a gentleman by the name of Alan Samm, whose funeral I attended yesterday. This is of interest to the house because Alan Samm was responsible for the five or six year campaign to get the land agents indemnity fund rules changed so that the families who had suffered a fraud under G.C. Growden Pty. Ltd. could get their $13 million to $14 million back. Alan Samm was a remarkable gentleman. Born in Luton, Bedfordshire, he developed a transport business of substantial size and eventually came to Australia. During the war, he was part of the Red Berets, and was part of the parachute group who parachuted into the Dutch town of Arnhem to take the bridge, so that the Allies could push deep into enemy territory. As it turned out, there was a traitor amongst the group and, of the 10 000 paratroopers who jumped that day, only 2 000 survived. Alan Samm survived that particular incident and wrote a fascinating book called *The Traitor of Arnhem*, which was so popular it was reprinted throughout Australia, and it is a very good read for those who want to see what that particular group of people went through.

I remember when Alan Samm first came to see me about the Growden's issue. I listened very carefully to Alan, and I could not see where his argument was wrong. The more I listened, the more I thought, 'Here is a genuine grievance.' It disappointed me that the ministers whom I approached in my own government at the time could not see the validity of Alan's argument or, at least, a way through it, and it was a great pleasure that, after five or six years of fighting that issue on behalf of Alan and the 400 people involved, the parliament saw sense. I thank those members who voted for it and indicated to the government that it should change its mind, which it ultimately did. So, Alan Samm was a remarkable gentleman who, through his very sincere commitment to other people, took up a five-year battle at about 75 years of age, to lobby the state political process as he and others did, and to achieve that very good outcome for those families. Alan Samm will certainly be missed. My thoughts are with Marge and the family.

NEPORENDI ABORIGINAL FORUM

Ms THOMPSON (Reynell): I rise today to speak of the way in which the Howard government has abandoned urban aborigines, placed increasing stress on their community leaders and made it increasingly difficult for the members of the Aboriginal community who, as we all know, face many challenges in life, to overcome those challenges. The vehicle for support for the Aboriginal community of the south is the Neporendi Aboriginal Forum Inc. It is located in Reynella, and it services the Aboriginal community from Anzac Highway to Willunga Hills, approximately the old Kaurna ATSIC area. The federal government has abandoned funding for this centre, despite the important services that it should be providing to the Aboriginal community. The only funding that is available to Neporendi is $88 000 to employ a family violence worker. Family violence is an important issue in the Aboriginal community, and the family violence worker,

Daphne Rickett, provides an important service in this area and support for all members of the family in learning improved ways of conducting their family relationships.

There has been a measure of success in the family violence area in the south. However, that is not the only service that is required. There are a number of services previously supplied under the ATSIC regime, such as the recognition of Aboriginality and the provision of information about the community, that are being undertaken through Neporendi mainly by people undertaking CDEP work and volunteers. This is extremely stressful, because it really results in Daphne having to undertake her work as a family violence worker and also be an unpaid community development officer in her spare time.

The federal government has made a range of funding available to urban Aboriginal groups, but it has not provided any mechanism for people to access this funding. For example, the recognition of Aboriginality was something that was previously funded at a cost of about $100 per application. This is required for all sorts of situations: for children to receive special assistance at school, for Aboriginal housing and for a number of other community services. It relies on elders of the community being able to attest that this person is of Aboriginal descent. In fact, Christies Beach High School has invited the Neporendi committee to meet at that school in the future, so that their students who believe they are of Aboriginal dissent can have this formally recognised through the volunteers on the management committee.

But this simply is not being funded any more. There are funds available through various employment programs but, again, there is no-one available to write the applications. Many of the board members and the volunteers at Neporendi can not even read and write, and the fact that they are then being asked to undertake complex applications for grants and complex accountability processes is simply unrealistic and demonstrates the way the federal government simply does not understand the needs of the urban Aboriginal community. If it did, it would not have abandoned the ATSIC processes that were serving them.

I commend Doug Morgan, the chair of the Neporendi forum, and all those members of the committee, who give so much of their time and energy to do their best to service their community and to provide a range of services but who are really becoming extremely exhausted. Daphne Rickett has taken on many functions above her paid one, and has become increasingly unwell. Yet, there seems no way of the federal government providing funds to have a community development officer which is much needed.

SITTINGS AND BUSINESS

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

That the house at its rising adjourn until Tuesday 30 May at 2 p.m.

Motion carried.

STATUTES AMENDMENT (ROAD TRANSPORT COMPLIANCE AND ENFORCEMENT) BILL

The Hon. P.F. CONLON (Minister for Transport) obtained leave and introduced a bill for an act to amend the Road Traffic Act 1961, the Motor Vehicles Act 1959 and the Summary Offences Act 1953. Read a second time.

The Hon. P.F. CONLON: I seek leave to insert the second reading explanation in *Hansard* without my reading it.

Leave granted.

The *Statutes Amendment (Road Transport Compliance and Enforcement) Bill 2006* introduces model national legislation into South Australia through amendments to the *Road Traffic Act 1961* and the *Motor Vehicles Act 1959* and makes consequential amendments to the *Summary Offences Act 1953*.

Over the last five years industry, traffic police and transport agencies across Australia have been working under the leadership of the National Transport Commission (NTC) to develop model national legislation which will make the road transport industry safer and, through uniformity, promote some greater efficiency. The Australian Transport Council, comprising Transport Ministers from around the country, approved the model legislation in November 2003. It has been implemented in New South Wales and Victoria already. Other jurisdictions will follow in 2006.

In the highly competitive road transport industry, commercial pressures can significantly impact on road safety. With road freight expected to double over the next twenty years, it is likely these commercial pressures will increase. The new legislation focuses on achieving better safety outcomes in the heavy vehicle industry by improving compliance with road transport laws – and improving the ability of police, transport inspectors and the courts to enforce the law when it is breached.

The Department for Transport, Energy and Infrastructure ("the Department") has been an active participant in the development of the new legislation. In 2002-2003 it consulted with stakeholders through over 25 metropolitan and regional information sessions and distributed 1 500 information kits across the State.

This consultation has helped to ensure that the legislation is relevant to South Australia, and balances business needs with the community's concerns about improving road safety. The legislation represents sensible reform that will achieve real results in improving road safety across the heavy vehicle industry.

Recognising that jurisdictions have different criminal justice policies, the national model legislation was designed with 'essential' and 'desirable only' provisions. Jurisdictions are obliged to implement all the essential elements and the desirable elements if they match the jurisdictions' existing criminal justice framework. Importantly, South Australia will be adopting all desirable and essential elements. The Government's view is that the benefits of the reform to South Australia will be maximised if the national model is implemented in full.

Chain of responsibility

The legislation recognises that the conduct of drivers on the road is often controlled or influenced by the actions, inactions or demands of customers and other parties off the road. Commercial pressures from off-road parties, for example, can lead to deliberate or inadvertent breaches of the law.

A key feature of the legislation is the 'chain of responsibility' provisions that will ensure that all players in the road freight industry who have control over activities affecting compliance with heavy vehicle laws share responsibility for breaches of those laws. To this extent, the legislation will have an impact that will reach beyond road transport operators and drivers.

For example, manufacturers, primary producers, shipping agents or importers who consign or receive goods by road transport could be jointly liable with the heavy vehicle operator or driver if they know the heavy vehicle is overloaded, or ought to know that, particularly if profiting because of the overloading, and fail to take reasonable steps to prevent the overloading.

The application of the chain of responsibility principle in this Bill is more comprehensive than in other State legislation. It imposes more robust obligations through the reasonable steps defence, and is backed up by a broad suite of stronger enforcement powers, better evidentiary tools and an improved range of sanctions and penalties.

These new provisions will form the basis not only of a chain of responsibility for mass, dimension and load restraint laws contained

in this Bill but also for future chain of responsibility provisions relating to other areas of heavy vehicle regulation such as speeding, vehicle maintenance and design, and fatigue management. The NTC, in collaboration with state transport agencies, is already in the process of developing similar chain of responsibility provisions in these areas of law.

Reasonable steps defence

The reasonable steps defence is the principal defence provided in the legislation. To avoid being held liable for mass, dimension and load restraint breaches, all parties in the transport supply chain must demonstrate that they have taken reasonable steps to ensure their business operations have not caused or contributed to road safety breaches. The aim is for everyone who uses or is involved in road transport services to take responsibility for ensuring safety on the road. It is not intended to be an onerous burden, but it will mean taking reasonable steps to ensure that the law is obeyed. Given that drivers and operators are in a better position to be aware of the load on their vehicles, the availability of this defence for drivers and operators is limited.

Critically for the road transport industry in South Australia, this Bill includes the reasonable steps defence for drivers and road transport operators for minor breaches. This Government recognises that minor breaches should be considered in the context of the move to the new Austroads measurement adjustments which allow less margin for error than the current weighing tolerances. Viewed in this context, the inclusion of the reasonable steps for minor breaches should be accepted as a fair approach.

This is a significant issue for the road transport industry and the Government has had input and support from industry peak bodies such as the SA Road Transport Association throughout the development of this reform.

Categorisation of offences

The Bill provides for mass, dimension and load restraint offences to be categorised based upon risk to safety, public amenity and infrastructure. Under the legislation these offences may be categorised as 'minor', 'substantial' or 'severe' – with the penalties escalating according to the risk category of the breach.

A grossly overloaded vehicle, for example, is likely to cause more significant damage to road infrastructure and, in the event of a crash, is a significantly greater safety risk than a complying vehicle. Risk-based categorisation recognises that one size does not fit all.

Industry codes of practice

Consistent with the national laws, the Bill includes provisions allowing for the registration of industry codes of practice. Compliance with an industry code of practice is one way for businesses to demonstrate that they have met the reasonable steps defence.

The Government's view is that the legislative obligations on all parties in the chain of responsibility should not be overly onerous, but be capable of integration into normal business practices. Those businesses making an effort to address safety and compliance within their operations should be supported by allowing for industry codes of practice to be developed and recognised in the law. Registration of an industry code of practice gives appropriate recognition to industry for efforts made to take reasonable steps that will address safety and compliance with heavy vehicle laws.

Enforcement powers

Supporting the new chain of responsibility provisions is a suite of enforcement powers developed to provide police and transport inspectors with the ability to conduct investigations, obtain evidence of offending and address non-compliant or unsafe behaviour as soon as it is detected on the road.

The national model legislation applies these powers to heavy vehicles (vehicles with gross mass over 4.5tonnes). However, the policy allows the enforcement powers to apply to light vehicles at the discretion of a jurisdiction. The general enforcement powers in the national model legislation cover matters such as stopping a vehicle, search and entry powers, powers to request name and address and powers to require reasonable assistance from drivers. This represents a comprehensive attempt to codify enforcement officer powers in road transport law along best practice lines.

A number of these powers exist in the South Australian legislation already and are applicable to both light and heavy vehicles and their drivers. For example, the power to stop and direct vehicles and the power to ask for details to identify the driver of a vehicle.

The Government's aim in this Bill has been to ensure that the enforcement powers for light and heavy vehicle drivers are collected together and made uniform where appropriate. This approach has been supported by SA Police.

Additional administrative and court-imposed sanctions

The Bill also provides for a wider range of administrative sanctions and court orders to deal with these offences. For example, instead of issuing an expiation notice, police officers and inspectors will be able to issue an improvement notice requiring an operator, driver or other party in the chain of responsibility to make improvements to equipment, facilities, practices or processes within a specified period. Alternatively, instead of prosecuting an offender, a formal warning may be issued for minor risk breaches where the person was unaware of the breach and it is appropriate to deal with the breach in that way.

Additionally, courts will be able to choose from a wider range of penalty options as an alternative or in addition to fines. Courts may impose any of the following:

1 a compensation order—requiring parties in the chain to pay for the cost of repair of damaged road infrastructure;

2 a commercial benefits penalty – allowing any party who has made a commercial benefit from a breach of mass, dimension or load restraint laws to be fined up to three times the amount of profit made;

3 suspension, cancellation or disqualification orders – which affect licence or vehicle registration for systematic or persistent offenders against the road laws;

4 supervisory intervention and prohibition orders – intervening in a business to address systematic or persistent offending or, if this does not work, prohibiting parties from involvement in road transport if they are a persistent offender against the road laws.

The Bill does not apply the chain of responsibility provisions to light vehicles. Also, some of the penalty options are not appropriate for application to light vehicles and have been applied only to heavy vehicles. The penalty options limited to heavy vehicles include improvement notices, commercial benefit penalties, supervisory intervention orders and prohibition orders.

Penalty levels

The nationally developed model proposes indicative penalties for offences. These were set at quite significant levels, including a five times corporate multiplier for mass, dimension and load restraint offences. Penalties in the Bill have been set at levels consistent with levels prevailing in South Australian legislation generally and the Road Traffic and Motor Vehicles Acts in particular. Penalties for bodies corporate are set higher, as in the model legislation.

In addition, the Bill increases the current expiation limit that can be set by regulation for South Australian road law offences from $350 under the Road Traffic Act and $310 under the Motor Vehicles Act to $750 and increases the default maximum penalty under the Road Traffic Act from $1 250 to $2 500.

The offences relating to breaches of mass, dimension and load restraint will apply to drivers and operators of both light and heavy vehicles, as they currently do. Current penalties are calculated on the basis of a dollar amount per kilogram over the allowable limit. If the vehicle is grossly overmass the penalty will be higher than if it is less heavily loaded. With the introduction of risk categories and penalties calculated on the basis of the percentage of overload, the penalties are likely to be higher than current penalties depending on the category of risk the breach falls into. There will be different penalties applying to light and heavy vehicles for these offences so that light vehicles will not be subject to the same level of penalty as heavy vehicles in relation to mass, dimension and load restraint offences. It is also proposed that these offences will be expiable.

Consequential amendments to Summary Offences Act

The Bill transfers several police powers that relate to roads and vehicles but are unrelated to road traffic regulation or road safety from the Road Traffic Act to the Summary Offences Act. These are the power to search premises where a vehicle has been stolen or used without the owner's consent and the power to question a person to establish the identity of the driver of a vehicle, currently in sections 37 and 38 of the Road Traffic Act. The Summary Offences Act is the appropriate place to locate general police investigation powers. The relocation of the provisions enables the national model to be implemented more consistently in South Australia.

Implementation of legislation

This Government will conduct an intensive communication campaign immediately prior to and following commencement of the new legislation. During implementation, the Government will work closely with the transport industry, South Australian businesses and other parties who may be affected by the chain of responsibility

provisions, to ensure a smooth transition to the new heavy vehicle mass, dimension and load restraint requirements. The Department has already consulted widely during the development of the national model legislation and also conducted detailed market research involving a wide array of business groups and industry sectors to ensure that information about the legislation is accessible and relevant to affected businesses.

The Department has also worked with the NTC to develop an extensive national communications strategy supporting implementation of the legislation.

Additionally the NTC has prepared guidelines and other materials that support the implementation of the legislation. This includes a series of enforcement guidelines for mass, dimension and load restraint which will assist enforcement officers in determining breaches and assessing the risk category of those breaches. This will assist in minimising confusion and inconsistency in on-road enforcement operations for the heavy vehicle industry. These guidelines will apply new Austroads measurement adjustments to replace the existing enforcement tolerances that were developed over a decade ago. The Government is intending to participate with other jurisdictions in implementing the new measurement adjustments for mass breaches on a common national implementation date of 31 March 2006.

Guidelines have also been developed to assist enforcement officers in conducting investigations along the chain of responsibility – to identify where and how enforcement action should be taken and against whom. The Government is providing resources for the development of training programs for enforcement officers to ensure there is consistent interpretation of breaches and application of penalties under the new legislation. To this end, a new investigations team has already been established in the Department and will take the lead in conducting chain of responsibility investigations once the Bill is implemented. The new team will work closely with police, workplace inspectors and equivalent interstate investigation units in conducting investigations and undertaking enforcement action. The intelligence-gathering capability of this new team will be significantly enhanced by the Department's new Safe-T-Cam initiative and the exchange of heavy vehicle enforcement information with the NSW Roads and Traffic Authority under that system.

In time, it is intended that procedures for the improved exchange of enforcement information with other jurisdictions will be developed at a national level that will be similar to those we are currently piloting with NSW.

I commend the Bill to the House.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Road Traffic Act 1961* (temporary powers related to drink driving and drug driving)

4—Insertion of section 47EAB

This clause inserts new section 47EAB, temporarily empowering police to direct a person whom they suspect of being unfit to drive a vehicle due to the consumption of alcohol or a drug to vacate a vehicle, not to drive a vehicle and to immobilise the vehicle, and give similar directions related to preventing the person from driving the vehicle, and securing the same. Section 47EAB will operate only until clause 16 of this measure comes into operation, at which point it will be repealed and the temporary power will be subsumed by the broader powers conferred under clause 14 of this measure.

Part 3—Amendment of *Road Traffic Act 1961*

5—Amendment of section 5—Interpretation

This clause proposes numerous definitional changes.

Attention is drawn to the new definitions of more general significance:

Australian road law is defined as a road law or a corresponding road law.

Road law is defined as the *Road Traffic Act 1961*, the *Motor Vehicles Act 1959* or rules or regulations under either of the Acts.

Corresponding road law is defined as a law declared under the regulations to be a corresponding road law, or if a law is not so declared for a particular jurisdiction, a road law, or applicable road law, as defined in the law of that jurisdiction that is declared under the regulations to correspond to the *Road Traffic Act 1961*.

6—Substitution of section 8A

Current section 8A is a defunct provision—exemptions are now provided for by regulation rather than by proclamation.

8—Driver's base

9—Associates

Proposed new sections 8 and 9 are also definitional provisions.

10—Act in addition to and not in derogation of other Acts

A new provision is inserted to make it clear that the principal Act is in addition to and does not derogate from other Acts.

7—Amendment of section 16—Roads under care etc of Commissioner of Highways

8—Amendment of section 17—Installation etc of traffic control devices

9—Amendment of section 18—Direction as to installation etc of traffic control devices

10—Amendment of section 19—Cost of traffic control devices and duty to maintain

11—Amendment of section 19A—Recovery of cost of installing certain traffic control devices

12—Amendment of section 21—Offences relating to traffic control devices

13—Amendment of section 31—Action to deal with false devices or hazards to traffic

Clauses 7 to 13 each make changes that are consequential only on the adoption of the new term ***road authority*** from the model uniform draft. The new term as defined is the same, in effect, as the current term (***Authority***):

- an authority, person or body that is responsible for the care, control or management of a road; or
- any person or body prescribed by the regulations for the purposes of this definition, in relation to specified roads or specified classes of roads.

14—Substitution of Part 2 Divisions 4 and 5

Part 2 Divisions 4 and 5 of the *Road Traffic Act 1961* deal with inspectors and the powers of police and inspectors. These Divisions are replaced by provisions based closely on provisions from the model uniform draft.

Division 4—Enforcement officers for Australian road laws

35—Authorised officers

The Minister is empowered to appoint authorised officers. An authorised person as defined in the *Local Government Act 1999* is to be an authorised officer for the purposes of enforcing particular provisions of the *Road Traffic Act 1961* prescribed by regulation, or exercising particular powers prescribed by regulation, in the area of the council concerned. Ferry operators are to be authorised officers. An authorised officer as defined in a corresponding road law may also be appointed as an authorised officer.

36—Exercise of powers by authorised officers

Conditions and limitations may be imposed by the Minister on the exercise of powers by authorised officers.

37—Exercise of powers by police officers

A police officer is to have the powers conferred on police officers by a road law in addition to the officer's powers under other Acts or at law.

38—Identification cards

This provision deals with the issuing of identification cards.

39—Production of identification

This provision deals with the production of identification by authorised officers and police officers when exercising powers under the *Road Traffic Act 1961*.

40—Return of identification cards

This clause provides that it is an offence (unless there is a reasonable excuse) for an authorised officer to fail to return an identification card to the Minister when requested to do so, attracting a maximum fine of $2 500.

40A—Reciprocal powers of officers

This clause provides that the Minister may enter into an agreement with a Minister of another jurisdiction in relation to the exercise of powers conferred on each jurisdiction's police officers or authorised officers under a corresponding law of the other jurisdiction.

Hence, an authorised officer or police officer of this State may, in this State or in the other jurisdiction, exercise powers conferred on authorised officers or police officers of the other jurisdiction under the corresponding law of the other jurisdiction.

The clause also sets out procedural matters relating to such an agreement.

40B—Registrar may exercise powers of authorised officers

The Registrar of Motor Vehicles is to have the powers of an authorised officer under a road law.

Division 5—General enforcement powers for Australian road laws

Subdivision 1—Interpretation

40C—Meaning of qualified, fit or authorised to drive or run engine

This clause sets out definitions of certain terms used in the Division.

A person is defined as being qualified to drive a vehicle (or to run its engine) if the person holds a driver's licence of the appropriate class to drive it that is not suspended, and is not otherwise prevented under a law from driving it at the relevant time.

A person is defined as being fit to drive a vehicle (or to run its engine) if the person is apparently physically and mentally fit to drive the vehicle, is not apparently affected by alcohol or other drug or both, has not at the time been found to have (and there are not any reasonable grounds to suspect that the person has) the prescribed concentration of alcohol in his or her blood, and has not at the time been found to have (and there are not any reasonable grounds to suspect that the person has) a prescribed drug in his or her oral fluid or blood.

A person is defined as being authorised to drive, or run the engine of, a vehicle if the person is its operator or has the authority of the operator to do so. This is so regardless of whether or not the person is qualified to drive the vehicle or run its engine.

40D—Meaning of unattended vehicle and driver of disconnected trailer

This clause provides that a vehicle is unattended in the following circumstances:

- if the authorised officer or police officer concerned is present at the scene and, after a reasonable inspection and enquiry by the officer, there does not appear to be a person in, on or in the vicinity of, the vehicle who appears to be the driver of the vehicle;
- if the authorised officer or police officer concerned is not actually present at the scene but can inspect the scene (eg, by camera or some other means of surveillance) and, after a reasonable inspection by the officer, there does not appear to be a person in, on or in the vicinity of, the vehicle who appears to be the driver of the vehicle;
- if the driver is in, or in the vicinity of, the vehicle and the officer believes on reasonable grounds that the person is either not qualified, fit or authorised to drive the vehicle, or is unwilling to do so, or is subject to a direction under proposed section 40K in relation to the vehicle.

This clause also provides that, in relation to a trailer that is no longer connected to a towing vehicle, the driver of the trailer is the last driver of the towing vehicle to which the trailer was, or apparently was, last connected.

40E—Meaning of broken down vehicle

This clause defines what broken down means for the purposes of the Division.

In relation to a vehicle, it means that it is not possible to drive the vehicle because it is disabled through damage, mechanical failure, lack of fuel or any similar reason.

In relation to a trailer, it means that the trailer is not connected to a towing vehicle, whether or not the trailer is also disabled through damage, mechanical power or any similar reason.

In relation to a combination, it means that it is not possible to drive the combination because the combination or a vehicle comprised in the combination is disabled through damage, mechanical failure, lack of fuel or any similar reason.

In relation to any other type of vehicle, it means that the vehicle is not connected to a towing vehicle or an animal by which it could be drawn, or that it is not possible to tow or draw the vehicle because it is disabled through damage, mechanical failure or any similar reason.

40F—Meaning of compliance purposes

This clause provides that, for the purposes of the Division, a power is exercised for compliance purposes in relation to a person if the power is exercised for one of the reasons set out in the clause, namely:

- to find out whether the Australian road laws or an approved road transport compliance scheme are being complied with by that or any other person; or
- to investigate a breach or suspected breach of an Australian road law or an approved road transport compliance scheme by that or any other person; or
- to investigate an accident in which that person or any other person has been involved.

Subdivision 2—Directions to stop, move or leave vehicles

40G—Application of Subdivision

This clause provides that Subdivision 2 applies to a vehicle that is on a road, in or on premises occupied or owned by a public authority, or in or on premises where an officer is lawfully present after entry under Subdivision 4.

Subdivision 2 also applies to the driver of a vehicle who is apparently in, on or in the vicinity of the vehicle.

40H—Direction to stop vehicle to enable exercise of other powers

This clause provides that an authorised officer or police officer may, for the purpose of or in connection with exercising other powers under a road law, give certain directions. They include directing the driver of a vehicle to stop, or directing the driver or other person not to move the vehicle or interfere with it, any equipment in it, or its load.

A direction is overridden by a later inconsistent direction, and may be terminated by an officer.

It is an offence for a person subject to such a direction to contravene it, attracting a maximum penalty of $5 000.

40I—Direction to move vehicle to enable exercise of other powers

This clause provides that an authorised officer or police officer may for the purpose of or in connection with the exercise of other powers under the principal Act, direct the driver or operator of a vehicle to move it or cause it to be moved to the nearest suitable location that is within the prescribed distance and specified by the officer. The prescribed distance is a 30km radius of certain points. A suitable location is defined as meaning a location that the officer concerned believes on reasonable grounds to be a suitable location.

Contravention of this proposed section attracts a maximum penalty of a fine of between $5 000 and $10 000 for an offence relating to determining whether there has been a breach of a mass limit, or a maximum $5 000 fine in any other case (and the minimum penalty under this section cannot be mitigated or reduced). These penalties are the same as the penalties for the corresponding offence in current section 152 of the Act (which is to be removed).

It is a defence to an offence if the defendant establishes that it was not possible to move the vehicle concerned because it was broken down, and that the breakdown occurred for a physical reason beyond the driver's or operator's control, and that the breakdown could not be readily rectified in a way that would enable the direction to be complied with within a reasonable time.

40J—Direction to move vehicle if danger or obstruction

This clause provides that, if an authorised officer or police officer believes on reasonable grounds that a vehicle on a road is—

- causing serious harm, or creating an imminent risk of serious harm, to public safety, the environment or road infrastructure; or
- causing or likely to cause an obstruction to traffic or any event lawfully authorised to be held on the road; or

· obstructing or hindering, or likely to obstruct or hinder, vehicles from entering or leaving land adjacent to the road,

the officer may direct the driver or operator of the vehicle to move it, or cause it to be moved, or do anything else reasonably required by the officer, or to cause anything else reasonably required by the officer to be done (or both) to avoid the harm or obstruction.

It is an offence for a person subject to such a direction to contravene it, attracting a maximum penalty of $5 000.

The same defence as for proposed section 40I applies in this case.

40K—Direction to leave vehicle

This proposed section applies in the case of a driver who fails to comply with a direction given by an authorised officer or police officer under another provision of this Subdivision, or if an authorised officer or police officer believes on reasonable grounds that the driver of a vehicle is not qualified, is not fit or is not authorised to drive the vehicle.

In such a case, the officer may direct the driver to vacate the driver's seat, leave the vehicle, not to occupy the driver's seat until permitted to do so by an authorised officer or police officer, or not to enter the vehicle until permitted to do so by an authorised officer or police officer, or more than one of these. The officer may also direct any other person to leave the vehicle, or not to enter the vehicle until permitted to do so by an authorised officer or police officer, or both.

A police officer (but not an authorised officer) may, if the officer believes on reasonable grounds that the driver is not fit to drive the vehicle because of the consumption of alcohol or a drug, direct the driver to secure the vehicle and surrender to the officer all keys to the vehicle that are in the person's immediate possession or in the vehicle. The officer may also immobilise the vehicle, and direct the driver not to drive any other vehicle until permitted to do so by a police officer.

It is an offence for a person subject to such a direction to contravene it, attracting a maximum penalty of $5 000.

The provision also sets out procedures relating to the recovery of keys or components taken under the provision.

40L—Manner of giving directions under Subdivision

This proposed section provides that a direction under this proposed Subdivision may be given to a driver orally or by means of a sign or signal (electronic or otherwise), or in any other manner.

In the case of an operator of a vehicle, a direction may be given to an operator orally or by telephone, facsimile, electronic mail or radio, or in any other manner.

40M—Moving unattended vehicle to enable exercise of other powers

This clause provides that an authorised officer or police officer may move a vehicle, or authorise another person to move the vehicle, in certain circumstances. To do so, the officer must believe on reasonable grounds that the vehicle is unattended on a road, must be seeking to exercise other powers under the principal Act and must believe on reasonable grounds that the vehicle should be moved to enable or to facilitate the exercise of those powers.

In exercising this power, the officer or authorised person may use reasonable force to open unlocked doors and other unlocked panels and objects, to gain access to the vehicle (or its engine or other mechanical components) to enable the vehicle to be moved, or enable the vehicle to be towed.

Subdivision 3—Power to move or remove unattended or broken down vehicles

40N—Removing unattended or broken down vehicle if danger or obstruction

This clause provides that, if an authorised officer or police officer believes on reasonable grounds that a vehicle is unattended or broken down on a bridge, culvert or freeway, or that a vehicle on a road is—

· causing serious harm, or creating an imminent risk of serious harm, to public safety, the environment or road infrastructure; or

· causing or likely to cause an obstruction to traffic or any event lawfully authorised to be held on the road; or

· obstructing or hindering, or likely to obstruct or hinder, vehicles from entering or leaving land adjacent to the road,

the officer may remove the vehicle or authorise another person to remove it.

In order to do so, the officer may (using reasonable force to the extent necessary) enter the vehicle, or authorise another person to enter it, or, in the case of a vehicle that is a combination, separate any or all of the vehicles forming part of the combination, or authorise another person to separate them. An officer or authorised person may use reasonable force to enter or remove the vehicle.

The clause also sets out procedural matters relating to such entry and removal.

In this proposed section, an authorised officer includes a person authorised by the Minister for the purposes of this section (in relation to a vehicle on a freeway) and an officer of a council (in relation to a vehicle on a road within the area of the council).

40O—Operator's authorisation not required for driving under Subdivision

This clause provides that it is immaterial that the officer or person driving a vehicle under the authority of this proposed Subdivision is not authorised to drive it.

40P—Notice of removal of vehicle and disposal of vehicle if unclaimed

This clause provides that, in the case where a vehicle is removed to a convenient place under proposed section 40N, the person who removed the vehicle must ensure that the owner of the vehicle is notified of the removal of the vehicle and of the place to which the vehicle was removed.

Such a notice must be written, and served either on the owner personally, or sent by registered post to the owner's last-known residential address. Alternatively, the notification may be made by public notice published in a newspaper circulating generally in the State within 14 days after the removal of the vehicle.

If the owner of the vehicle does not, within 1 month after service or publication of the notice relating to the removal of the vehicle, take possession of the vehicle and pay the listed expenses, the relevant authority must offer the vehicle for sale by public auction. However, if the vehicle does not sell at auction, or the relevant authority believes that the proceeds of the sale of the vehicle would be unlikely to exceed the costs incurred in selling the vehicle, the relevant authority may dispose of the vehicle in such manner as it thinks fit. Who is the relevant authority is defined in the proposed section.

This clause also sets out what must happen to the proceeds of the sale of the vehicle.

Subdivision 4—Powers of inspection and search

40Q—Power to inspect vehicle on road or certain official premises

This clause provides that the proposed section applies to a vehicle (whether unattended or not) located at a place on a road, or in or on premises occupied or owned by a public authority.

In relation to such a vehicle, an authorised officer or police officer may inspect a vehicle for compliance purposes (defined in proposed section 40F). To this end, the officer may enter the vehicle. The consent of the of the driver etc is not needed, and the powers under this section can be exercised at any time. The clause sets out examples of what an officer can do under the proposed section.

Whilst the proposed section does not authorise the use of force, an officer may nevertheless open unlocked doors etc, inspect anything that has been opened or otherwise accessed through the exercise of a power under proposed Subdivision 3, and move (but not remove) anything that is not locked up or sealed.

40R—Power to search vehicle on road or certain official premises

This clause provides that the proposed section applies to a vehicle (whether unattended or not) located at a place on a road, or in or on premises occupied or owned by a public authority.

In relation to such a vehicle, an authorised officer or police officer may search (rather than inspect) a vehicle for compliance purposes. The power may be exercised if he or

she believes on reasonable grounds that the vehicle has been used, is being used, or is likely to be used, in the commission of an Australian road law offence or in the commission of a breach of an approved road transport compliance scheme. Alternatively, the power may be exercised if he or she believes on reasonable grounds that the vehicle has been or may have been involved in an accident. Such belief may be formed during or after an inspection (not a search under this proposed section), or independently of an inspection.

To this end, the officer may enter the vehicle. The consent of the of the driver etc is not needed, and the powers under this section can be exercised at any time. The clause sets out examples of what an officer can do under the proposed section, including seizing and removing any records, devices or other things from the vehicle that the officer believes on reasonable grounds provide, or may on further inspection provide, evidence of an Australian road law offence or a breach of an approved road transport compliance scheme.

Unlike proposed section 40Q, an officer may use reasonable force in the exercise of powers under this proposed section.

40S—Power to inspect premises

This clause provides that an authorised officer or police officer may enter and inspect certain premises (and any vehicle at the premises) for compliance purposes. Those premises include—

- premises at or from which a responsible person carries on business, or that are occupied by a responsible person in connection with such a business, or that are a registered office of a responsible person; and
- the garage address of a vehicle; and
- the base of the driver or drivers of a vehicle; and
- premises where records required to be kept under an Australian road law or under an approved road transport compliance scheme are located or where any such records are required to be located.

Such an inspection may be made at any time with the consent of the occupier, or without such consent if the premises are business premises and the search takes place during the usual business hours applicable to the premises.

However, the proposed section does not authorise, without consent, the entry or inspection of residential premises, or premises that are apparently unattended unless the officer believes on reasonable grounds that the premises are not unattended.

The clause also sets out what can be done under this power. Whilst the proposed section does not authorise the use of force, an officer may nevertheless open unlocked doors etc, inspect anything that has been opened or otherwise accessed through the exercise of a power under proposed Subdivision 3, and move (but not remove) anything that is not locked up or sealed.

40T—Power to search premises

This clause provides that an authorised officer or police officer may enter and search (rather than inspect) certain premises (and any vehicle at the premises) for compliance purposes. Those premises include—

- premises at or from which a responsible person carries on business, or that are occupied by a responsible person in connection with such a business, or that are a registered office of a responsible person; and
- the garage address of a vehicle; and
- the base of the driver or drivers of a vehicle; and
- premises where records required to be kept under an Australian road law or under an approved road transport compliance scheme are located or where any such records are required to be located; and
- premises where the officer concerned believes on reasonable grounds that—
  - a vehicle is or has been located; or
  - transport documentation or journey documentation is located.

Such search may be undertaken if the officer believes on reasonable grounds that either there may be records, devices or other things that may provide evidence of an Australian road law offence or of the commission of a breach of an approved road transport compliance scheme at the premises, or that a vehicle connected with the premises has been or may have been involved in an accident. What constitutes being "connected with the premises" is defined.

Proposed subsection (7) sets out the times when such a search may be undertaken, and whether a particular type of search requires a warrant under the principal Act (for obtaining warrants see proposed section 41B).

However, the proposed section does not authorise, without a warrant or consent, the entry or inspection of residential premises, or premises that are apparently unattended unless the officer believes on reasonable grounds that the premises are not unattended.

The provision sets out examples of what an officer can do under the proposed section, including seizing and removing any records, devices or other things from the vehicle that the officer believes on reasonable grounds provide, or may on further inspection provide, evidence of an Australian road law offence or a breach of an approved road transport compliance scheme.

An officer may use reasonable force in the exercise of powers under this proposed section.

40U—Residential purposes

This clause provides that, for the purposes of this proposed Subdivision, premises are, or any part of premises is, taken not to be used for residential purposes merely because temporary or casual sleeping or other accommodation is provided there for drivers of vehicles.

Subdivision 5—Other directions

40V—Direction to give name and other personal details

This clause provides that an authorised officer or police officer may direct a natural person to give his or her personal details (including providing evidence if it is suspected the details given are false or misleading) if the officer suspects on reasonable grounds that the person—

- is or may be a responsible person; or
- has committed or is committing or is about to commit an Australian road law offence; or
- may be able to assist in the investigation of an Australian road law offence or a suspected Australian road law offence; or
- is or may be the driver or other person in charge of a vehicle that has been or may have been involved in an accident.

It is an offence attracting a maximum penalty of $5 000 if the person contravenes the direction, gives false or misleading details or produces false or misleading evidence. However, this does not apply if the person has a reasonable excuse.

It is a defence (in relation to a failure to state a business address) if the person charged establishes that he or she did not have a business address, or that his or her business address was not connected (directly or indirectly) with road transport involving vehicles.

40W—Direction to produce records, devices or other things

This clause provides that an authorised officer or police officer may, for compliance purposes, direct any responsible person (a new definition is added, see clause 4 of the Bill) to produce the records or devices etc listed in proposed subclause (1).

The officer may inspect records etc produced under the direction, or make copies of or take extracts from them, and may seize and remove them if he or she believes on reasonable grounds they may on further inspection provide evidence of an Australian road law offence.

It is an offence attracting a maximum penalty of $5 000 if the person contravenes a direction. However, this does not apply if the person has a reasonable excuse.

40X—Direction to provide information

This clause provides that an authorised officer or police officer may, for compliance purposes, direct a responsible person to provide information to the officer about a vehicle or any load or equipment carried or intended to be carried by a vehicle. Proposed subsection (2) gives examples of what such a direction might require.

It is an offence attracting a maximum penalty of $10 000 if the person contravenes the direction or gives false or misleading information. However, this does not apply if the person has a reasonable excuse.

The proposed section also provides defences to the offence, namely where the person establishes that he or she did not know and could not be reasonably expected to know or ascertain the required information, and also (in relation to a failure to state a business address) the person did not have a business address, or that the business address was not connected (directly or indirectly) with road transport involving vehicles.

40Y—Direction to provide reasonable assistance for powers of inspection and search

This clause enables an authorised officer or police officer to direct a responsible person to provide assistance to the officer to enable the officer effectively to exercise a power under proposed Subdivision 4. Proposed subsection (2) gives examples of the sort of assistance contemplated by the provision. However, whilst the proposed section authorises a direction to run a vehicle's engine, it does not authorise the driving of the vehicle.

Such a direction can only be given in relation to a power under Subdivision 4 (defined as the ***principal power***) while the principal power can lawfully be exercised, and the direction ceases to be operative if the principal power ceases to be exercisable.

It is an offence attracting a maximum penalty of $10 000 if the person contravenes a direction. However, this does not apply if the direction is unreasonable, or if the direction or its subject-matter is outside the scope of the business or other activities of the person.

The proposed provision also allows the officer to run the engine of a vehicle, or authorise any other person to do so, if the responsible person fails to comply with the direction to do so.

40Z—Provisions relating to running engine

This clause provides that an authorised person (being a responsible person to whom a direction is given by an officer under proposed section 40Y, an officer authorised by proposed section 40Y(7) or a person authorised by an officer under that proposed subsection to run the engine of a vehicle) may run the engine even though the person is not qualified to drive the vehicle, if the officer believes on reasonable grounds that there is no other person in, on or in the vicinity of the vehicle who is more capable of running the engine than the authorised person and who is fit and willing to run the engine. The authorised person may use reasonable force to run the engine and is, in running the engine under this proposed section, exempt from any other road law to the extent that the other law would require him or her to be licensed or otherwise authorised to do so.

41—Manner of giving directions under Subdivision

This clause provides that a direction under this proposed Subdivision may be given orally, in writing or in any other manner. The proposed section also permits a direction not given in person to be sent or transmitted by post, telephone, facsimile, electronic mail, radio or in any other manner.

41A—Directions to state when to be complied with

This clause provides that if a direction under this proposed Subdivision is given orally, it must state whether it is to be complied with then and there or within a specified period. Similarly, if it is given in writing, a direction under this proposed Subdivision must state the period within which it is to be complied with.

Subdivision 6—Warrants

41B—Warrants

This clause provides that the proposed section applies if an authorised officer or police officer believes on reasonable grounds that either—

- there may be at particular premises, then or within the next 72 hours, records, devices or other things that may provide evidence of an Australian road law offence; or
- a vehicle has been or may have been involved in an accident and the vehicle is or has been located at particular premises, or particular premises are or may be otherwise connected (directly or indirectly) with the vehicle or any part of its equipment or load.

In such a case, the officer may (personally or by telephone) apply to a magistrate for a warrant to enter and search the premises under proposed section 40T, and the magistrate may then issue the warrant if satisfied that it is reasonably required in the circumstances.

The proposed section sets out procedural matters related to the warrant.

Subdivision 7—Other provisions regarding inspections and searches

41C—Use of assistants and equipment

This clause provides that an authorised officer or police officer may exercise powers under this Division with the aid of such assistants and equipment as the officer considers reasonably necessary in the circumstances. Proposed subsection (2) also permits an assistant authorised and supervised by the officer to exercise a power under the proposed Division, but only if the officer considers that it is reasonably necessary.

41D—Use of equipment to examine or process things

This clause permits an authorised officer or police officer exercising a power under this Division to bring to, or onto, a vehicle or premises any equipment reasonably necessary for the examination or processing of things. If it is not practicable to examine or process the things at the vehicle or premises, or if occupier of the vehicle or premises consents in writing, the things may be moved to another place so that the examination or processing can occur. The officer, or an assistant, may operate equipment already in, on or at the vehicle or premises to carry out the examination or processing of the thing if he or she believes it to be suitable, and the examination or processing can be carried out without damage to the equipment or the thing.

41E—Use or seizure of electronic equipment

This clause permits the operation of equipment found in, on or at the vehicle or premises to access information on a storage device found during an examination. The proposed section sets out what can be done with the information or storage device or equipment, and is subject to the limitation that the officer must believe that the operation or seizure of the equipment can be carried out without damage to the equipment.

Subdivision 8—Other provisions regarding seizure

41F—Receipt for and access to seized material

This clause provides that, if a record, device or other thing is seized and removed under this Division, the authorised officer or police officer concerned must give a receipt to the person from whom it is seized and removed, and, if practicable, allow the person who would normally be entitled to possession of it reasonable access to it.

41G—Embargo notices

This clause provides that an authorised officer or police officer may issue an embargo notice in relation to a record, device or other thing under this Division that cannot, or cannot readily, be physically seized and removed.

An embargo notice is a notice forbidding the movement, sale, leasing, transfer, deletion of information from or other dealing with the record, device or other thing, or any part of it, without the written consent of the officer, the Minister or the Commissioner of Police. The provision sets out procedural matters related to embargo notices.

It is an offence attracting a maximum penalty of $10 000 if a person who knows an embargo notice relates to a record, device or other thing, and he or she does anything that is forbidden by the notice (or instructs another person to do anything forbidden by the notice, or forbidden for the person to do).

Finally, the provision provides that a sale, lease or transfer or other dealing with a record, device or other thing, or part of it, in contravention of this section is void.

Subdivision 9—Miscellaneous

41H—Power to use force against persons to be exercised only by police officers

This clause provides that a provision of this Division that authorises a person to use reasonable force does not authorise a person who is not a police officer to use force against a person.

41I—Various powers may be exercised on same occasion

This clause is intended to make it clear that an authorised officer or police officer may exercise various powers under road laws on the same occasion, whether the exercise of the powers is for the same purpose or different purposes

and whether the opportunity to exercise one power arises only as a result of the exercise of another power.

41J—Restoring vehicle or premises to original condition after action taken

This clause requires that, if an authorised officer or police officer or an authorised person takes certain action in relation to a vehicle etc under the proposed Division that (because of an unreasonable exercise of the power or an unauthorised use of force) results in damage to the vehicle or premises, the officer must take reasonable steps to return the vehicle etc to the condition it was in immediately before the action was take.

41K—Self-incrimination

This clause displaces the privilege against self-incrimination, providing that it is not an excuse for a person to refuse or fail to provide or produce any information, document, record, device or other thing in compliance with a direction under the proposed Division on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.

However, the fact that the person produced a document etc (as distinct from the contents of the document etc), or if the direction was not to produce a document, any information provided in compliance with the direction is not admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty (other than proceedings in respect of the making of a false or misleading statement).

41L—Providing evidence to other authorities

This clause provides if a record, device or other thing is seized under this Act, or if any information is obtained under this Act, it may be given to any appropriate public authority. This extends to a public authority in another jurisdiction. Prior to doing so, the public authority concerned must be consulted.

41M—Obstructing or hindering authorised officers or police officers

This clause provides that it is an offence to obstruct or hinder an authorised officer or police officer who is exercising a power under a road law. The maximum penalty for the offence is a fine of $10 000.

41N—Impersonating authorised officers

This clause provides that it is an offence to impersonate an authorised officer, the maximum penalty for the offence being a fine of $10 000.

41O—Division not to affect other powers

This clause provides that the proposed Division does not derogate from any other law that confers powers on an authorised officer or police officer.

Part 2A—Mutual recognition and corresponding road laws

41P—Effect of administrative actions of authorities of other jurisdictions

The effect of this provision is that an administrative action (of an administrative authority) under or in connection with a corresponding road law has the same effect in this State as it has in the other jurisdiction. An administrative action is defined to mean an action of an administrative nature, as in force from time to time, but the provision only applies to administrative actions of the kinds prescribed by the regulations. The provision is limited by proposed subsection (3) in the case where—

- the action is incapable of having effect in or in relation to this State or that place; or
- the terms of the action expressly provide that the action does not extend or apply to or in relation to this State or that place; or
- the terms of the action expressly provide that the action has effect only in the other jurisdiction or a specified place in the other jurisdiction.

41Q—Effect of court orders of other jurisdictions

This clause provides that an order of a prescribed kind of a court or tribunal of another jurisdiction under or in connection with a corresponding road law has the same effect in this State as it has in the other jurisdiction. This provision is limited in the same terms as proposed section 41P.

15—Repeal of Part 3 Division 1

Part 3 Division 1 consists of sections 41 and 42. These provisions relate to police or inspector powers and are to be deleted in view of the provisions of the model uniform draft. The corresponding new provisions are proposed new sections 40G to 40J and 40V to 40X. Existing sections 33(7) and (8) and 34(2) should also be noted. These provisions are unaffected by this Bill and contain police directions powers that relate to the closure of roads for events or emergency aircraft use.

16—Repeal of section 47EAB

This clause repeals section 47EAB, itself inserted by clause 4 of this Bill.

17—Repeal of section 86

Section 86 (Removal of vehicles causing danger or obstruction) is removed in view of proposed new sections 40N to 40P .

18—Repeal of section 106

Section 106 (Damage to roads and works) is deleted. The subject matter is now to be dealt with in section 107 (see the next clause) and proposed new Part 4C (General compensation orders).

19—Amendment of section 107—Damage to road infrastructure

Section 107 currently contains an offence relating to causing particular harm to a road surface. A new general provision is added to prohibit a person from removing or interfering with road infrastructure or damaging it in any way other than through reasonable use. A definition of the term ***road infrastructure*** is to be added to section 5 of the *Road Traffic Act 1961* drawn from the model uniform draft.

20—Repeal of section 110AAD

Section 110AAD (Power to enter and inspect records etc) provides special police and inspector powers relating to the driving hours regulations. The section is removed and instead the general powers in proposed new sections 40S to 40Y will be relied on.

21—Repeal of section 112

Section 112 (Offences relating to vehicle standards, safety maintenance and emission control systems) is deleted. The subject matter is now to be dealt with in proposed new Part 4 Division 3A (Provisions relating to breaches of vehicle standards or maintenance requirements) (see clause 24).

22—Repeal of section 114

Section 114 (Offences relating to mass and loading requirements) is deleted. The subject matter is now to be dealt with in proposed new Part 4 Division 3B (Provisions relating to breaches of mass, dimension and load restraint requirements) (see clause 24).

23—Amendment of section 115—Standard form conditions for oversize or overmass vehicle exemptions

This clause makes a drafting correction. Subsection (7), which is deleted by the clause, defines ***vehicle*** to include a combination. The definition is redundant given that section 5(1) of the *Road Traffic Act 1961* currently defines ***vehicle*** to include a combination.

24—Insertion of Part 4 Divisions 3A and 3B

Division 3A—Provisions relating to breaches of vehicle standards or maintenance requirements

116—Meaning of breach of vehicle standards or maintenance requirement

Breach of a vehicle standards or maintenance requirement—such a breach occurs if—

- a vehicle is driven on a road; and
- the vehicle—
- has not been maintained in a safe condition; or
- has not been maintained with an emission control system fitted to it of each kind that was fitted to it when it was built and in a condition that ensures that each emission control system fitted to it continues operating essentially in accordance with the system's original design; or
- does not comply with the requirements of section 162A of the *Road Traffic Act 1961* (Seat belts and child restraints).

117—Liability of driver

It will be an offence with a maximum penalty of $2 500 to drive a vehicle in breach of a vehicle standards or maintenance requirement. A new defence is added where a person—

- did not cause or contribute to the condition of the vehicle and had no responsibility for or control over the maintenance of the vehicle at any relevant time; and

· did not know and could not reasonably be expected to have known of the condition of the vehicle; and

· could not reasonably be expected to have sought to ascertain whether there were or were likely to be deficiencies in the vehicle.

118—Liability of operator

A person will commit an offence with a maximum penalty of $2 500 if—

· there is a breach of a vehicle standards or maintenance requirement; and

· the person is the operator of the vehicle concerned.

There will be a defence where the person establishes that the vehicle was being used at the relevant time by—

· another person not entitled (whether by express or implied authority or otherwise) to use it, other than an employee or agent of the person; or

· by an employee of the person who was acting at the relevant time outside the scope of the employment; or

· by an agent of the person who was acting at the relevant time outside the scope of the agency.

Division 3B—Provisions relating to breaches of mass, dimension and load restraint requirements

Subdivision 1—Preliminary

119—Meaning of breach of mass, dimension or load restraint requirement

Breach of a mass, dimension or load restraint requirement—such a breach occurs if—

· a vehicle is driven on a road (whether in this State or another jurisdiction); and

· the vehicle does not comply with a mass, dimension or load restraint requirement.

Breach of a mass, dimension or load restraint requirement in this State—such a breach occurs if—

· a vehicle is driven on a road in this State; and

· the vehicle does not comply with a mass, dimension or load restraint requirement that is a law of this State.

Breach of a mass, dimension or load restraint requirement in another jurisdiction—such a breach occurs if—

· a vehicle is driven on a road in another jurisdiction; and

· the vehicle does not comply with a mass, dimension or load restraint requirement that is a law of the other jurisdiction.

120—Meaning of minor, substantial or severe risk breaches

The regulations are to contain provisions categorising breaches of mass, dimension or load restraint requirements into minor, substantial or severe risk breaches.

Subdivision 2—Reasonable steps defence

121—Reasonable steps defence

A person will have the ***reasonable steps defence*** for an offence if the person establishes that—

· the person did not know, and could not reasonably be expected to have known, of the contravention concerned; and

· either—

· the person had taken all reasonable steps to prevent the contravention; or

· there were no steps that the person could reasonably be expected to have taken to prevent the contravention.

Certain factors are set out to which a court must have regard in deciding whether a person has the defence.

If the person establishes that the person had complied with all relevant standards and procedures under a registered industry code of practice (see proposed new section 174F) with respect to matters to which the breach relates, proof of compliance will constitute prima facie evidence that the person charged had taken reasonable steps to prevent the contravention.

122—Reasonable steps defence—reliance on container weight declaration

In establishing the defence, a person may rely on the weight stated in a relevant container weight declaration, unless it is established that the person knew or ought reasonably to have known that—

· the stated weight was lower than the actual weight; or

· the distributed weight of the container and its contents, together with—

· the mass or location of any other load in or on the vehicle; or

· the mass of the vehicle or any part of it,

would cause one or more breaches of mass limits.

Subdivision 3—Liability for breaches of mass, dimension or load restraint requirements

123—Liability of driver

It will be an offence to drive a vehicle in breach of a mass, dimension or load restraint requirement in this State.

The reasonable steps defence will apply to a minor risk breach. The reasonable steps defence will also apply to a substantial risk breach or a severe risk breach but only so far as it relates to reliance on the weight stated in a container weight declaration.

124—Liability of operator

A person will commit an offence if—

· there is a breach of a mass, dimension or load restraint requirement; and

· the person is the operator of the vehicle concerned.

The offence will apply to—

· a breach of a mass, dimension or load restraint requirement in this State; or

· a breach of a mass, dimension or load restraint requirement in another jurisdiction if the journey of the vehicle during which the breach occurs resulted from action taken by the person as the operator of the vehicle in this State.

The reasonable steps defence will apply to a minor risk breach. The reasonable steps defence will also apply to a substantial risk breach or a severe risk breach but only so far as it relates to reliance on the weight stated in a container weight declaration.

It will also be a defence if the person charged establishes that the vehicle was being used at the relevant time by—

· another person not entitled (whether by express or implied authority or otherwise) to use it, other than an employee or agent of the person; or

· by an employee of the person who was acting at the relevant time outside the scope of the employment; or

· by an agent of the person who was acting at the relevant time outside the scope of the agency.

125—Liability of consignor

This provision applies only to the transport of goods by a heavy vehicle by road.

A person will commit an offence if—

· there is a breach of a mass, dimension or load restraint requirement; and

· the person is the consignor of any goods that are in or on the vehicle concerned.

The offence will apply to—

· a breach of a mass, dimension or load restraint requirement in this State; or

· a breach of a mass, dimension or load restraint requirement in another jurisdiction if the person is the consignor of the goods—

· because of action taken by the person in this State; or

· because the person had possession of, or control over, the goods in this State immediately before their transport by road.

A person will also commit an offence if—

· the weight of a freight container containing goods consigned for road transport exceeds the maximum gross weight as marked on the container or on the container's safety approval plate; and

· the person is the consignor of any of the goods contained in the freight container.

The latter offence will apply to—

· the transport of the freight container in this State; or

· the transport of the freight container in another jurisdiction if the person is the consignor of the goods—

· because of action taken by the person in this State; or

· because the person had possession of, or control over, the goods in this State immediately before their transport by road.

The reasonable steps defence will apply to an offence under this clause.

Proceedings for such an offence may be commenced at any time within 2 years after the date of the alleged commission of the offence or, with the authorisation of the Attorney-General, at any later time within 3 years after the date of the alleged commission of the offence.

126—Liability of packer

This provision applies only to the transport of goods by a heavy vehicle by road.

A person will commit an offence if—

· there is a breach of a mass, dimension or load restraint requirement; and

· the person is the packer of any goods that are in or on the vehicle concerned.

The offence will apply to—

· a breach of a mass, dimension or load restraint requirement in this State; or

· a breach of a mass, dimension or load restraint requirement in another jurisdiction if the person is the packer of the goods because of action taken by the person in this State.

A person will also commit an offence if—

· the weight of a freight container containing goods consigned for road transport exceeds the maximum gross weight as marked on the container or on the container's safety approval plate; and

· the person is the packer of any of the goods contained in the freight container.

The latter offence will apply to—

· the transport of the freight container in this State; or

· the transport of the freight container in another jurisdiction if the person is the packer of the goods because of action taken by the person in this State.

The reasonable steps defence will apply to an offence under this clause.

Proceedings for such an offence may be commenced at any time within 2 years after the date of the alleged commission of the offence or, with the authorisation of the Attorney-General, at any later time within 3 years after the date of the alleged commission of the offence.

127—Liability of loader

This provision applies only to the transport of goods by a heavy vehicle by road.

A person will commit an offence if—

· there is a breach of a mass, dimension or load restraint requirement; and

· the person is the loader of any goods that are in or on the vehicle concerned.

The offence will apply to—

· a breach of a mass, dimension or load restraint requirement in this State; or

· a breach of a mass, dimension or load restraint requirement in another jurisdiction if the person is the loader of the goods because of action taken by the person in this State.

The reasonable steps defence will apply to an offence under this clause.

Proceedings for such an offence may be commenced at any time within 2 years after the date of the alleged commission of the offence or, with the authorisation of the Attorney-General, at any later time within 3 years after the date of the alleged commission of the offence.

128—Liability of consignee

This provision applies only to the transport of goods by a heavy vehicle by road.

A person will commit an offence if—

· there is a breach of a mass, dimension or load restraint requirement; and

· the person is the consignee of any goods that are in or on the vehicle concerned; and

· the person engaged in conduct that resulted or was likely to result in inducing or rewarding the breach; and

· the person intended or was reckless or negligent as to whether there would be that result.

The offence will apply to—

· a breach of a mass, dimension or load restraint requirement in this State; or

· a breach of a mass, dimension or load restraint requirement in another jurisdiction if the person engaged in conduct in this State that resulted or was likely to result in inducing or rewarding the breach.

The reasonable steps defence will apply to an offence under this clause.

Proceedings for such an offence may be commenced at any time within 2 years after the date of the alleged commission of the offence or, with the authorisation of the Attorney-General, at any later time within 3 years after the date of the alleged commission of the offence.

129—Penalties for offences against Subdivision

The penalty for an offence against this Subdivision involving a heavy vehicle will be as follows:

Offence	**Penalty if first offence by natural person against provision concerned**	**Penalty if subsequent offence by natural person against provision concerned**	**Penalty if first offence by body corporate against provision concerned**	**Penalty if subsequent offence by body corporate against provision concerned**
Offence involving minor risk breach of mass, dimension or load restraint requirement (not being offence against section 128)	Maximum $1 250	Maximum $2 500; minimum $300	Maximum $5 000	Maximum $10 000; minimum $300
Offence involving substantial risk breach of mass, dimension or load restraint (not being offence against section 128)	Maximum $2 500	Maximum $5 000; minimum $600	Maximum $10 000	Maximum $20 000; minimum $600

Offence	Penalty if first offence by natural person against provision concerned	Penalty if subsequent offence by natural person against provision concerned	Penalty if first offence by body corporate against provision concerned	Penalty if subsequent offence by body corporate against provision concerned
Offence involving severe risk breach of mass limit (not being offence against section 128)	Maximum $5 000 plus maximum $500 for each additional 1% over 120% overload	Maximum $10 000 plus maximum $1 000 for each additional 1% over 120% overload; minimum $2 000 plus minimum $200 for each additional 1% over 120% overload	Maximum $20 000 plus maximum $2 500 for each additional 1% over 120% overload	Maximum $50 000 plus maximum $5 000 for each additional 1% over 120% overload; minimum $2 000 plus minimum $200 for each additional 1% over 120% overload
Any other offence involving severe risk breach of mass, dimension or load restraint requirement (not being offence against section 128)	Maximum $5 000	Maximum $10 000; minimum $2 000	Maximum $20 000	Maximum $50 000; minimum $2 000
Offence against section 125(4), 126(4) or 128	Maximum $5 000	Maximum $10 000; minimum $2 000	Maximum $20 000	Maximum $50 000; minimum $2 000

The penalty for an offence against this Subdivision involving a vehicle other than a heavy vehicle will be—

- in the case of an offence involving a minor risk breach of a mass, dimension or load restraint requirement—a maximum penalty of $750; or
- in the case of an offence involving a substantial risk breach of a mass, dimension or load restraint requirement—a maximum penalty of $1 250; or
- in the case of an offence involving a severe risk breach of a mass, dimension or load restraint requirement—a maximum penalty of $2 500.

Subdivision 4—Sanctions

130—Matters to be taken into consideration by courts

Certain matters set out in the provision will be required to be take into consideration by the courts in determining the sanctions (including the level of fine) that are to be imposed in respect of breaches of mass, dimension or load restraint requirements.

Subdivision 5—Container weight declarations

131—Application of Subdivision

This Subdivision applies to the transport of a freight container by a heavy vehicle by road.

A ***freight container*** is defined (by a new definition being added to section 5 of the *Road Traffic Act 1961*) as —

- a re-usable container of the kind referred to in Australian/New Zealand Standard AS/NZS 3711.1:2000, *Freight containers—Classification, dimensions and ratings*, that is designed for repeated use for the transport of goods by one or more modes of transport; or
- a re-usable container of the same or a similar design and construction though of different dimensions; or
- a container of a kind prescribed by the regulations,

but as not including anything excluded by the regulations.

132—Meaning of "responsible entity

A ***responsible entity***, in relation to a freight container, is—

- a person who consigned the container for transport by a heavy vehicle by road in this State; or
- a person who, on behalf of the consignor, arranged for the transport of the container by a heavy vehicle by road in this State; or
- a person who physically offered the container for transport by a heavy vehicle by road in this State.

133—Container weight declarations

A ***container weight declaration*** for a freight container is a declaration that states or purports to state the weight of the freight container and its contents. It may be comprised in one or more documents or other formats, including in electronic form or wholly or partly in a placard attached or affixed to the freight container.

134—Complying container weight declarations

This provision sets out the requirements for a complying container weight declaration.

135—Duty of responsible entity

A responsible entity that offers a freight container to an operator of a heavy vehicle for transport in this State must ensure that the operator or driver of the vehicle is provided, before the start of the transport of the freight container in this State, with a complying container weight declaration relating to the freight container.

The maximum penalty for a breach of this provision will be:

- if the offender is a natural person—$5 000;
- if the offender is a body corporate—$20 000.

The reasonable steps defence will apply to an offence under this clause.

136—Duty of operator

The same penalty will apply if an operator of a heavy vehicle transporting a freight container fails to ensure that—

- the driver of the vehicle is provided, before the start of the driver's journey, with a complying container weight declaration relating to the freight container; or
- if the freight container is to be transported by another road or rail carrier, the other carrier is provided with a complying container weight declaration relating to the freight container (or with the prescribed particulars contained in the declaration) by the time the other carrier receives the freight container.

The reasonable steps defence will apply to an offence under this clause.

137—Duty of driver

A person who drives a heavy vehicle loaded with a freight container on a road in this State will commit an offence if the person fails to have the relevant container weight declaration or to keep it in or about the vehicle or readily accessible from the vehicle during the course of the journey in this State. A maximum penalty of $5 000 is fixed for this offence.

The reasonable steps defence will apply to an offence under this clause.

138—Liability of consignee—knowledge of matters relating to container weight declaration

Proposed new section 128 provides that a consignee of goods will commit an offence if—

- there is a breach of a mass, dimension or load restraint requirement; and
- the person engaged in conduct that resulted or was likely to result in inducing or rewarding the breach; and

· the person intended or was reckless or negligent as to whether there would be that result.

Under this provision, a consignee of goods will be taken to have intended that result if—

· the conduct concerned related to a freight container; and

· the person knew or ought reasonably to have known that—

· a container weight declaration for the container was not provided as required; or

· a container weight declaration provided for the container contained information about the weight of the container and its contents that was false or misleading in a material particular.

Subdivision 6—Recovery of losses resulting from non-provision of or inaccurate container weight declarations

139—Recovery of losses for non-provision of container weight declaration

This provision is to apply if—

· a container weight declaration has not been provided as required; and

· a person suffered loss as a result of the non-provision of the declaration.

The person will have a right to recover from the responsible entity for the freight container for losses such as—

· any loss incurred from delays in the delivery of the freight container or any goods contained in it or of other goods;

· any loss incurred from spoliation of or damage to the goods;

· any loss incurred from the need to provide another vehicle, and any loss incurred from any delay in the provision of another vehicle;

· any costs or expenses incurred in weighing the freight container or any of its contents or both.

140—Recovery of losses for provision of inaccurate container weight declaration

This provision is to apply if—

· a container weight declaration has been provided as required; and

· the declaration contains information about a freight container—

· that is false or misleading in a material particular by understating the weight of the container; or

· that is otherwise false or misleading in a material particular by indicating that the weight of the container is lower than its actual weight; and

· a breach of a mass limit occurred as a result of the reliance, by an operator or driver of a vehicle, on the information in the declaration when transporting the container by road (whether or not enforcement action has been or may be taken in relation to the breach); and

· the operator or driver of the vehicle—

· had at the time a reasonable belief that the vehicle concerned was not in breach of a mass limit; and

· did not know, and ought not reasonably to have known, at the time that the minimum weight stated in the declaration was lower than the actual weight of the container; and

· a person suffered loss as a result of the provision of the declaration.

The person will have a right to recover from the responsible entity for the freight container for losses such as—

· any fine, expiation fee, infringement penalty or other penalty imposed on the plaintiff under an Australian road law;

· any fine, expiation fee, infringement penalty or other penalty imposed on an agent or employee of the plaintiff under an Australian road law and reimbursed by the plaintiff;

· any loss incurred from delays in the delivery of the freight container or any goods contained in it or of other goods;

· any loss incurred from spoliation of, or damage to, the goods;

· any loss incurred from the need to provide another vehicle, and any loss incurred from any delay in the provision of another vehicle;

· any costs or expenses incurred in weighing the freight container or any of its contents or both.

141—Recovery of amount by responsible entity

This provision is to apply if an order under the preceding clause has been made or is being sought against a responsible entity for payment of the monetary value of any loss incurred by a person.

The responsible entity has a right to recover from a person who provided the responsible entity with all or any of the information that was false or misleading, so much of the monetary value paid or payable by the responsible entity under the order as is attributable to that information.

142—Assessment of monetary value or attributable amount

This provision deals with the assessment by a court of the monetary value of losses or amounts recoverable under preceding provisions.

143—Costs

This provision deals with the recovery of costs and expenses in proceedings under preceding provisions.

Subdivision 7—Transport documentation

144—False or misleading transport documentation: liability of consignor, packer, loader, receiver and others

This provision is to apply if—

· goods are consigned for transport by a heavy vehicle by road; and

· all or any part of the transport by road occurs or is to occur in this State.

A range of persons may commit offences under this provision if the transport documentation relating to the consignment is false or misleading in a material particular relating to the mass, dimension or load restraint of any or all of the goods.

Transport documentation is defined (by a new definition being added to section 5 of the *Road Traffic Act 1961*) as —

· any contractual documentation directly or indirectly associated with—

· a transaction for or relating to the actual or proposed transport of goods or passengers by road or any previous transport of the goods or passengers by any mode; or

· goods or passengers themselves so far as the documentation is relevant to their actual or proposed transport; or

· any associated documentation—

· contemplated in the contractual documentation; or

· required by law, or customarily provided, in connection with the contractual documentation or with the transaction,

whether the documentation is in paper, electronic or any other form, and whether or not the documentation has been transmitted physically, electronically or in any other manner, and includes (for example) an invoice, vendor declaration, delivery order, consignment note, load manifest, export receival advice, bill of lading, contract of carriage, sea carriage document, or container weight declaration, relating to the goods or passengers.

The maximum penalty for an offence under this clause will be:

· if the offender is a natural person—$5 000;

· if the offender is a body corporate—$20 000.

The reasonable steps defence will apply to an offence under this clause.

25—Substitution of sections 148 to 156

A group of current provisions of the *Road Traffic Act 1961* under the heading "Enforcement powers" is to be removed:

· section 148 (Determination of mass)

· section 149 (Measurement of distance between axles)

· section 152 (Directions to driver)

· section 153 (Determining unladen mass)

· section 154 (Measurement of loads etc)

· section 156 (Unloading of excess mass).

The provisions will be replaced by various of the general enforcement powers in proposed new Part 2 Division 5 and the following enforcement powers that relate specifically to vehicle standards or maintenance requirements or mass, dimension or load restraint requirements.

Subdivision 1—Defect notices relating to breaches of vehicle standards or maintenance requirements

26—Amendment and redesignation of section 160—Defect notices

The amendments to this section are consequential only. The section is renumbered as section 145.

27—Insertion of Subdivision 2

Subdivision 2—Formal warnings relating to breaches of mass, dimension or load restraint requirements

146—Formal warnings

147—Withdrawal of formal warnings

Provision is made for the issuing and withdrawal of formal warnings relating to breaches of mass, dimension or load restraint requirements.

Subdivision 3—Directions powers relating to breaches of mass, dimension or load restraint requirements

148—Directions power if minor risk breach

149—Directions power if substantial risk breach

150—Directions power if severe risk breach

Various directions powers are conferred on authorised officers and police officers to deal with breaches of mass, dimension or load restraint requirements. The powers involve varying degrees of intervention depending on whether a detected breach is a minor risk breach, substantial risk breach or severe risk breach. Rules are set out governing an officer's discretion as to whether a journey may be continued, or whether the breach must be rectified and, if so, where it must be rectified.

151—Authorisation to continue journey if minor risk breach

Under this provision an authorised officer or police officer may authorise the driver of a vehicle to continue its journey (unconditionally or conditionally) where—

- the vehicle is found to be the subject of one or more minor risk breaches of mass, dimension or load restraint requirements; and
- the vehicle is not or is no longer the subject of a substantial risk breach or a severe risk breach; and
- the driver is not or is no longer the subject of a direction for the rectification of the minor risk breach or any of the minor risk breaches.

152—Operation of directions in relation to combinations

This provision makes it clear that nothing in this Subdivision prevents a component vehicle of a combination from being separately driven or moved if—

- the component vehicle is not itself the subject of a breach of a mass, dimension or load restraint requirement; and
- it is not otherwise unlawful for the component vehicle to be driven or moved.

153—Directions and authorisations to be in writing

A direction or authorisation under this Subdivision is to be in writing, except—

- in the case of a direction to move a vehicle, where the moving is carried out in the presence of, or under the supervision of, an authorised officer or police officer; or
- in other circumstances prescribed by the regulations.

154—Application of Subdivision in relation to other directions

This Subdivision is to apply to a vehicle regardless of whether or not the vehicle is, has been or becomes the subject of a direction under Part 2 Division 5 and is not to limit or prevent the exercise of powers under Part 2 Division 5.

28—Amendment of section 161A—Driving of certain vehicles subject to Ministerial approval

Section 161A requires the Minister's approval for the use on roads of certain vehicles prescribed by regulation. The use of oversize and overmass vehicles, for example, requires the Minister's approval. This clause proposes an amendment designed to make it clear that such an approval may be conditional.

29—Amendment of section 162A—Seat belts and child restraints

The offence provision in section 162A, subsection (2), is deleted. The deletion is consequential on the inclusion within the definition of ***breach of a vehicle standards or maintenance requirement*** (see proposed new section 116) of failure to comply with the requirements of this section.

30—Amendment of section 163GA—Maintenance records

Subsections (4) to (8) of section 163GA (which contain inspection powers) are deleted. The deletion is consequential on the proposed general enforcement powers in new Part 2 Division 5.

31—Repeal of section 163H

The proposed deletion of section 163H (Prohibition against hindering an inspector) is also consequential on the proposed general enforcement provisions of new Part 2 Division 5.

32—Amendment of section 163I—Evidentiary

This amendment is also consequential on the proposed general enforcement provisions of new Part 2 Division 5.

33—Substitution of section 163KA

Section 163KA is a general offence provision for Part 4A of the *Road Traffic Act 1961*. The provision is to be removed and instead the general offence provision contained in section 164A of the Act will be relied on. The provision is to be replaced by the following new Part:

Part 4B—Special provisions relating to heavy vehicle offences

Division 1—Improvement notices

163L—Definition

This clause defines approved officer as meaning an authorised officer, or an authorised officer of a class, for the time being nominated by the Minister as an approved officer for the purposes of proposed Division 1 of this proposed Part.

163M—Improvement notices

This clause provides that, if an approved officer is of the opinion that a person has contravened, is contravening or is likely to contravene a provision of an Australian road law and the contravention or likely contravention involves a heavy vehicle, he or she may serve on the person an improvement notice requiring the person to remedy the contravention or likely contravention, or the matters or activities occasioning the contravention or likely contravention, within the period specified in the notice. Such a period must be at least 7 days after the notice is served on the person, although the approved officer may specify a shorter period if satisfied that it is reasonably practicable for the person to comply with the notice by the end of the shorter period.

The provision also sets out procedural matters related to an improvement notice.

163N—Contravention of improvement notice

This clause provides that it is an offence (unless the person has a reasonable excuse) for a person subject to an improvement notice to contravene a requirement of the notice, attracting a maximum fine of $10 000.

Proposed subsection (3) provides a defence to a charge under the section, namely where the person charged establishes that the contravention etc was remedied within the period specified in the notice, albeit by a method different from that specified in the notice.

163O—Amendment of improvement notices

This clause provides that an improvement notice may be amended by an approved officer, and sets out procedures relating to how such an amendment may be effected.

163P—Cancellation of improvement notices

This clause provides that an improvement notice may be cancelled by the Minister or an approved officer, with notice of such cancellation needing to be served on the person affected.

163Q—Clearance certificates

This clause provides that an approved officer may issue a clearance certificate to the effect that all or any specified requirements of an improvement notice have been complied with.

Accordingly, a requirement of an improvement notice ceases to be operative on receipt, by the person on whom the notice was served, of a clearance certificate to the effect that all, or that that specified requirement has been complied with.

163R—Review of notice

This clause provides that a person on whom an improvement notice or a notice of an amendment of an improvement notice has been served under the proposed Division may, within 28 days (or such later time as the Minister may allow), apply to the Minister for a review of the notice.

If an application is made, the operation of the notice is stayed pending the determination of the application and any subsequent appeal relating to the notice.

A review must be determined within 28 days of the application being lodged with the Minister, and if it is not, the Minister is taken to have confirmed the notice.

163S—Appeal to District Court

This clause provides that an applicant for a review under the proposed Division who is not satisfied with the decision of the Minister on the review may appeal to the Administrative and Disciplinary Division of the District Court against the decision.

This clause also sets out procedures related to the appeal.

Division 2—Sanctions for heavy vehicle offences

163T—Sanctions imposed by courts

This clause provides that a court that finds a person guilty of an offence that involves a heavy vehicle may impose one or more of the sanctions provided for in the principal Act. The provisions sets out matters related to the imposition of sanctions, including the need to consider the combined effect of the sanctions when imposing more than one.

163U—Commercial benefits penalty orders

This clause provides a court that finds a person guilty of an offence that involves a heavy vehicle may make an order requiring the person to pay a fine not exceeding 3 times the amount estimated by the court to be the gross commercial benefit that was received or receivable by the person (or an associate of the person) from the commission of the offence. Where a journey was interrupted or not commenced because of action taken by an authorised officer or police officer in connection with the commission of the offence, the amount is the amount that would have been received or receivable from the commission of the offence had the journey been completed.

The clause sets out the factors that may be taken into account in estimating the gross commercial benefit that was or would have been received or receivable from the commission of the offence.

163V—Supervisory intervention orders

This clause provides that a court that finds a person guilty of an offence that involves a heavy vehicle may, if the court considers the person to be a systematic or persistent offender against the Australian road laws, make an order requiring the person (at the person's own expense and for a specified period not exceeding 1 year) to do any or all of the things set out in proposed subsection (1), being things that are generally intended to improve, or provide for the monitoring of, the person's compliance with road laws.

The provision sets out procedural matters relating to the court's powers under the proposed section, including a power to revoke or amend an order under the section on the application of the Minister, or of the person (but in that case only if the court is satisfied that there has been a change of circumstances warranting revocation or amendment).

163W—Contravention of supervisory intervention order

This clause provides that it is an offence for a person subject to requirement in a supervisory intervention order to contravene the requirement, attracting a maximum fine of $10 000.

163X—Prohibition orders

This clause provides that a court that finds a person guilty of an offence that involves a heavy vehicle may, if the court considers the person to be a systematic or persistent offender against the Australian road laws, make an order prohibiting the person, for a specified period, from having a specified role or responsibilities associated with road transport.

However, such an order cannot prohibit the person from driving or registering a vehicle.

The court may only make an order if it is satisfied that the person should not continue the things the subject of the proposed order, and that a supervisory intervention order is not appropriate. The provision sets out matters the court must have regard to in determining whether to make a prohibition order.

The court may revoke or amend an order on the application of the Minister, or of the person (but in that case only if the court is satisfied that there has been a change of circumstances warranting revocation or amendment).

163Y—Contravention of prohibition order

This clause provides that it is an offence for a person subject to a requirement in a prohibition order to contravene the requirement, attracting a maximum fine of $10 000.

Division 3—Criminal responsibility in relation to organisations and employers

163Z—Application of Division limited to heavy vehicle offences

This clause provides that the proposed Division applies in relation to an offence that involves a heavy vehicle.

163ZA—Liability of directors, managers and partners

This clause provides for the liability of directors and managers in the case where a body corporate, and partners in the case where a partnership, commits an offence under the principal Act (without affecting the liability of the body corporate or other person who actually committed the offence).

It is a defence to a charge for an offence arising under the proposed section if the defendant establishes that he or she was not in a position to influence the conduct involved in the actual offence, or, being in such a position, took all reasonable steps to prevent the commission of the actual offence.

163ZB—Vicarious responsibility

This clause sets out standard matters relating to proving vicarious liability on the part of a body corporate or employer.

Part 4C—General compensation orders

163ZC—Compensation orders for damage to road infrastructure

This clause provides that a court that finds a person guilty of an offence may make a compensation order requiring the offender to pay a road authority such amount by way of compensation as the court thinks fit for damage to any road infrastructure that the road authority has incurred or is likely to incur in consequence of the offence.

The provision sets out procedural matters relating to such an order.

163ZD—Assessment of compensation

This clause provides that, in making a compensation order under proposed section 163ZC, the court may assess the amount of compensation in such manner as it considers appropriate, including (for example) the estimated cost of remedying the damage. The clause also sets out examples of the type of matters the court may take into account in assessing the amount of compensation, including certain evidentiary certificates issued by the road authority.

163ZE—Service of certificates

This clause sets out matters relating to the service of certificates referred to in proposed section 163ZD, including the need to serve a certificate to be used in proceedings on the defendant at least 28 working days before the day on which the matter is set down for hearing.

The clause allows the defendant to challenge a statement in such a certificate, but he or she must serve a notice in writing on the road authority at least 14 working days before the day on which the matter is set down for hearing specifying the matters that are intended to be challenged. The clause also sets out procedural matters related to such a challenge.

163ZF—Limits on amount of compensation

This clause provides that, in relation to the making of a compensation order, the court must limit the amount of the compensation payable if the court is satisfied that other factors not connected with the commission of the offence also contributed to the damage.

The maximum amount of compensation cannot is limited by the monetary jurisdictional limit of the court in civil proceedings.

The court may not include in the order amounts for personal injury or death, loss of income or damage to any property that is not part of the road infrastructure.

163ZG—Costs

This clause provides that the court has the same power to award costs in relation to proceedings for a compensation order as it has in relation to civil proceedings, and the relevant provisions of laws applying to such costs apply (with any necessary adaptations) to costs under the proposed provision.

163ZH—Relationship with orders or awards of other courts and tribunals

This clause provides that a compensation order may not be made if another court or tribunal has awarded compensatory damages or compensation in civil proceedings in respect of the damage based on the same or similar facts.

If a court purports to make a compensation order in those circumstances it is void to the extent that it covers the same matters as those covered by the other award, and any payments made under the order to the extent to which it is void must be repaid by the road authority.

However, the making of a compensation order does not prevent another court or tribunal from afterwards awarding damages or compensation in civil proceedings in respect of the damage based on the same or similar facts, but the court or tribunal must take the order into account when awarding damages or compensation.

34—Amendment of section 164A—Offences and penalties

Section 164A provides for a general offence for breaches of the Act, or conditions of permits or exemptions, where no other penalty is fixed. This clause applies this provision also to breaches of conditions of approvals (as in section 161A). The clause increases the maximum penalty from $1 250 to $2 500.

35—Amendment of section 165—False statements

The maximum fine for an offence of making a false or misleading statement in furnishing information, or compiling a record, under the Act is increased to $10 000, a penalty consistent with penalty levels adopted in proposed new Part 2 Division 5. [Section 165 is to be brought into the Act by an amendment contained in the Transport Portfolio legislation.]

36—Substitution of section 166

Section 166 provides a defence for an employee to an offence of driving a vehicle with a defect if the employee—

- drove the vehicle, or caused it to stand, under the express instructions of the employer; and
- was not aware that the vehicle did not comply with the requirement or had, before the time of the alleged offence, called the attention of the employer to the fact that the vehicle did not comply with the requirement.

The section is to be deleted and instead the general defence for a driver of a vehicle with a defect set out in proposed new section 117 will apply.

The section is to be replaced by the following new section:

166—Double jeopardy

The provision makes it clear that a person may be punished only once in relation to the same contravention of a particular provision of the Act, even if the person is liable in more than one capacity.

However, it goes on to provide that a person may be punished for more than one contravention of a requirement if the contraventions relate to different parts of the same vehicle.

37—Amendment of section 168—Power of court to make orders relating to licences or registration

Section 168 applies where a court convicts a person of—

- an offence against the *Road Traffic Act 1961* relating to motor vehicles; or
- an offence (under the *Road Traffic Act 1961* or any other Act or law) in the commission of which a motor vehicle was used or the commission of which was facilitated by the use of a motor vehicle.

The orders that the court may make are expanded to include (in addition to an order for disqualification from holding or obtaining a driver's licence)—

- an order that a driver's licence held by the person be modified for a period fixed by the court or until further order;
- an order that the registration of the motor vehicle concerned under the *Motor Vehicles Act 1959* be suspended for a period fixed by the court or until further order, or be cancelled;
- an order that the person, and any associate of the person, be disqualified from obtaining registration of the motor vehicle concerned as owner or operator under the *Motor Vehicles Act 1959* for a period fixed by the court or until further order.

38—Amendment of section 173A—Defence relating to registered owner or operator

The amendments to section 173A are consequential only on the inclusion in section 5 of the Act of new definitions of ***operator***, ***registered operator***, ***owner*** and ***registered owner***.

39—Insertion of section 173AB

173AB—Further defences

Further defences are added for the purposes of the Act. It will be a defence to a charge for an offence against the Act if the person charged establishes that the conduct constituting the offence was—

- authorised or excused by or under a law; or
- done in compliance with a direction given by an authorised officer or police officer or an Australian Authority or a delegate of an Australian Authority; or
- done in response to circumstances of emergency.

The emergency defence will apply only if the person charged reasonably believed that—

- circumstances of emergency existed; and
- committing the offence was the only reasonable way to deal with the emergency; and
- the conduct was a reasonable response to the emergency.

40—Insertion of section 174AB

174AB—Marking of tyres for parking purposes

This provision effectively repeats current section 38A which is in the portion of the Act to be replaced by the new uniform enforcement provisions.

An authorised officer is empowered to place an erasable mark on a tyre of a vehicle in the course of enforcing laws relating to the parking of vehicles.

It will be an offence if a person erases such a mark without proper authority.

41—Insertion of sections 174F to 174K

174F—Industry codes of practice

Provision is made for the Minister to register industry codes of practice. Under section 121, proof that a person has complied with all relevant standards and procedures under a registered industry code of practice with respect to matters to which a breach of a mass, dimension or load restraint requirement relates will constitute prima facie evidence that the person has taken reasonable steps to prevent the breach for the purpose of establishing the reasonable steps defence.

174G—Dismissal or other victimisation of employee or contractor assisting with or reporting breaches

Under this provision, it will be an offence if an employer dismisses an employee or contractor, injures an employee or contractor in his or her employment or alters an employee's or contractor's position to his or her detriment because the employee or contractor—

- has assisted or has given any information to a public agency in respect of a breach or alleged breach of an Australian road law; or
- has made a complaint about a breach or alleged breach of an Australian road law to the employer, a fellow employee or fellow contractor, a trade union or a public agency.

Further, an employer or prospective employer is not, for similar reasons, to refuse or deliberately omit to offer employment to a prospective employee or prospective contractor or treat a prospective employee or prospective contractor less favourably than another prospective employee or prospective contractor would be treated in relation to the terms on which employment is offered .

If a person is found guilty of an offence under this provision, the court may make an order for damages, reinstatement or employment in favour of the person against whom the offence was committed.

174H—False or misleading information provided between responsible persons

A person will be guilty of an offence if—

- the person is a responsible person and provides information to another responsible person; and

· the person does so knowing that the information is false or misleading in a material particular or being reckless as to whether the information is false or misleading in a material particular; and

· the material particular in which the information is alleged to be false or misleading relates to an ingredient of an Australian road law offence that is or could be committed by the other or any other responsible person if that other person relies or were to rely on the material particular.

Responsible person is defined in a new definition added to section 5 of the Act as an owner, driver or operator of a vehicle or some other person with any of various specified connections with a vehicle.

174I—Amendment or revocation of directions or conditions

General provision is made for the amendment or revocation of directions or conditions given or imposed under the Act by authorised officers or police officers.

174J—Minister may provide information to corresponding Authorities

It is made clear that the Minister may provide information to a corresponding Authority about any action taken by the Minister under any road law or any information obtained under the Act.

174K—Contracting out prohibited

A term of any contract or agreement that purports to—

· exclude, limit or modify the operation of this Act or of any provision of this Act; or

· require the payment or reimbursement by a person of all or part of any penalty that another has been ordered to pay under this Act,

is void to the extent that it would otherwise have that effect.

A person will commit an offence if the person requires or proposes that another agree to such a term.

42—Amendment of section 175—Evidence

Consequential amendments are made to the evidentiary provisions.

43—Amendment of section 176—Regulations and rules

The maximum penalty for an offence against the regulations or rules is increased from $1 250 to $2 500. The maximum expiation fee for alleged offences under the Act is increased from $350 to $750.

44—Amendments relating to members of police force

General amendments are made to the Act to change references to members of the police force to references to police officers.

45—Amendments relating to inspectors

Similarly, general amendments are made to the Act to change references to inspectors to references to authorised officers.

Part 4—Amendment of *Motor Vehicles Act 1959*

46—Amendment of section 5—Interpretation

Definitional changes are made to reflect the change from inspectors appointed under the *Motor Vehicles Act 1959* to authorised officers appointed under the *Road Traffic Act 1961*.

47—Amendment of section 7—Registrar and officers

These amendments are also consequential on the change from inspectors appointed under the *Motor Vehicles Act 1959* to authorised officers appointed under the *Road Traffic Act 1961*.

48—Amendment of section 47C—Return or recovery of number plates

49—Amendment of section 52—Return or destruction of registration labels

The amendments to sections 47C and 52 are each consequential on the inclusion in the *Road Traffic Act 1961* of a general provision making it an offence to hinder, etc, an authorised officer. The new enforcement powers to be added to the *Road Traffic Act 1961* will be exercisable for the purposes of matters under either that Act or the *Motor Vehicles Act 1959*.

50—Insertion of sections 55B and 55C

New provisions are inserted consequential on the model Bill provision for a court convicting a person of a motor vehicle offence to be able to make an order—

· suspending or cancelling the registration of a motor vehicle; or

· disqualifying a person from registering a motor vehicle.

55B—Notice to be given to Registrar

If a court makes such an order, the proper officer of the court must notify the Registrar in writing of the date of the order, the nature of the order (including the period of any disqualification) and short particulars of the grounds on which the order was made.

55C—Action following disqualification or suspension outside State

If a person is disqualified from registering a motor vehicle in another State or Territory of the Commonwealth, the Registrar must—

· if the motor vehicle is registered in the name of the person as the operator of the vehicle under the *Motor Vehicles Act 1959*, cancel the registration of the motor vehicle;

· refuse to register the motor vehicle in the name of the person as owner or operator during the period of disqualification.

If an order is made in another State or Territory of the Commonwealth that the registration of a motor vehicle be suspended, the Registrar must, if the motor vehicle is registered in the name of the person as the operator of the vehicle under the *Motor Vehicles Act 1959*, suspend the registration of the motor vehicle.

51—Amendment of section 83—Action following disqualification etc outside State

52—Amendment of section 93—Notice to be given to Registrar

Amendments are made to sections 83 and 93 consequential on the model Bill provision for a court convicting a person of a motor vehicle offence to be able to make an order modifying a person's driver's licence.

53—Amendment of section 96—Duty to produce licence or permit

The penalty for an offence of failing to produce a licence or permit when required to do so by a police officer is increased from $250 to $2 500.

An amendment is made consequential on the change from inspectors appointed under the *Motor Vehicles Act 1959* to authorised officers appointed under the *Road Traffic Act 1961*.

54—Amendment of section 97—Duty to produce licence or permit at court

A drafting correction is made.

The penalty for an offence of failing to produce a licence at court when required to do so is increased from $250 to $2 500.

55—Amendment of section 97A—Visiting motorists

An amendment is made consequential on the change from inspectors appointed under the *Motor Vehicles Act 1959* to authorised officers appointed under the *Road Traffic Act 1961*.

The penalty for an offence by a visiting motorist of failing to carry and produce a licence when required to do so by a police officer or authorised officer is increased from $250 to $2 500.

56—Amendment of section 98AAA—Duty to carry licence when driving heavy vehicle

The application of this provision is extended from vehicles with a GVM greater than 8 tonnes to all heavy vehicles as defined, that is, with a GVM greater than 4.5 tonnes.

The penalty for an offence by the driver of a heavy vehicle of failing to carry and produce a licence when required to do so by a police officer is increased from $750 to $2 500.

An amendment is made consequential on the change from inspectors appointed under the *Motor Vehicles Act 1959* to authorised officers appointed under the *Road Traffic Act 1961*.

57—Amendment of section 98AAB—Duty to carry probationary licence, provisional licence or learner's permit

The penalty for an offence by the holder of a probationary licence, provisional licence or learner's permit of failing to carry and produce a licence when required to do so by a police officer is increased from $250 to $2 500.

58—Repeal of section 98C

The repeal of this provision is consequential on the change from inspectors appointed under the *Motor Vehicles Act 1959* to authorised officers appointed under the *Road Traffic Act 1961*.

59—Amendment of section 98P—Investigation powers

This clause removes provisions relating to towtrucks and inspectors that are no longer required in view of the new enforcement powers that are to be added to the *Road Traffic Act 1961* and will be exercisable for the purposes of matters under either that Act or the *Motor Vehicles Act 1959*.

60—Amendment of section 139BA—Power to require production of licence etc

The penalty for an offence of failing to produce a licence when required to do so under section 139BA is increased from $750 to $2 500.

61—Amendment of section 139D—Confidentiality

The exceptions to the confidentiality requirement are widened so that there will also be authority for disclosure to a public authority of any jurisdiction for law enforcement purposes or to a prescribed public authority of any jurisdiction.

62—Repeal of section 139F

The repeal of this section is consequential on the inclusion in the *Road Traffic Act 1961* of a general provision making it an offence to hinder, etc, an authorised officer.

63—Insertion of section 143B

143B—General defences

Further general defences are added for the purposes of the *Motor Vehicles Act 1959* Act that match those proposed to be added to the *Road Traffic Act 1961* (see clause 39 above). It will be a defence to a charge for an offence against the Act if the person charged establishes that the conduct constituting the offence was—

- authorised or excused by or under a law; or
- done in compliance with a direction given by an authorised officer or police officer or an Australian Authority or a delegate of an Australian Authority; or
- done in response to circumstances of emergency.

The emergency defence will apply only if the person charged reasonably believed that—

- circumstances of emergency existed; and
- committing the offence was the only reasonable way to deal with the emergency; and
- the conduct was a reasonable response to the emergency.

64—Amendment of section 145—Regulations

The maximum expiation fee allowed for alleged offences under the Act is increased from $310 to $750.

65—Amendments relating to members of police force

General amendments are made to the Act to change references to members of the police force to references to police officers.

66—Amendments relating to inspectors

Similarly, general amendments are made to the Act to change references to inspectors to references to authorised officers.

Part 5—Amendment of *Summary Offences Act 1953*

67—Insertion of section 68A

68A—Power to search land for stolen vehicles etc

A new provision is added to the *Summary Offences Act 1953* that preserves the power to be found in current section 37 of the *Road Traffic Act 1961* for a police officer to enter land or premises where he or she has reasonable cause to suspect that there is a vehicle that has been stolen or used without the consent of the owner, and then search for the vehicle, and, if it is found, examine it.

68—Amendment of section 74A—Power to require name and name and other personal details

The power under section 74A of the *Summary Offences Act 1953* to require full name and address is widened so that all or any of a person's personal details may be required.

Personal details of a person is defined to mean—

- the person's full name; and
- the person's date of birth; and
- the address of where the person is living; and
- the address of where the person usually lives; and
- the person's business address.

A police officer who has required a person to state all or any of the person's personal details will be required to comply with a request to identify himself or herself, by—

- producing his or her police identification; or
- stating orally or in writing his or her surname, rank and identification number.

This latter requirement has been made to match the similar requirement to be included in the *Road Traffic Act 1961*.

69—Insertion of section 74AB

74AB—Questions as to identity of drivers etc

A new provision is added to the *Summary Offences Act 1953* that is based on current section 38 of the *Road Traffic Act 1961*. Under the provision, a police officer may ask a person questions for the purpose of obtaining information that may lead to the identification of the person who was driving, or was the owner of, a vehicle on a particular occasion or at a particular time.

A person who refuses or fails, without reasonable excuse, to answer such a question, or gives an answer that is false or misleading in a material particular, will be guilty of an offence and liable to a maximum penalty of $1 250 or imprisonment for 3 months.

A police officer who has asked a person such a question will be required to comply with a request to identify himself or herself, by—

- producing his or her police identification; or
- stating orally or in writing his or her surname, rank and identification number.

Ms CHAPMAN secured the adjournment of the debate.

GAS PIPELINES ACCESS (SOUTH AUSTRALIA) (GREENFIELDS PIPELINE INCENTIVES) AMENDMENT BILL

The Hon. P.F. CONLON (Minister for Energy) obtained leave and introduced a bill for an act to amend the Gas Pipelines Access (South Australia) Act 1997. Read a first time.

The Hon. P.F. CONLON: 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.

The purpose of the *Gas Pipelines Access (South Australia) (Greenfields Pipeline Incentives) Amendment Bill 2006* (Greenfields Bill) is to amend the *Gas Pipelines Access (South Australia) Act 1997* to provide greater certainty regarding the regulatory coverage of greenfields pipelines, thereby encouraging further investment in new pipelines.

The proposed greenfields amendments will aid the development of a strong, interconnected gas transmission network which is essential to the reliable supply of gas and improving competition in the gas market. Reliable supply of gas at efficient prices is essential to the community and to the ongoing competitiveness of South Australian businesses, small and large. Links with more remote gas fields will become essential over the medium term as demand grows and supply from closer fields diminishes.

The Gas Pipelines Access Act, which came into effect on 30 July 1998, is the lead legislation for the national scheme that regulates the provision of third party access to gas pipelines. The Gas Pipelines Access Act is designed to provide a degree of certainty as to the terms and conditions of access to the services of specific gas infrastructure facilities. Other than Western Australia, the States and Territories have passed legislation that applies the Gas Pipelines Access Act in their jurisdiction. Western Australia has passed legislation that is substantially the same as the Gas Pipelines Access Act.

As honourable members would be aware, South Australia is participating in the reform of the regulatory framework of Australia's energy markets. A national legislative framework for gas and electricity is being established on a collaborative basis between the Commonwealth, States and Territories under the Council of Australian Government's Australian Energy Market Agreement. The Greenfields Bill is consistent with the Australian Energy Market Agreement's framework for reform to the gas and electricity markets.

Under the current gas regime, a new pipeline is not subject to any regulation under the Gas Pipelines Access Act unless an application

for coverage is made and assessed in accordance with the coverage criteria. An application can, however, be made at any point in time by a third party, which, in effect, creates regulatory uncertainty for investors in new pipelines.

Consequently, the Ministerial Council on Energy agreed to implement two measures specifically to improve regulatory certainty and to encourage investment in gas pipelines:

Binding no-coverage ruling

Under the proposed reforms, the proponent of a proposed greenfield gas transmission pipeline or distribution network could apply to the National Competition Council for an upfront coverage assessment. Following an assessment of the pipeline against the coverage criteria, the National Competition Council could make a recommendation to exempt a pipeline from regulation for 15 years. The process for the National Competition Council to arrive at its recommendation would include the extensive public consultation as is currently undertaken under the present coverage process, which includes a draft and final report by the National Competition Council and consideration by the Minister. Upon receiving a National Competition Council recommendation that the proposed pipeline does not meet the coverage criteria, the relevant Minister may provide a binding 15 year no coverage ruling in respect of the pipeline.

Consistent with recommendations by the Productivity Commission in the Review of the Gas Access Regime and current amendments to the Commonwealth *Trade Practices Act 1974*, the coverage criteria used in this Bill refer to the need for there to be 'a material' increase in competition resulting from coverage under the regime. The concern for both the National Access Regime and for this law is the doubt that the current wording does not sufficiently address the situation where, irrespective of the significance of the infrastructure, coverage would only result in marginal increases in competition. Nonetheless, the new wording is consistent with current interpretations of the present coverage criteria such that the increase in competition required should be non-trivial before regulation is applied to a pipeline.

Price regulation exemption

The coverage assessment process for Ministerial decision on a binding no-coverage ruling may not be a sufficiently timely process to provide regulatory certainty for some gas pipeline projects.

To ensure that the regulatory regime does not inhibit new international pipelines proceeding to financial close, the Ministerial Council on Energy decided to implement the option of a 15 year price regulation holiday for greenfields gas pipelines.

Price regulation exemptions would only apply to international transmission pipelines which originate in another country and bring gas from a source outside Australia. An application for a price regulation exemption would be made to the National Competition Council, with the Commonwealth Minister making the final determination based on the National Competition Council recommendations. The public interest considerations for granting this exemption are broader than the existing coverage criteria.

If a price regulation exemption is granted, the proponent must still submit a limited access arrangement, which governs regulation of non-price access provisions and meets certain transparency requirements, to the Australian Competition and Consumer Commission for approval.

For both these exemptions, the incentive will lapse if the pipeline is not commissioned within 3 years. The incentives cannot be revoked unless the applicant misrepresented a material fact or failed to disclose material information. The proponent of a proposed pipeline will also need to submit a description of the project to allow the relevant Ministers to make informed decisions on granting the incentives. If for operational reasons the pipeline description needs to be varied, there is a process for a further approval to be sought from the Minister who granted the incentive before the pipeline is commissioned.

Honourable members should note that, later this year, in the Spring Session, I propose to introduce to Parliament a larger legislative reform package which includes the new National Gas Law and amendments to the National Electricity Law.

The Greenfields Bill includes a definition of the National Gas Objective of the proposed National Gas Law, as an essential component for the assessment of the price regulation exemption.

The introduction into the South Australian Parliament of the Greenfields Bill illustrates this Government's commitment to improving energy market regulation, both at a state and national level, for the benefit all South Australians and all Australians.

I commend the *Gas Pipelines Access (Greenfields Pipeline Incentives) Amendment Bill 2006* to Honourable Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

This clause provides that the measure will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

This clause is formal.

Part 2—Amendment of *Gas Pipelines Access (South Australia) Act 1997*

4—Amendment of section 10—Power to make regulations for the Gas Pipelines Access Law

Section 10(1) of the *Gas Pipelines Access (South Australia) Act 1997* provides that the Governor may make regulations for or with respect to any matter or thing necessary to be prescribed to give effect to the *Gas Pipeline Access Law* ("the Law"). New section 10(1), to be inserted by this clause, retains that existing power but includes an additional power for the Governor to make regulations contemplated by the Law.

5—Amendment of Schedule 1—Third party access to natural gas pipelines

Clause 5 amends the *Gas Pipeline Access Law* (Schedule 1). By virtue of section 7 of the Act, the Law applies as a law of South Australia.

The first amendment, which is to section 2 of the Schedule, is the substitution of a new definition of ***civil penalty provision***. This amendment is consequential on the proposal to insert into Schedule 1 new Part 3A. The new definition is substantially the same as the existing definition but includes a reference to proposed new section 13V(3).

The subject of proposed new **Part 3A** of Schedule 1 is greenfields pipeline incentives. This term is defined in new **section 13A** to mean a binding no-coverage determination or a price regulation exemption. A ***binding no-coverage determination*** is a determination under Division 2 of Part 3A. A ***price regulation exemption*** is an exemption under Division 3.

Section 13A includes a number of additional definitions. For example, a ***greenfields pipeline project*** is a project for the construction of a pipeline that is to be—

- structurally separate from any existing pipeline (whether or not it is to traverse a route different from the route of an existing pipeline); or
- a major extension of an existing pipeline that is not a covered pipeline; or
- a major extension of a covered pipeline to which the access arrangement for the covered pipeline will not apply.

A ***limited access arrangement*** is an access arrangement that does not include provision for price or revenue regulation but deals with all other matters for which the *National Third Party Access Code For Natural Gas Pipeline Systems* requires provision to be made in an access arrangement.

The ***national gas objective*** is defined by reference to **section 13B**, which states the objective is to promote efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas. This statement of the national gas objective is for the purposes of Part 3A only.

The ***pipeline coverage criteria*** are defined for the purposes of Part 3A in **section 13C** as follows:

- that access (or increased access) to services to be provided by means of the pipeline would promote a material increase in competition in at least one market (whether or not in Australia), other than the market for services to be provided by means of the pipeline;
- that it would be uneconomic for anyone to develop another pipeline to provide the services to be provided by means of the pipeline;

- that access (or increased access) to the services to be provided by means of the pipeline could be provided without undue risk to human health or safety;
- that access (or increased access) to the services to be provided by means of the pipeline would not be contrary to the public interest.

Under **section 13D**, if a greenfields pipeline project is proposed or has commenced, the service provider may apply to the National Competition Council (the NCC) for a binding no-coverage determination exempting the pipeline from coverage. (***Service provider*** is defined in section 2 of Schedule 1 to mean "the person who is, or is to be, the owner or operator of the whole or any part of the pipeline or proposed pipeline".)

Section 13D(2) provides that if a price regulation exemption has been granted for an international pipeline, an application for a binding no-coverage determination may be made by the service provider to the NCC. Section 13D also prescribes some matters to be specified and other requirements in relation to applications and pipeline descriptions.

Under **section 13E**, the NCC must, on receipt of an application for a binding no-coverage determination, notify the relevant Minister of the application.

Section 13F sets out some general principles governing the NCC's recommendations on applications for binding no-coverage determinations. In framing a recommendation, the NCC is required to give effect to the pipeline coverage criteria. In deciding whether or not those criteria are satisfied, the NCC is required to have regard to relevant submissions and comments made within the time allowed for submissions and comments.

If the NCC is satisfied that all the pipeline coverage criteria are satisfied in relation to the pipeline, the NCC must recommend against making a binding no-coverage determination. If the NCC is not satisfied that all the criteria are satisfied, the recommendation must be in favour of making a determination.

Section 13G provides that notice of an application for a binding no-coverage determination must be published by the NCC on its website and in a newspaper circulating throughout Australia. Section 13G(2) sets out certain other matters relating to the notice and provides that the notice must invite submissions and comments within 21 days from the date of the notice. The NCC is not required to give notice of an application if the application is rejected within 14 days of receipt on the ground that the applicant has failed to provide the necessary information and materials or the application is frivolous or vexatious.

Under **section 13H**, a draft recommendation in respect of an application must be prepared by the NCC within 42 days after the required notice of the application is given under section 13G. The draft recommendation must be in writing and contain a short description of the pipeline accompanied by a reference to a website at which the relevant pipeline description can be inspected. The daft recommendation must also state the terms of the proposed recommendation and the reasons for it and contain other information required by regulation (if any).

The NCC is required under **section 13I** to give copies of the draft recommendation to the applicant, the Australian Energy Market Commission and the relevant Regulator. The draft recommendation must be published on the NCC's website and made available for inspection during business hours at the NCC's offices. The NCC is also required to publish, on its website and in a newspaper circulating throughout Australia, notice of the draft recommendation. The notice must invite submissions and comments on the recommendation.

Section 13J provides that the NCC must, within 28 days following the end of the period allowed for making submissions and comments, consider the submissions and comments and make a final recommendation.

The relevant Minister is required under **section 13K** to decide whether or not to make a binding no-coverage determination within 42 days of receiving the NCC's recommendation. In making his or her decision, the relevant Minister must give effect to the pipeline coverage criteria. In deciding whether or not the pipeline coverage criteria are satisfied in relation to the pipeline, the Minister must have regard to the national gas objective and the NCC's recommendation. He or she may take into account any relevant submissions and comments made to the NCC.

If the Minister is satisfied that all the pipeline coverage criteria are satisfied in relation to the pipeline, the Minister must not make a binding no-coverage determination. If the Minister is not satisfied that all the pipeline coverage criteria are satisfied in relation to the pipeline, the Minister must make a binding no-coverage determination. A binding no-coverage determination, or a decision not to make a binding no-coverage determination, must be in writing and must contain a short description of the pipeline the subject of the determination, accompanied by a reference to a website at which the relevant pipeline description can be inspected. The determination or decision must also set out the Minister's reasons for the determination or decision.

Section 13L provides that a binding no-coverage determination takes effect when it is made and remains in force for a period of 15 years from the commissioning of the pipeline. An application for coverage of a pipeline to which a binding no-coverage determination applies can only be made before the end of the period for which the determination remains in force if the coverage sought in the application is to commence from, or after, the end of that period.

If the Commonwealth Minister decides against making a binding no-coverage determination for an international pipeline, and the applicant asks the Commonwealth Minister to treat the application as an application for a price regulation exemption, the Minister may, under **section 13M**, treat the application as an application for a price regulation exemption. The Commonwealth Minister may then refer the application back to the NCC for a recommendation or proceed to determine the application without a further recommendation.

Section 13N provides that if a greenfields pipeline project for construction of an international pipeline is proposed, or has commenced, the service provider may apply for a price regulation exemption for the pipeline. The application must be made to the NCC before the pipeline is commissioned.

The NCC is required under **section 13O** to notify the Commonwealth Minister of receipt of an application for a price regulation exemption without delay.

Under **section 13P**, the NCC must, when framing its recommendation on an application for a price regulation exemption, weigh the benefits to the public of granting the exemption against the detriments to the public. The NCC is required to have regard to the national gas objective and other relevant matters. **Section 13Q** requires the NCC to publish notice of receipt of an application on its website and in a newspaper circulating generally throughout Australia. The notice must invite submissions and comments. The NCC is not obliged to give notice of an application if the application is rejected on the ground that the applicant has failed to provide the required information and materials or the application is frivolous or vexatious.

The NCC must make a recommendation to the Commonwealth Minister on a price regulation exemption application within 42 days following receipt of the application. The NCC is also required to give copies of its recommendation to the applicant, the AEMC and the ACCC.

Section 13S requires the Commonwealth Minister to decide whether or not to make a price regulation exemption within 14 days following receipt of the NCC's recommendation. The Minister must weigh the benefits to the public of granting the exemption against the detriment to the public.

The Commonwealth Minister is also required to have regard to the national gas objective with particular reference to the implications of the exemption for relevant markets and other possible effects of the exemption on the public interest. The Commonwealth Minister is not bound by the NCC's recommendation, but he or she must have regard to it.

A price regulation exemption, or a decision not to make a price regulation exemption, must be in writing and must set out the Commonwealth Minister's reasons for the decision to grant, or not to grant, the exemption.

Section 13T describes the effect of a price regulation exemption. Where a price regulation exemption is granted, for a period of 15 years from the commissioning of the pipeline the services provided by means of the pipeline are not subject to price or revenue regulation under the Law. A

price regulation exemption is ineffective unless a limited access arrangement (approved by the ACCC) is in force in relation to the relevant pipeline. (***Limited access arrangement*** is defined in section 13A.)

If the Commonwealth Minister makes a binding no-coverage determination for a pipeline while a price regulation exemption is in force, the determination supersedes the exemption (which is then terminated) and remains in force for the balance of the period for which the exemption was granted.

If a person wishes to apply for coverage of a pipeline to which a price regulation exemption applies, the application can only be made before the end of the period of exemption if the coverage sought in the application is to commence from, or after, the end of that period.

Under **section 13U**, the service provider must submit a proposed limited access arrangement to the ACCC for approval. After a limited access arrangement has been approved, the service provider may submit a proposed amendment to the arrangement. Following receipt of a proposed limited access arrangement for approval, the ACCC must do the following:

- it must publish the proposed limited access arrangement, or the proposed amendment, on its website and invite the public to make submissions and comments on the proposal within 21 days after the date of the invitation;
- it must consider the submissions and comments made in response to the invitation and publish on its website a draft decision on the proposal and a further invitation to the public to make submissions and comments on the draft decision within 14 days from the date of the invitation;
- it must make a final decision on the proposal and may—
- in the case of a proposed limited access arrangement—approve the limited access arrangement with or without amendment;
- in the case of a proposed amendment to a limited access arrangement—amend the limited access arrangement in accordance with the proposed amendment or in some other way acceptable to the service provider, or reject the proposed amendment;
- it must then publish its final decision, and the reasons for it, on its website.

A limited access arrangement cannot contain a provision for price or revenue regulation but must contain an undertaking on the part of the service provider not to engage in price discrimination unless the price discrimination is conducive to efficient service provision or can be justified on some other rational economic basis.

A dispute about access to a pipeline to which a price regulation exemption applies may be dealt with under the Law in the same way as a dispute about access to a covered pipeline. However, an access dispute cannot be resolved by arbitration on terms regulating the price at which services are to be provided by the service provider (except to the extent that such regulation is necessary to give effect to an undertaking not to engage in price discrimination). Also, an access dispute cannot be resolved by arbitration on terms limiting the revenue to be derived by the service provider from the provision of services.

Section 13V lists some provisions to which the service provider for a pipeline to which a price regulation exemption applies is subject. Under section 13V(2), a price regulation exemption is subject to the following conditions:

- the service provider must not engage in price discrimination contrary to the undertaking contained in the service provider's limited access arrangement;
- the service provider must maintain a register of spare capacity;
- the service provider's limited access arrangement and the register of spare capacity are to be accessible on the service provider's website;
- the service provider must, as and when required, provide information requested by the ACCC or the Commonwealth Minister on access negotiations and the result of access negotiations and must report annually to the ACCC and the Commonwealth Minister on access negotiations and the result of access negotiations.

A service provider must also ensure compliance with conditions to which the exemption is subject.

Section 13W provides that a greenfields pipeline incentive applies to the pipeline as described in the relevant pipeline description. If the pipeline, as constructed, differs from the pipeline as described in the pipeline description, the incentive does not attach to the pipeline and the service provider is not entitled to its benefit.

Under **section 13X**, the relevant Minister may, on application by the service provider, amend the relevant pipeline description. However, an amendment cannot be made under section 13X after the pipeline has been commissioned. An application for amendment to a pipeline description may be referred by the Minister to the NCC for advice. If the proposed amendment involves a substantial change to the pipeline description as it currently exists, the Minister *must* refer the application to the NCC for advice.

Section 13Y provides that a greenfields pipeline incentive lapses if the pipeline for which it was granted is not commissioned within 3 years after the incentive was granted. However, this 3 year period may be extended by the regulations in a particular case.

The relevant Minister may, under **section 13Z**, at the request of the service provider, revoke a greenfields pipeline incentive.

Under **section 13ZA**, the relevant Minister may revoke a greenfields pipeline incentive on application by the relevant Regulator on the ground that the applicant misrepresented a material fact or failed to disclose material information.

Section 13ZB provides that a greenfields pipeline incentive does not terminate, and cannot be revoked, before the end of its term except as provided in Part 3A.

An amendment is also made to section 38(13) of Schedule 1 so that the section, which provides that a person may apply for review of a decision to which the section applies, applies to a decision to grant, or to refuse, a binding no-coverage determination in relation to a pipeline under Part 3A and a decision to revoke a greenfields pipeline incentive under section 13ZA.

Clause 2 of the Appendix to Schedule 1 is deleted and a new clause substituted in its place. New clause 2(1) and (2) are substantially the same as the existing provision. However, new clause 2 includes two additional provisions. Subclause (3) provides that the Law is not to be construed as imposing a duty on the NCC, the Commonwealth Minister, the ACCC or the Australian Competition Tribunal to perform a function or exercise a power if the imposition of the duty would be in excess of the legislative powers of the Legislature (ie, the Parliament of South Australia).

If a provision of the Law appears to impose a duty on the NCC, the Commonwealth Minister, the ACCC or the Australian Competition Tribunal to perform a function or exercise a power in matters or circumstances in which the assumption of the duty cannot be validly authorised under the law of the Commonwealth, or is otherwise ineffective, the provision is to be construed as if its operation were expressly confined to—

- acts or omissions of corporations to which section 51(xx) of the *Constitution of the Commonwealth* applies; or
- acts or omissions taking place in the course of, or in relation to, trade or commerce between this jurisdiction and places outside this jurisdiction (whether within or outside Australia); or
- acts or omissions taking place outside Australia, or in relation to things outside Australia.

Subclause (5) of clause 2 provides that clause 2 does not limit the effect that a provision of the Law would validly have apart from clause 2.

Ms CHAPMAN secured the adjournment of the debate.

Q FEVER

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

Leave granted.

The Hon. J.D. HILL: On 2 May, I was asked a question by the member for Schubert about the supply of Q fever vaccine in South Australia. I said to the house that day that I was advised by the Department of Health that the sole supplier of the vaccine, CSL Pharmaceuticals, had ceased production of the vaccine. On Thursday last week, which I think was the very next day, when I was in Melbourne for a ministerial council meeting, I took the opportunity to visit the CSL Limited Bioplasma factory in Broadmeadows. It is coincidental that I was intending to go there in any event. While I was there, I took the opportunity to raise the member for Schubert's concerns with the president of the Asia Pacific region, Tom Giarla. The company informed me that it is making its best efforts to ensure the national supply of this vaccine.

CSL did stop production of the vaccine late last year due to decreasing demand and increased investment that was needed to meet regulatory standards. The company determined that its existing stocks of the vaccine would have been sufficient to maintain supply until March 2007. However, due to the publicity surrounding its decision—and the member might want to listen to this—it thought its stocks would be sufficient to last until March 2007. However, due to the publicity surrounding its decision (that is, to stop producing it), there was a significantly higher demand for vaccinations. In other words, there was a rush on it. As a consequence, there will be limited supply of the vaccine until CSL can produce fresh stocks which will be available early next year.

The South Australian government will continue to work with CSL and the commonwealth government to ensure that those workers at high risk from Q fever are able to receive the vaccine. This week, I will write to the federal Minister for Health and Ageing and the Minister for Agriculture, Fisheries and Forestry to discuss South Australia's wish to work with the commonwealth to secure the long-term supply of the vaccine and to continue the National Q Fever Management Program.

NATURAL RESOURCES MANAGEMENT (TRANSFER OF WATER LICENCES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 3 May. Page 81.)

Mr WILLIAMS (MacKillop): I indicate to the house that I am the lead speaker on behalf of the opposition for this matter, not that I will take an excessively long time; in fact, I hope that we will get through this in a very short time. Having said that, I wish to raise some matters. I am not the opposition spokesperson for this matter, but it impacts on my electorate which incorporates the lower lakes, half of Lake Albert and a proportion of Lake Alexandrina. I have a number of constituents who are vitally concerned about the health of the River Murray. There are a number of dairy farmers down in the Meningie area on the Narrung Peninsula who, two seasons ago, had dire problems because of not only the salinity levels of the lakes but also the actual level of the water in the lakes, which made it very difficult for their pumps to extract water from the system. I am very well aware of some of the issues.

Recently I was in some of the very upstream portions of the river at Tocumwal—I think that is where I crossed the river—and one of the problems we have in South Australia, in my opinion, is that if you go that part of the world, right up in the top end of the River Murray, the river is in very good health. There is a large population in New South Wales and it is very difficult to convince them that the river is in extreme danger down in this area. I think we have to be aware of that and we have to be very wary of the way we go about the business of arguing for restoration of the environment of the River Murray or the Murray-Darling Basin when we are talking to those people, because they see it very differently from us.

The bill before us is not only about the environmental flows and the environment of the River Murray but also significantly about the way we collect stamp duties in South Australia. The opposition has some concerns about that and I will put a couple of questions to the minister in committee. The most recent budget papers show that stamp duty revenues to the state of South Australia have increased extraordinarily. Conveyance duty was budgeted in the 2004-05 year to be $439.9 million but the estimated result, at the time of the most recent budget, is that the collection would be $545.3 million—a very significant increase of almost 25 per cent from the budgeted figure to the estimated result.

Other stamp duties are increasing likewise from a budgeted figure 12 months before of $88.3 million up to $113.1 million. Those figures, it is estimated, will continue to grow. Stamp duty, in a lot of cases is, I think, an invidious tax. It is a direct tax on business and it is a direct tax on individuals and business activity. I think we should be trying, in every way and in every case, to increase that activity and not tax it. I put stamp duty in the same sort of basket as payroll tax and the impact that has on the economic activity of the state. Having said that, I acknowledge that the Treasurer does need sources of revenue and, from those figures, obviously stamp duty is an important source of revenue for the state.

The Stamp Duty Act is one of the few acts in this state that I have attempted to read from front to back and I do not mind admitting that I find it very confusing. I have talked to a number of people who practise in the law who also find it very confusing. I think you need to be a bit of a specialist to understand that act. That, in itself, disturbs me because I think this parliament should endeavour to write its statutes in a form which is readily understandable, not only by practitioners of the law but also by the general man or woman in the street.

The environmental part of the bill concerns getting water back into the river to improve flows down the river and for environmental works along the length of the river. I come back to the point I made about the way we sell the message about the river to the people upstream in New South Wales and Victoria and also to the people in South Australia. When we talk about putting flows back into the river I think we are being slightly misleading. The target before us at the moment, at both state and national level, as a first step, at least, to try and secure 500 gigalitres of extra water as environmental flows, are not actually flows in the river. It is water that will be used specifically for environmental purposes. I think that, as a community, we have to understand that it is not necessarily flowing down the river in South Australia, going through the barrages and out of the Mouth. In fact, a fair bit of the water will be used for irrigation purposes, that is, to irrigate red gums and wetland sites along the river. It is my understanding that, if and when we do achieve the 500 gigalitres, six iconic sites have been picked out where the water will be utilised, and only about 180 of those gigalitres will flow past Renmark in South Australia. So, when we talk about flows,

I think that we have to understand exactly what they are. It certainly does not mean that 500 gigalitres of water will flow out through the barrages and the Mouth or, indeed, into the Lower Lakes and the Coorong.

The bill is all about ensuring that water allocations not used by individuals are used for environmental purposes, and that is why I think that we have to make a distinction between flows and some of the other uses for this water. If we were only going to see the water flow down the full length of the river and out of the Mouth, we would not need this piece of legislation. I think that a lot of people in the community believe that, if a water allocation is not used (certainly along our part of the river), that it is allowed to flow past their property from which they would normally extract the water, down the river and out to sea. Of course, that is not the case. The water remains in storage in the upper reaches of the river (in South Australia's case, generally in Lake Victoria) and is only released from Lake Victoria as it is required by the irrigator.

The Hon. K.A. Maywald: No, it's not.

Mr WILLIAMS: The minister says no, but it is my understanding that, if the irrigators are not utilising the water, it is not released into South Australia. The minister may well correct me, and she is indicating that I have got that wrong. In any case, it is my understanding that, once the water is in the river, it can only be extracted by a licensee. This bill actually allows a person to transfer some of the water they will not extract for their irrigation purposes to be put into a special environmental licence, which will then give legal permission for that water to be extracted from the river for that particular purpose. I am pleased to see that the minister is nodding and that at last I have got something right. So, that is what the bill is all about.

The existing act allows for temporary transfers of up to five years, without the imposition of stamp duty on those transfers, for virtually any purpose. Certainly, if somebody wants to make a permanent transfer, particularly for environmental purposes, the bill will indeed waive any stamp duty that is payable. I think that is only fair and reasonable. The opposition certainly supports what the bill sets out to achieve. We do not have a problem with that, and the opposition supports that matter in the bill.

Another issue that the opposition will question the minister on (and I indicate that it is certainly our intention to look at it between houses) is whether we can extend the bill by amendment in the other place to offer the same exemption from stamp duty to inter-family transfers of water licences. This would only pick up the principle we already have for inter-family transfers of farming land in the case of farming businesses. This has been the case in South Australia for a significant number of years now. As far as I am aware, it was certainly a principle adopted in South Australia, and certainly in my electorate, before a water licensing regime came into being. I am not sure how long we have had licensing on the River Murray (probably since before the exemptions for inter-family transfers of land). Notwithstanding that, I think that the parliament should consider at this time adopting amendments to allow a similar exemption to the one proposed by this bill to inter-family transfers.

The only other matter on which I would like to comment is one which I make regularly in this place. I question the minister as to why the bill is set up in such a way that it requires regulations to be made to achieve its end. I do not know that I am a lone voice but, certainly, I am a regular voice that takes exception to this parliament's passing legislation which relies heavily on regulations to make it work. I think that, if we are to make changes to our statutes and adopt certain policies that require legislation, the relevant clauses we need to enact our wishes and desires should be in the statutes of the parliament. We should not necessarily rely on regulations.

I have that fundamental belief because in that way we can be sure that the parliament is always across what is going on. Notwithstanding that regulations must be tabled by the ministers and that they are a disallowable instrument under subordinate legislation, I still think that if a minister wants to make a significant change through varying the statute it should be done by debating a bill properly in the parliament, whereas the regulation-making power is rarely, if ever, debated in the parliament. It is seen by the members of the Legislative Review Committee, but I believe that to be a much less open process than by debating an amendment to an act in the parliament. I think that I have covered most of the issues I wanted to raise. Again, I indicate that the opposition will be supporting the bill, but I will seek some information from the minister at the third reading stage.

Mr PEDERICK (Hammond): I commend the government on its commitment to remove some of the fees and charges where water is donated to an accredited environmental watering project. Refunding a portion of the NRM-based levy paid by the donor in respect of the donated water is one incentive for people to address this issue. Another is the removal of transfer fees on water allocations on licences donated to the environment, and the removal of establishment fees for environmental donation licences. All these issues are excellent to give people incentive to donate water back to this scheme. The removal of stamp duty on water allocation licences donated to the environment is another excellent idea, but I believe (as does the member for MacKillop) that we need to extend the level of the removal of stamp duty.

The DEPUTY SPEAKER: Order! I am sorry to interrupt the member for Hammond, but I draw to the attention of members that there is a problem with the clock. The honourable member's remarks started at 3.52, and 20 minutes is available to him.

Mr PEDERICK: You will be safe, Madam Deputy Speaker.

Mr Williams interjecting:

Mr PEDERICK: Yes, no worries. Thanks, Mitch. I believe that we need to extend the level of the removal of stamp duty. We should be addressing the issue of inter-generational transfer of water and the removal of stamp duty on these transfers. For irrigators on the river or lakes (and I have a significant portion in my electorate of Hammond), the removal of stamp duty would be a significant help for farming families. These people are suffering enough as a result of poor commodity prices, and I cannot see why stamp duty cannot be removed on water licences transferred between generations of farming families.

We are all aware of the tough times that especially citrus growers and vignerons are having in the irrigation areas. There is already an exemption of stamp duty on the transfer of land and plant and equipment, and this relates to the Stamp Duties (Concessions) Amendment Act 1994, concerning family farm transfers.

I will read a portion of that act in relation to family farm transfers, which I think would be appropriate for the transfer of water allocations. The act provides:

The land is used wholly or mainly for the business of primary production. The business of primary production is defined as the business of agriculture, pastorage, horticulture, viticulture, agriculture, poultry farming, dairy farming, forestry or any other business consisting of the cultivation of soils, the gathering in of crops, the rearing of livestock or the propagation and harvesting of fish or other aquatic organisms.

Most of that wording could appropriately be transferred through as far as water allocations are concerned. Obviously, in sections that talk about horticulture, viticulture and pastorage, where irrigation is used I think it is totally appropriate. At some stage, could the minister come back to the house with a costing of such a stamp duty exemption?

Mr HANNA (Mitchell): I am pleased to support this proposal. The minister would know that I have long been an advocate of facilitating trade of water between the states so that there could be some sort of dividend for the environment and, by extension of that, I am even more delighted to support a measure that will encourage people to donate surplus water. The users donating the water need to know that the water will be used productively and efficiently for environmental purposes, and we now have an appropriate body in place to administer the water that is being donated and an assessment based on environmental objectives that allocates that water to the most appropriate environmental projects at any given time.

In summary, this is a very positive measure, because it removes an impediment to those who would wish to donate water for environmental objectives along the Murray, and I am pleased to support it.

The Hon. K.A. MAYWALD (Minister for the River Murray): Congratulations on your position, Madam Deputy Speaker. I would thank all members for their contribution to this debate and the support offered for this initiative, which is extremely important and will provide incentives for irrigators to participate in helping to achieve a sustainable working river in the River Murray. To answer some of the questions that have been raised by members opposite and to comment on some of the remarks made by the member for MacKillop, the 500 gigalitre target for environmental flows is a target that has been established to provide water to six significant ecological assets along the river.

It will also include water for the River Murray channel, as the channel itself has been identified as one of those six assets. South Australia has Chowilla, a major floodplain environment up north of Renmark, and the Lower Murray Lakes, Coorong and Mouth is another of the assets. To achieve water to those assets it will need to flow down through the system. Each of those assets will have a management plan developed, and we are well on the way to having those plans accredited. Those management plans will be accredited and managed centrally. They will require water at certain times and call on the environmental flows bank of water at certain times of the year, according to the plan.

The 500 gigalitres is an average figure per annum, not a figure that will definitely come down the river each year. It is about ensuring that we have flows available for when those assets will need water. South Australia is a strong supporter, and has been advocating for some time, that 500 gigalitres is just the first step. This is about the six ecological assets, and it is about demonstrating to those critics upstream who do not believe there is a problem with the river. The member makes a very valid point that above the Darling-Murray junction there are not the issues that we are seeing in South Australia and, therefore, it is very difficult to convince communities up there to let water flow freely past their door when they feel they are subject to unfair imposts and lack of access to water which is, they believe, their right.

We need to continue to show very strong leadership in this area and demonstrate through this first step that that environmental water will have a significant benefit to the overall health of the river. South Australia has already conducted pilot projects run with environmental water that has been donated by groups such as the Murray Wetlands Working Group in New South Wales (which donated 1.5 gigalitres) and companies such as Timbercorp and, last week, the Foster's wine company. We also have a range of private irrigators, such as the Bookpurnong to Lock 4 environmental group, who are irrigators in the Bookpurnong district, and they have donated significant amounts of water to their flood plain. Also, we have seen other irrigators across the region make a deliberate decision to leave their water in the river to flow down the channel rather than use it for economic gain by leasing it out into the marketplace when it is surplus to their requirements.

This bill aims to bring that water into play for specific projects. It does just flow down the channel now, as the member for MacKillop points out, but, if we are to use it better and for better environmental outcomes, we need to ensure that we minimise the losses of that environmental water, that is, that it just does not flow down to the lower lakes, sit there and evaporate. Whilst it is important to get water to the lakes, it is also important to get water onto the flood plain on its way to the lakes. There is a range of projects that we have been working through with community groups and with the Natural Resources Management Board through a project of accreditation whereby we can direct that water through the system and make better use of it. It is important to note that the flood plain is the lungs of the river system. Having water just flowing down the channel does not aid getting the salt out of the system. The Murray River is a huge drain from the central eastern Australian region and picks up and collects a lot of salt along the way. That salt accumulates on the flood plain and, without environmental flows getting onto the flood plain collecting that salt and bringing it out through the Mouth, we get tremendous build-up of salt on the flood plain, and that is having a very detrimental impact on the health of our river redgums and the environment as a whole.

The member made reference to the way in which water is ordered by irrigators and supplied into South Australia. We have very progressive irrigation companies that are able to provide water to irrigators on order. I am just addressing the issue of the flow over the border and I thought the member for MacKillop might like to hear the answer to that because it was a question he specifically raised. The water comes into South Australia on the basis of our entitlement flow and not to do with our irrigation allocations. In the other states they actually apply water on the basis of their irrigation allocations and, when irrigators call for water, it is supplied at the delivery point for it to be extracted by irrigators. In South Australia, our irrigators can take what they want, when they want, of their allocation. We anticipate that and we set up a profile of when water comes into South Australia on the expectation of when we think irrigators are going to need their water, and it is based on our 1 850 entitlement flows, not on individual irrigator call on water. So the water still comes across the border whether they call on it or not. It is not

stored somewhere when they do not use it. It does come across the border now and goes straight down the channel.

The point I make when saying that is that, because we do not know how much of that water there is until the end of the year and we read the meters and know how much people have used, we cannot effectively use it and manage it best through the system. The process we are setting up through the River Murray Environmental Manager will identify important projects, accredit those projects, do the baseline studies to understand the dynamics of the environment in those areas, and license those community groups to take water at those particular sites along the way. If we have a quantity of water that we know is available and not going to be used by irrigators, we can apply it to those projects. We cannot do that unless we know how much water is available.

So the mechanism we are using is this water donation process, and we believe (as has already been demonstrated in recent times) that there is huge capacity, and a huge will, in the community to support a more sustainable river system. That, I guess, can be quantified by the amount of water per year that is not actually used by irrigators. Central Irrigation Trust, for example, has an allocation over its nine districts and would use, on average, 80 per cent to 85 per cent of their allocation, so there is a significant amount of water available that just goes down through the system at the moment. A number of other irrigators use up to 100 per cent of their allocation but many others do not, and we believe this will provide them the opportunity to see their water work better for the river also.

On the matter of stamp duty, in the budget announcement last year under the intergovernmental agreement that the South Australian government has with the commonwealth in relation to the GST, stamp duty on water is scheduled to be removed by 50 per cent by 1 July 2009 and to be completely removed by 1 July 2010. I will, however, take on board the questions that the member has raised in relation to stamp duty, and stamp duty as it relates to water, and I will raise those matters with the Treasurer between houses.

I also point out that we have removed stamp duty on the transfer of water where the transfer is for not longer than five years, so it is a temporary transfer. That was an initiative introduced about four years ago, and it certainly provides an incentive for people to transfer their water on an annual basis. However, that does not carry through to permanent donations. However, there is an agenda for them to be removed in the long run.

I thank members for their contributions and look forward to seeing the benefits that this legislation will bring to not only irrigators because of the incentives that they will receive if they participate in this program, but also the environment.

Bill read a second time.

In committee.

Clauses 1 to 3 passed.

Clause 4.

Mr WILLIAMS: The minister heard my comments regarding using regulations to do this. Why has the government chosen to go down this path rather than put all the relevant matters in the bill?

The Hon. K.A. MAYWALD: The idea of the legislation in the first instance is to provide the broad policy framework under which this legislation will operate. The regulations are necessary to provide a certain level of flexibility. As the member pointed out in his second reading remarks, the regulations also come before the parliament, and there is the opportunity for members to contribute to those, or there is a disallowance provision. The regulations are not about introducing major substantive changes: they are about providing the opportunity to have flexibility. If we had to go through the process of introducing legislation for every minor change that we wanted to make to tweak a policy direction, it would become unworkable in the system. We believe that so long as we have the broad policy principles in place, if there are concerns in relation to the regulations when they come before the parliament, they can be disallowed at that point in time. The parliament will have ample opportunity to have input.

Mr WILLIAMS: Notwithstanding the minister's explanation, I still have grave reservations, and I believe that the opportunity for the parliament to scrutinise regulations is far less, and it takes away from the parliament the opportunity to have a say in those—albeit more minor—policy settings. Notwithstanding that, I will move on, and I am sure that I will continue to make my point on this particular matter, and I am sure that I am not alone.

In her second reading speech, the minister talked about setting up a list of environmental donations, licences and associated proof that environmental watering projects will be maintained, and made publicly accessible by the department. It is interesting because only this week the minister made a ministerial statement in the house talking about a significant donation by the Foster's wine group which, I am sure, will be utilised once this bill is enacted. My understanding is that that particular donation is only for a short time, probably 12 months.

The first part of my question is whether that publicly available list will have in it the time for which the water is being made available, so that the public has the understanding that some licences, or portions of licences, will be made for a particular period? Also, what expectations does the minister have that SA Water will be making a major contribution through its unused allocations to this water fund?

The Hon. K.A. MAYWALD: That is an extremely good question, and I thank the member for MacKillop for that. All water donations, regardless of the time frame for which they are donated, will be on the register, and the time frame at which they have been transferred will also be indicated. The particular donation that the member refers to is a donation of 1 gigalitre of water from the Foster's wine company to a project on land adjacent to its vineyards. That is significant in itself, in that Foster's is donating this directly to the River Murray Environmental Manager for this year's watering. Foster's has indicated, however, that it recognises that there will be future years where water will need to be applied to the flood plain, and it has indicated that it will also consider doing this again in the future. Rather than commit the water for five years, Foster's wants to commit it to this particular project so, therefore, it is doing it on a temporary basis. It may not need it next year, it may not need it the year after, and Foster's may choose to do other things with that water in those years. So, this enables Foster's to have the flexibility to do what it wants to do with its water.

Also, if we get some extra flows down the river—it might naturally occur—we will not need to pump the water. So, Foster's has indicated that it is prepared to donate it for this year. Stamp duty does not apply on a temporary transfer, anyway, so this bill has no relevance to that particular transfer but, in two years, when the wetland may require watering again, it may have happened naturally, or Foster's may choose again to donate the water to that project.

Mr WILLIAMS: My final question has a couple of parts to it. The first part will not be a question. I noted in the minister's summation of the second reading debate that she indicated that she would cost the proposal that the opposition made about interfamily transfers. By way of explanation, I have at least one constituent who was involved in an interfamily transfer of a farming property, and the farming property had some irrigation activities. It happened a few years ago, but it did not come to the attention of the members of the family until about three years after that transfer that the water licence had not been included in the original transfer. When they went to change the name on the water licence, they were hit with stamp duty. I was able to assure them that, if they had picked that up at the time, and their conveyancer had advised them more properly about how to go about their business, they would not have had to pay the stamp duty on the transfer of the water licence. Notwithstanding that, and notwithstanding that it transferred at no cost, Revenue SA assigned a value to that water licence. I think that, at the time, they were liable for about $1 300 of stamp duty. They were very cross about it, and I was not very happy with the matter either.

I do not imagine that, in very many instances, that would happen, so I do not think the cost to the state would be significant at all. I imagine that, in most instances, the transfer under those circumstances would occur at the same time as the land, there would be one conveyance made, and it would be exempt under the land transfer clause that my colleague, the member for Hammond, raised in his second reading speech.

The other point about which I seek a bit more clarification is the minister's explanation as to the way in which the flows coming to South Australia and the total amount of water of the irrigation licences is released—obviously in a managed fashion—into South Australia. This bill, in fact, will enable the department, in a timely fashion, to know when water will be available through having an allocation itself. We will be able to extract water at various points along the river. This will indeed mean that less water will, in fact, flow down the full length of the river and get to the barrages.

You have not had the capacity to date to know how much water you could extract at some site that you wanted to pump water onto, or some river flat or flood plain, in the upstream reaches of the river, and, consequently, you lost that opportunity, and it all ended up in Lake Alexandrina. Am I right at least in saying that the net effect of this, in one way, through that extraction, by being able to better manage, will mean that less water will end up at Lake Alexandrina, particularly in the sort of years such as where having now, and have had the last couple of years, where we are hovering around our minimum flow levels?

The Hon. K.A. MAYWALD: The member makes a very valid point, and that is why we are managing this entire process through the River Murray Environmental Manager. There will be a statewide plan in respect of where we water, how we water, and we will ensure that we share that resource equitably. We also manage the levels of the lakes very carefully. We also include in our environmental projects the fish passageways at the barrages. The Coorong, of course, is also very important. In balancing all that, the projects to which we could apply this water would include the fish passageways at the barrages, or freshwater flows into the Coorong, depending on the statewide watering plan, the needs required, and the amount of water that is available.

The other thing to remember is that, in our minimum flows entitlement, and because we have really been running very close to the bone over recent years, we have actually discovered that the 1 850 gigalitres is just simply not enough if we have to maintain those low flows over consecutive years to sustain the system in South Australia. It is imperative that we get extra environmental flows back into the river over and above what we will achieve through this particular process. The process that we are using here is about better utilising the water we have in South Australia. This is not about getting extra flows into the river; this is better utilising the flows that we have. This is part of our commitment to getting the 1 500 gigalitres by 2018, and ensuring that, whatever drops we do get over the border, we manage them in the best possible way.

I would also like to make mention of the fact that SA Water has also made a considerable contribution this year. Five gigalitres of water has been applied from SA Water's allocation to keeping the fish passageways open for an extended period, and that has provided some really tremendous environmental outcomes. SA Water is very much a party to the government's objectives in respect of achieving a more sustainable River Murray. It does have headroom in its licence at times; other times it does not. We will be working with SA Water to maximise our opportunity to get the best environmental outcomes when water is available.

Clause passed.

Title passed.

Bill reported without amendment.

The Hon. K.A. MAYWALD (Minister for the River Murray): I move:

That this bill be now read a third time.

In conclusion, I thank all members for their contributions and the support of the house in regard to this legislation. We look forward to some significant benefits for the River Murray and its environs.

Bill read a third time and passed.

ADJOURNMENT DEBATE

The Hon. K.A. MAYWALD (Minister for the River Murray): I move:

That the house do now adjourn.

GLADSTONE EXPLOSION

Mr VENNING (Schubert): In this adjournment debate today, I wish to stand in my place and put on record all members' shock (I am sure) at the tragedy that has occurred at Gladstone. We extend our heartfelt sympathy to the Keeley, Harris and Millington families who lost loved ones, and also to the two men who are currently in hospital. As many members would know, I come from Crystal Brook, an adjoining town to Beetaloo Valley, where this explosion and subsequent loss of life has occurred. The Quin Investments factory is situated in picturesque bush country west of Gladstone.

This place is well-known to me. When I was in the national service, this area was an ordnance storage depot of the Australian Army, and I often called to collect missiles for the Royal Australian Artillery. It was quite a fortified place, with underground bunkers tucked away in the hills near Beetaloo Valley. It also had residential areas—beautifully maintained, bitumen roads, kerbing, etc.—as the common-

wealth government did. Back in the 1960s, the federal government let the site; it was taken over by private interests and, because of its fortification and isolation, it was ideal for an explosives manufacturing plant. I knew the original and current owner, Mr Nick Kuzub. He gave employment to many locals over many years. Many of these people were farmers or members of farming families, and I knew many of them.

It was with disbelief that I heard the news of this tragedy on Tuesday. How could this happen? I visited this facility on several occasions in its role as an explosives manufacturing facility, and I was always impressed at the strict code of operation in relation to working with explosives materials. My own son got an explosives licence, and some of the materials that he used came from this site. My understanding of these materials is that, whilst they are highly explosive, they need a high impact flash, usually from a detonator to ignite. How did it happen? Ammonium nitrate is explosive but it needs an accelerant—diesel, for example—to be ignited. Nitropill, which is all explosive, is usually very stable.

Three men have lost their lives and two are in hospital recovering. We wish them a full recovery. To the three families involved—the Keeley, Harris and Millington families—we are all shocked and in disbelief. I am aware of the Keeley and Harris families, as they are members of the Gladstone community. I have known the Millington family all my life. Kev Millington, the father of Darren, who is presumed dead but has not been found, has been a close friend of mine since my teenage years. He has given me good advice, particularly regarding my choice of partners over many years. He was a valued member of the local dance band and he observed who I was lucky enough to be with. He approved of my final choice. To Kevin and the Millington family, I extend my heartfelt condolences and good wishes. All three men were involved with the Gladstone Football Club—now called the Southern Flinders Football Club. I heard the president, Mr Geoff Brand, this morning on the local radio. This event has rocked the whole community, so much so that there will be no football anywhere in the northern area this weekend and the association match will also be cancelled.

To Danny Murphy, who so bravely saved Cameron Edson, you may have broken the rules—as the member for Finniss would know—but we are so pleased that you did because you got this guy out alive. It was unbelievable bravery. Well done, I say. I hope you are recognised, Danny. Also, to Damian and John, may you both make a speedy recovery. I hope that Darren can be found and that a reason is found for what happened. Was it the power surge that the community experienced a few moments before this explosion? I hope we can find out. Again, to the families of the three deceased men, and to the two in hospital, to their friends and workmates, we extend our heartfelt condolences.

We take our loved ones and comfort zones for granted. It is incidents such as this that remind us all of what is precious to us and where our priorities really ought to be. To the member for Frome, Rob Kerin, thank you for your representation on Tuesday on our behalf. I know how much it has affected you. You knew them better than I did. To the Premier, I welcome your announcement today of the $100 000 Gladstone Appeal. I urge everybody to support it. Again, the grief and loss is felt by us all. To the grieving families, grieve but realise that you do not do it alone. Our community will rally to help and comfort you. God's speed.

Honourable members: Hear, hear!

Motion carried.

At 4.27 p.m. the house adjourned until Tuesday 30 May at 2 p.m.