HOUSE OF ASSEMBLY

Wednesday 12 September 2007

The SPEAKER (Hon. J.J. Snelling) took the chair at 11 a.m. and read prayers.

OLYMPIC DAM

Mr HANNA (Mitchell): I move:

That this house establishes a select committee to examine and report upon—

(a) the adequacy of current arrangements for the storage and transport of waste arising from uranium mining;
(b) the impact of the proposed expansion of the Olympic Dam mine in terms of radioactive waste transport and storage;
(c) whether waste arising from uranium mining should be subject to the Environment Protection Act 1993; and
(d) any other relevant matter.

There is a general background to the introduction of this motion, and that is the boom in the uranium market world wide. Clearly, South Australia is playing a significant role in that. There is a lot of uranium oxide to be mined at the Olympic Dam site, otherwise known as Roxby Downs. When Roxby Downs was first established, it was approved by means of an indenture act. The Roxby Downs (Indenture Ratification) Act 1982 represented a deal between mining company interests and the government and, of course, part of that deal concerned what would happen with the waste products of the mining that took place there. It was understood then that there would be material which could be rendered into uranium through the relevant processing. It was considered at that time that it was appropriate to keep the monitoring of mining of radioactive materials out of the usual environmental process; therefore, section 7 of the Environment Protection Act 1993 specifically provides that the act is subject to the Roxby Downs (Indenture Ratification) Act 1982. Section 7 specifically states that the act does not apply in relation to wastes produced in the course of an activity authorised by lease or licence under the Roxby Downs (Indenture Ratification) Act.

The foremost environmental monitoring agency in South Australia basically has no right to go up to Roxby Downs and see what they are doing with the waste products which arise from mining radioactive materials. There is a national system for monitoring radioactive substances, including waste products, etc. I note that, in the indenture ratification act itself, the schedule insists that certain minor matters at Roxby Downs be subject to relevant codes of practice. The relevant codes of practice are the Code of Practice on Radiation Protection in the Mining and Milling of Radioactive Ores; the Code of Practice for the Safe Transport of Radioactive Substances 1990; the Code of Practice on the Management of Radioactive Wastes from the Mining and Milling of Radioactive Ores; and, of course, there may be recommendations from time to time from the National Health and Medical Research Council of Australia, the International Commission on Radiological Protection, or the International Atomic Energy Agency.

My concern is that these codes, which are overseen by a national agency, will not be able to pay sufficient attention to what is going on at Roxby Downs, especially with the huge expansion that is proposed for that mine. We are already shipping radioactive materials out of there and there is going to be a lot more of it. The other new factor, or relatively new factor, that has come into play in the last couple of years is the threat of terrorism. Clearly, the Prime Minister and the national government have expressed concern about the risk of a terrorist attack in Australia. I am as concerned as anyone else about that prospect, and I do not think I am giving anything away to suggest that the seizure of radioactive materials could be a part of some terrorist act because of the threat that could then be made in relation to how that radioactive material might be disposed of.

We live in times when there is a heightened awareness of the risks of material which is inherently dangerous to humanity. That is why I have suggested that we need a committee of this parliament to examine and report upon the adequacy of the current arrangements for the storage and transport of waste arising from uranium mining. The motion that I have moved is, in effect, a set of terms of reference for a parliamentary committee which I think are fairly straightforward.

We need to know the impact of the proposed expansion of the Olympic Dam mine in terms of radioactive waste transport and storage. To what extent are we going to have trucks on the road or railcars full of radioactive waste? In general terms, where is it going and what are we going to do with it? The vexed issue of storage will be the subject of political debate in years to come. There are those who say that there should be a national repository for nuclear waste but, of course, every particular community says that it does not want it in their own backyard.

In respect of the low-level radioactive materials that are stored around Adelaide and in the various capital cities as by-products of medical processes in hospitals and research processes in universities, for example, I believe it is quite adequate for storage of those materials to remain on site. At least that way the risks associated with transport are minimised, and each particular institution which produces such low-level radioactive waste will be well placed to know exactly what is there and how best to protect it on site. Indeed, that same principle may apply to the Olympic Dam mine area in itself.

At any rate, I think we need a South Australian agency to examine closely just what safeguards are in place at Roxby Downs. It is a thriving community of some thousands of people and, of course, there are many hundreds of workers involved. Occasionally we do hear of accidents or in some way people being exposed to radioactive waste. I think it is entirely appropriate for there to be a state agency to ensure the health of South Australians. With the prospect of increasing transport of radioactive waste out of the Olympic Dam region, we need a South Australian agency to examine whether all appropriate safeguards are being used, hence, the suggestion that the waste arising from uranium mining should be subject to the Environment Protection Act 1993. At least that way the state government gets a responsibility to make sure that we as the South Australian community know how much waste is being produced in general terms, where it is going, and that all possible safeguards are put in place. I thus commend the motion to the house.

The Hon. S.W. KEY secured the adjournment of the debate.

ECONOMIC AND FINANCE COMMITTEE: ANNUAL REPORT

Mr KOUTSANTONIS (West Torrens): I move:

That the 63rd report of the committee, being the annual report 2006-07, be noted.

I am proud to come to this chamber as a representative of the people of South Australia, who have symbolised throughout the world the fighting spirit of democracy. Two thousand years ago the proudest boast was, 'Civis Romanus sum'. Today, in the world of parliamentary oversight, the proudest boast is, 'Ich bin ein Economic and Finance Committee member'. There are many people in the world who really do not understand—or say they do not—what is the great issue in reviewing the emergency services levy proposals. Let them come to the Economic and Finance Committee. There are some who say that reviewing the audit and oversight of local government is unnecessary. Let them come to the Economic and Finance Committee. There are some who say, in Adelaide and elsewhere, that we can go without consideration of the proposal for a regular transport service for the city of Port Augusta under its obligations in the Passenger Transport Act 1994, sections 39(2a)(b) and (c). Let them come to the Economic and Finance Committee. There are even a few who say that it is true that the consumer credit regulatory environment is a necessary evil, but it permits us to make economic progress. Let them come to the Economic and Finance Committee.

Freedom has many difficulties and democracy is not perfect, but we have never had to table an unnecessary report just to keep our numbers up—to keep pace with the vanity of other committees. I want to say on behalf of my fellow members, some who live many miles away on the other side of the metropolitan growth boundary, who are far distant from you, that they take the greatest pride that they have been able to share with you, even from a distance, the story of the last 12 months. I know of no committee, no panel, that has been besieged for 12 months that still works with the vitality and the force, the hope and the determination of the Economic and Finance Committee.

The committee's reports into the emergency services levy, local government audit and oversight and the inquiry into consumer credit and investment schemes, are the most obvious and vivid demonstration of the success of the committee system for all the world to see, and we take satisfaction in it, for it is an ornament not only to history but also to humanity. What is true of this committee is true of South Australia. Real, lasting peace in the state can never be assured as long as even one citizen is denied the elementary right of free men, and that is to read the committee's report as to the allocation of the Sport and Recreation Fund pursuant to section 73A(4) of the Gaming Machines Act 1992.

In 18 hours of meetings, the Economic and Finance Committee has earned the right to be free, including the right to report its attendance at the Australasian Council of Public Accounts Committees in April this year. We live in a defended island of freedom, but our life is part of the main. So, let me ask you, as I close, to lift your eyes beyond the tedium of today, to the hopes of tomorrow, beyond merely the Economic and Finance Committee, or your country, to the advance of freedom everywhere, and beyond the annual report 2006-07 to the day of peace with justice, beyond yourselves and ourselves to all mankind.

Freedom is indivisible, and when one man is enslaved, all are not free. And so the committee has undertaken to improve its staffing arrangements to the mutual benefit of the committee and the secretariat. For, when all are free, then can we look forward to that day when this state will be joined as one—with this country and this great committee—in a peaceful and hopeful globe. When that day finally comes, as it will, members of the Economic and Finance Committee can take sober satisfaction in the fact that they were in the front lines for the past year. All free men, wherever they may live, are members of the Economic and Finance Committee. And, therefore, as a free man, I take pride in the words 'Ich bin ein Economic and Finance Committee member'. I commend this report to the house.

Mr GRIFFITHS (Goyder): On behalf of the opposition, I will reply in a few words as a member of the Economic and Finance Committee. I am quite impressed by our presiding member's complimentary speech about our work over the past year.

An honourable member interjecting:

Mr GRIFFITHS: It was Churchillian, yes.

An honourable member interjecting:

Mr GRIFFITHS: I know. I thought it was more than 18 hours that we served during the year but, obviously, he has added it up and that is what it worked out to be. The Economic and Finance Committee was the committee that I wanted to be on when I entered this place, because I thought that it controlled things. I have since found out that it is a little bit of a different story to that, but I have enjoyed my time there. I commend the presiding member for his fairness in running our meetings; he is quite happy to ensure that we, in opposition, are given every opportunity to talk about any matter important to us. We do not necessarily win the votes but we are given the chance to express our views.

The Hon. R.G. Kerin: Have you won a vote yet?

Mr GRIFFITHS: No, we have not.

Mr Pederick: Do you have to get all the coffee and tea?

Mr GRIFFITHS: No, that is always provided. We make sure that refreshments are there. The member for Mawson has had some concerns about the quality of the morning tea, but I am sure that is being addressed. It is a good committee that works well.

I want to focus briefly on two reports—the one that has been presented and the one that will come through in a few months' time. I think the local government report was necessary because it frustrated the life out of me that, every time we sat down, the first 15 minutes probably was taken up talking about local government. Those in government were not necessarily supportive of what local government was trying to do and the challenge eventually was presented that, instead of our wasting our time sitting there talking about it so much, we should actually do something.

So, we have done that. We received a variety of submissions from people from across the state, including the regions. They also have significant concerns with local government, and I know that the report has gone through to the Minister for State/Local Government Relations about that. It demonstrates that the committee can actually serve a purpose and that it needs to take on more of a challenge. As a member who covets this role, I think that we should take on a lot more work in the future. We have had a committee meeting this morning at which we talked about staffing arrangements in the future. I have no problem in supporting that, but I would like to make sure that at future meetings we sit down and talk about challenging issues.

The consumer credit inquiry that we have been undertaking has been one such challenge. It has allowed us to understand (those members who have not been exposed to it before) that a lot of financial transactions occur out there that

should be worrying for many members in this house. People are being financially disadvantaged; admittedly, it is probably an educational issue, but they are entering into contracts to borrow money and to repay sums that, in many cases, are beyond their means. However, because they do not understand the full implications of what they are agreeing to, they are being caught out. I am looking forward to that report being submitted to the house.

Paul Lobban, who is our executive officer, has done a good job. I enjoyed the opportunity of attending a conference in Canberra with Paul in April. Unfortunately, our presiding member was unable to be there due to ill health, so I represented the committee and I enjoyed the opportunity to talk with other committees from across the nation and overseas about financial accounting issues that were important to them. It was an enormous learning opportunity for me, and I am looking forward to South Australia's hosting that function next year; I am sure that our presiding member will be a very generous host to all the states and nations that are represented and that he will put South Australia in a good light. I commend the report of the Economic and Finance Committee to the house, and long may the committee prosper.

Mr RAU (Enfield): I join with my colleagues in congratulating the chair of the committee on his address today. It was inspiring, moving and also, I must say to other members, typical of the level of contribution that we have become accustomed to from our presiding member in committee meetings; it just shows you the sort of standard that is being set by this committee. All the members of the committee have worked in a very positive and cooperative fashion, and I congratulate both government and opposition members on the very constructive way that they have approached the activities of the committee over the past year. I join the member for Goyder in noting the excellent support we have had from Dr Paul Lobban, who has been an excellent secretary of the committee, and who has provided great support to all committee members.

The member for Goyder touched upon a couple of matters that we have looked at and, like him, I believe that those issues have been important to members of the committee. The local government matter, as members possibly know, is a field of interest to me, and it occurs to me that, having considered the matters that have been put before the committee and the matters that have come to my attention during that time and since, there is a further gap in the Local Government Act which should at least be considered for closing, if I can put it that way.

The Local Government Act provides for detailed examination of the conduct of members of a council and for consideration of allegations of misconduct against members (that is, elected members) of a council, and sections 272 and 273 of the act provide for the council as a corporate body to be the subject of an investigation, and under section 273, subject to the recommendations made by the investigator, the minister may do any number of things, including putting an administrator into a council. It does, however, concern me that, if the problem a council has is not such a serious problem as to warrant an administrator being placed in control of the council, but nevertheless involves serious and wilful misconduct on the part of individual employees of a council, there is no remedy at all under the Local Government Act to deal with those employees.

Presumably that vacuum exists because it was thought by the drafters of the legislation in the first place that the council would be perfectly capable of resolving its own internal management issues. The problem is that, if the people who are being looked upon to resolve the internal management issues of the council are in fact the ones causing the trouble, it is unlikely that they will rectify their own defaults. There are examples—which I need not go into, so as not to bore everybody—of councils where the very people who would be charged with the responsibility of inquiring into the behaviour of miscreant employees of the council, including very senior ones, are in fact the same people making the mistakes, breaching the act or doing bad things. It is unfortunate that at the moment the legislation does not easily provide a mechanism whereby these employees of councils can be subject to scrutiny.

The legislation is fine if you have an elected member who has gone off the rails, as it provides a remedy for that. The legislation provides a remedy if the whole council as a body is dysfunctional: section 272, with the remedy provided for under section 273. However, if you have an individual or group of individual members of council who are either breaching the Local Government Act or in some other way acting inappropriately or even fraudulently, short of the criminal law being brought down on their shoulders (which is another difficulty, because who will investigate that?), there is no easy mechanism for the examination of the conduct of employees, and that is a very real problem if those employees are the very senior employees who one ordinarily would expect to inquire into the council itself.

You cannot expect a senior council officer doing the wrong thing to legitimately inquire into himself or herself and report himself or herself to the CEO—if indeed they are not already the CEO—for the fact that they are doing the wrong thing. I look forward to somebody giving consideration to that matter as it is a very real problem. However, I digress. I congratulate the presiding member for his speech and all my colleagues on the committee for their excellent work, and I look forward to another productive year on the committee.

The Hon. R.B. SUCH: The oratory we heard from the member for West Torrens could only be described as inspirational and aspirational, and I think it put Churchill in the shadows.

Mr Koutsantonis interjecting:

The Hon. R.B. SUCH: They are both also-rans compared with the member for West Torrens in his contribution.

An honourable member interjecting:

The Hon. R.B. SUCH: I believe that the Economic and Finance Committee could form the basis of a feature film, and I will try to think of a suitable title.

An honourable member interjecting:

The Hon. R.B. SUCH: Perhaps we could have a competition to find out what to call it. Seriously, however, it is a very important committee, as indeed are all our committees. In fact, I would like to see them resourced more adequately, although I do not know whether the government would agree on that. Our parliamentary committees do a great job with very modest and limited resources. I think that they could do an even better job if they were more generously resourced. They are not likely to get the resourcing level of federal parliamentary committees. The federal committees are generously resourced, and that is reflected in the time in which they can prepare reports and in the thoroughness of those reports.

A couple of issues arise in relation to our committees. There are some inequities in terms of who gets paid what for

being on committees. I believe that if you do extra work you should get extra pay. That is a fundamental industrial relations principle. I think that, in all fairness, if someone is being paid to be on a committee but does not fulfil their function—and I am not talking about someone who has an occasional illness—their payment should be reduced. I think that is a deficiency in the present provisions. I have been on committees where some members have made virtually no contribution, yet they still get paid. There has been a breach of their duty, and I think the system should be looked at in terms of rewarding those who do their job rather than rewarding those who do not.

The Economic and Finance Committee has always had the tag of being a powerful committee; all committees of the parliament are powerful, but it is a phrase which has particularly appealed to Greg Kelton from *The Advertiser*.

Members interjecting:

The Hon. R.B. SUCH: Members are suggesting that it should be modified to 'all powerful'. I think some members of the committee might be getting a bit carried away with themselves. However, it is certainly a powerful committee. When I was on the Economic and Finance Committee—which was a while ago—we used to make the then catchment boards jump through the hoop in relation to very small amounts of money. They had to justify every little thing they did. I think the worst sin that we discovered involved members of a catchment board having several meetings during the one night and claiming attendance money for each of those meetings. I know that catchment boards are now part of the NRM and come under the NRM committee, but a more significant point to make is that I would like to see the Economic and Finance Committee put some of the major government departments through the hoop.

If we look at education and health—and I am not suggesting that there is anything necessarily wrong in those departments and the billions of dollars they spend, we see that it is far more significant than used to be the case in relation to catchment boards. I believe—and have argued for a long time—that our current estimates committee process is very inadequate, costly and time consuming. I think that the parliament could do the overview assessment of government expenditure in a much more efficient and effective way, and the Economic and Finance Committee could have a bigger role in looking at how some of the big agencies in particular—and some of the not so large ones—spend taxpayers' money. I think that there would be enormous savings for the community as a result of that.

Members would be aware that I, along with the member for Enfield, have argued for greater scrutiny of local government. It is not a question of picking on local government but, at the moment, I think that there is a deficiency. I have spoken with the former Auditor-General, Ken MacPherson, who acknowledged that there was no way that he, as Auditor-General, could have picked up some of the inappropriate behaviour that occurred albeit on an infrequent basis amongst a minority of councils, because he did not have that authority. I think that the Auditor-General should have that authority, and the Economic and Finance Committee should have general oversight of financial and other activities within councils. Councils are resisting that, but I think that they are out of step with the community and most of the members of parliament.

I have also argued—and I will not transgress because I have legislation before the parliament—that one of the deficiencies in the committee system at present is that we are lucky if we are looking at a current issue—normally we are looking at a historic event or activity. We should put more effort into looking into the future, and that is why I have argued strongly for a foresight committee. Other countries, such as Germany, Japan and the United Kingdom, have a foresight committee which is based in the Public Service, although I think it is better to base it in parliament. If we had what other countries have, we would have avoided some of the current problems in relation to providing a guaranteed water supply for Adelaide and South Australia. Likewise, we would be preparing for an ageing population. We would be looking at new developments in science and technology in advance rather than looking at what has happened today or yesterday—which inevitably is what happens under the current committee structure.

I commend the work of not only the Economic and Finance Committee (which is the subject of this motion) but also all the other committees. I think it is probably time that the government had a look at the equity or otherwise of payments to members on committees to ensure that everyone is treated fairly and rewarded appropriately for the effort they put in. I would like to see a significant increase in the capability of committees so that they can do their job more expeditiously and thoroughly than is the case at present. I join with the chair of the Economic and Finance Committee and all members of this house in applauding the work of not only the Economic and Finance Committee but also all the other committees that serve the parliament and, more importantly, the people of South Australia.

Mr GOLDSWORTHY (Kavel): I am pleased to speak to the tabling of the 2006-07 annual report of the Economic and Finance Committee. As other members have outlined to the house, several reasonably interesting topics were investigated during the course of the 12 months, including inquiries relating to local government and consumer credit, and I would like to focus on those two inquiries, concerning which we heard evidence from a range of interesting and informative witnesses. The member for Enfield has quite strong views about the way in which local government should be dealt with in terms of expanding the role of the Auditor-General to investigate local government governance issues and other related matters. I must admit that it is my opinion—and I have said this in the house previously—that there is an expanded role for the Office of the Auditor-General into local government.

I do not think it is necessarily correct that two spheres of government—federal and state—have an independent office to perform an audit function which reports to the parliament—not the government but, rather, the parliament—and the other sphere—local government—does not have the same level of audit and investigatory process. I am aware of the systems that are currently in place in terms of auditing and overviewing the affairs and operations of local government. I think that, in respect of the level of funding that the local government sphere deals with, there is a strong argument for another level of overview and audit, and I think that the Auditor-General's office is the right department to perform that function.

Another matter we looked at, and one on which we are still progressing the work, is the consumer credit inquiry. I have some understanding of this matter, having had a background in banking before I came into this place. As I have said to the house on numerous occasions, I was a bank manager, so I understand the principles, the systems, the

protocols and the procedures behind lending money and, on the other side of the ledger, borrowing money. In the course of our inquiry into this issue, it was quite clear that there are quite big gaps in the current arrangements in consumer credit land. A range of people from the industry gave evidence, and the police talked to us one day about activity they believed was untoward in relation to the lending industry. I think that we need to close some of those gaps, and I am aware that the Minister for Consumer Affairs is currently undertaking some work along those lines. That is a positive step, and we will certainly look with interest at the recommendations from the minister in that context.

Picking up on a couple of points raised by the member for Goyder, whilst these two major inquiries we have undertaken over the past 12 months have been worth while, we are not really getting into any of the nitty-gritty of the conduct of the state government itself, and there are a couple of issues which were raised by opposition members and which we were keen to investigate; one concerned chief executive contractual affairs within Transport SA, and we were keen to look at issues surrounding those matters. However, government members (who obviously hold the majority of the votes on the committee) did not wish that to proceed.

So, it is quite clear that the government does not want investigated any controversial issues, anything that might embarrass it, or anything that might be a little bit tricky. Going on from that, it basically stymied the role of the committee, particularly the Economic and Finance Committee; I cannot speak for other committees of the parliament. It is quite clear that the edict has come down from on high that the government does not want any controversial or potentially controversial matters explored by the committee. You could contrast that with the 1997-2002 parliament (the term before last), when the committee constituted not only government and opposition members but also an Independent member, who at times would support the opposition's need to investigate some affairs. Obviously, that spilled over into the parliament and formed the basis of some quite controversial matters discussed in the house. That is in quite stark contrast with the composition of the committee at the moment and the issues we are allowed by the government to investigate.

I also want to join with my parliamentary colleagues in congratulating Dr Paul Lobban, our secretary/executive officer, for his outstanding work and for the support he provides to the committee. I think our staffing structure is good, and we undertook to contract in a research officer when we require the duties of that person. I disagree with the comments made by the member for Fisher saying that the committees are not adequately resourced; I think the structure we have in place for the Economic and Finance Committee, in terms of resourcing, is quite satisfactory and that the arrangements we have in place have worked very well.

With those remarks, I support the report. I am pleased to be a member of the committee, the all-powerful Economic and Finance Committee—although over the last 12 months it has not been powerful at all, in view of the fact that it has not really looked at anything that is potentially controversial or embarrassing to the government. I look forward to some perhaps more robust investigations in the ensuing 12 months.

Motion carried.

ABORIGINAL LANDS PARLIAMENTARY STANDING COMMITTEE: MUNICIPAL SERVICES FUNDING

The Hon. J.W. WEATHERILL (Minister for Aboriginal Affairs and Reconciliation): I move:

That the report of the committee on an inquiry into the impact of Australian government changes to municipal services funding upon four Aboriginal communities in South Australia be noted.

The Australian government's Department of Families, Community Services and Indigenous Affairs (FaCSIA) plans to cease municipal services funding to 31 Aboriginal community councils and organisations across the country from 31 December 2006. Each of the 31 communities is located within a local government area and five of these communities are located in South Australia, namely, Davenport Community Council within the local government area of Port Augusta, the Umoona Community Council within the local government area of Coober Pedy, Raukkan Community Council within the local government area of Coorong, Koonibba Community Council within the local government area of Ceduna, and Point Pearce within the local government area of Yorke Peninsula.

The matter was raised in this place on 20 June 2006 by the member for Morialta. At that time I expressed my grave concerns both about the policy and the way in which it was to be implemented, and I wrote to minister Brough in September 2006 outlining the significant concerns expressed by both Aboriginal communities and local councils regarding the changes and the way in which they were to be implemented. I asked for FaCSIA officials to meet with representatives of the local communities and the state government to agree on any future arrangements. In particular, I was concerned about cost shifting, cuts to funding, the governance, and loss of services to communities. Many communities expressed to me their dire concerns about the future existence of their communities without this funding. It seems to me that the commonwealth cannot credibly demand more of Aboriginal communities while, at the same time, removing their funding; I believe it is setting them up to fail. It is disingenuous to say to Aboriginal communities that they should take charge of their own affairs and then not provide them with the wherewithal to carry out those responsibilities.

Whilst the commonwealth initiated discussions with state and local government at this point, local Aboriginal communities continued to tell me that they were not being included. Local councils were similarly concerned about the changes and about the exclusion of some Aboriginal communities from discussions; I note that councils such as the District Council of Coober Pedy informed commonwealth officers they would not meet with them without the representatives of the Umoona Aboriginal community present, and I commend the leadership of Coober Pedy council for taking a stand with this inclusive approach.

I wrote again in November 2006, urging minister Brough to ensure that local Aboriginal communities were included in the process. By 1 January 2007, agreements had not been reached with all communities and it became unclear what would happen to their funding. In particular, Umuwa, Raukkan and Davenport communities gave evidence to the committee that they had only received partial funding. Around this time, communities were informed that the full changes would come into effect on 30 June 2007. After having received no satisfactory response to my concerns and the legitimate concerns of both Aboriginal communities and

local councils by February 2007, I requested the Aboriginal Lands Parliamentary Standing Committee inquire into how the changes to Australian government municipal services funding have affected those communities.

In accordance with section 6 of the Aboriginal Lands Parliamentary Standing Act, as Minister for Aboriginal Affairs and Reconciliation I asked the committee to examine the ability of Aboriginal communities to undertake governance functions under the new arrangements and how this affects the provision of other services to the community. I wrote again to minister Brough in March and May 2007 asking him to reconsider his approach and again offering the support of my agency in facilitating a resolution. On 30 May 2007, I wrote a joint letter with Sid Waye, Chair of Davenport Aboriginal Community Council, and mayor Baluch of Port Augusta council to minister Brough urging him to reconsider his position. I also note that, in May this year, the Uniting Church went public on this issue with Gregor Henderson being reported as saying that cuts to municipal services would further marginalise Aboriginal South Australians.

I must pay credit to Mal Brough, despite the uncertainty of this policy, because he has managed to create a unified team out of the South Australian Labor Party, Joy Baluch, the Port Augusta Aboriginal community, the Uniting Church, the Liberal Party and Family First. I cannot recall a time when there has been such unanimity of purpose.

Mr Pederick: What a visionary!

The Hon. J.W. WEATHERILL: That is right. But, to be fair to Mal, he did say on 1 March:

> . . . to be frank I don't think we have handled this. . . as well as we could have. I think we could have had certainly better consultation.

I think that is a statement with which everyone agrees. Nonetheless, the minister had not changed his position. I wrote to him again in June and August, urging him to take responsibility for the consequences of this policy change and requesting further details on his intentions.

In the meantime, the Aboriginal Lands Parliamentary Standing Committee commenced its inquiry. Over the course of four meetings from 28 May to 18 June 2007, it heard evidence from 21 witnesses representing Aboriginal community councils, Aboriginal Community Development Employment Projects (CDEP) organisations and local government councils. The witnesses appearing before the committee raised with clarity and concern many current and emerging issues in relation to:

- employment;
- governance;
- service delivery;
- community viability and morale; and
- the consultation process with the Australian government.

Their evidence (summarised in the inquiry report) describes in detail the profound effects that the changes to municipal services funding are having, and will have, upon their councils and communities. Yet, during the course of the hearings, neither the committee nor the witnesses were able to understand a clear policy rationale for the changes which needs to be clearly articulated to all stakeholders.

These funding changes have caused significant employment losses within community councils. They have caused great distress and uncertainty in the affected communities. Witnesses have described the changes as occurring suddenly, without adequate consultation, transitional planning or exit strategies to manage the change process. The changes are not fully understood, nor have they formally been agreed to by community councils. With the loss of employment and the loss of administrative and management support to community councils, their functionality and governance capacity has been seriously threatened to the point where three of the four councils are struggling to find the resources to govern and lead their communities. This has negatively impacted upon the ability of outside agencies to engage with communities.

The committee heard that community councils have compensated for funding losses out of their own community reserves, resources and revenue by paying for redundancies from council savings, maintaining the office with community volunteers and using much needed rental income to pay wages. With the loss of employment and governance capacity, municipal service delivery by community councils has been greatly reduced. With only weeks before the changes to be implemented, all councils (local government and community) stated that they still do not know who will be delivering, what services, when and how. Witnesses stated the urgent need for timely, consistent and clear communication, culturally respectful and inclusive consultation and sufficient transitional planning to address the issues and adjustments needed to manage the change process positively into the future.

From their evidence, these communities feel confused, disrespected and disengaged from the change process and fear for their future survival. They acknowledge the need for change. I think that is an important point. No-one was saying that they did not believe that change needed to occur. They simply wanted to be in partnership with those changes. Their many positive stories attest to their communities' strengths, achievements and abilities, and their important contributions to the social and cultural harmony of the wider regional community. The committee has recommended in the report that the Australian government:

- defer the implementation of changes to municipal services funding due to commence on 1 July;
- commit to quarantine the funding identified for each community prior to any of the earlier funding changes;
- develop transitional plans for each community in joint consultation with all stakeholders;
- ensure timely, clear and culturally respectful consultation and agreement with all affected communities; and
- adopt the Key Principles in Municipal Services Funding Negotiations as agreed by the chief executive officers of the five affected local government councils.

The report was forwarded to the Minister for Indigenous Affairs on 28 June 2007. The committee received a written response from the Hon. Mal Brough on 20 July in which he advised that there would be an extension of the Australian government municipal services funding for a further year until 30 June 2008. He further advised that funding will be distributed through a range of state and local government authorities, local indigenous community organisations and the South Australian Aboriginal Lands Trust.

The commonwealth rationale for this policy change is still unclear. It appears that, despite the negative consequences for communities, the Australian government is sustaining its position. As it is plain to all, this matter has been complex and distressing to all those involved. Obviously, some work is still to be done. There is a reprieve, I suppose, for a further 12 months, but we still want to engage with the commonwealth during that period. I do, though, want to acknowledge the way in which the committee has worked on this occasion. It has dealt with the complex issue in a very short period of

time, and has, I think, been sensitive to the needs of the Aboriginal communities in question; and, in particular, the constructive and bipartisan nature of the committee on this occasion brings great credit to the committee's deliberations, and it achieved the outcome.

Frankly, if we had not been united I doubt whether we would have received the outcome we did in fact achieve. Finally, I would like to acknowledge the work of Sarah Alpers who plays a tremendous role on the committee. When we lost Jonathan Nicholls we thought we had lost a great resource to the committee and, of course, we did. However, Sarah Alpers has taken up that role and really done a fantastic job pulling together a report in a very short period of time. It was a bit of a baptism of fire for her and we very much value her work. I commend the report to the house.

Dr McFETRIDGE (Morphett): I rise to speak on this report not only as a member of the committee but also as the shadow minister for Aboriginal affairs. This is another example of how the Aboriginal Lands Parliamentary Standing Committee is a shining example of what can be achieved with bipartisan effort in this place for the betterment of the citizens of South Australia. The particular issues we have faced with the Aboriginal communities in Davenport, Umuwa, Raukkan, Koonibba and Point Pearce are historical. The initial foundation of some of these communities was based on church missions, and others seemed to be a good idea at the time.

Unfortunately, the outcomes produced have not been what we would all like to see. These communities have been struggling with many social and financial issues for a number of years now. They have done their very best under difficult circumstances to cope with the issues that surround Aboriginal communities. I do not wish to single it out, but Point Pearce is a shining example of how things can go wrong without the correct and proper support. Point Pearce, again, is having some financial difficulties. These communities are doing their very best. There are a number of historical reasons why the Aboriginal communities and Aboriginal people generally in Australia are still a long way behind achieving what should and could be considered to be a desirable lifestyle in this fabulous country.

The need to change is recognised by both the Aboriginal and the non-Aboriginal communities. These communities are located on the outskirts of major towns and, certainly, within district council areas. So, the district councils, on the surface, would have some responsibility for the delivery of municipal services. Historically, this has been carried out by members of the communities and funded by the federal government, in the main, at no small cost. I am constantly told that there are cultural reasons why this has to happen but, as I said, I think the reasons are more historical than cultural. I do not see why (and I hope no-one is offended by this) it takes two people to collect a rubbish bin from the back of a person's house in one of these communities when it takes one person to perform that task in a non-Aboriginal community. There needs to be an attitude change.

I have seen some light at the end of the tunnel with respect to these communities. They all recognise that there is a need and a reason to change for the better for everyone. Certainly, the full and frank discussions I have had with minister Brough and his chief of staff, and also with the head of FaCSIA in Canberra, have recognised the fact that this change has perhaps been implemented, or was being forced upon these communities, in a totally inappropriate manner. I seek leave to continue my remarks.

Leave granted; debate adjourned.

RAIL SAFETY BILL

The Hon. P.F. CONLON (Minister for Transport) obtained leave and introduced a bill for an act to make provision for rail safety and other matters that form part of a system of nationally consistent rail safety laws; to amend the Railways (Operations and Access) Act 1997; to repeal the Rail Safety Act 1996; and for other purposes. 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 Government is committed to the effective management and control of risks to improve safety performance in railway operations. High values are also placed on improving workplace safety, and promoting public confidence in the safety of rail transport. In line with its commitment and values, the Government has introduced this Bill which adopts the model national Rail Safety Bill 2006, developed by the National Transport Commission in consultation with rail organisations including the Australasian Railway Association and the Rail Tram and Bus Industry Union, and rail safety regulators across Australia, and unanimously approved by Transport Ministers through the Australian Transport Council.

In February 2006, the Council of Australian Governments also recognised the importance of a nationally consistent legislative framework for the regulation of rail safety across the national rail network and set timeframes over the next 5 years for the achievement of this and other road and rail regulatory reforms.

Safety regulation of the rail industry by Australian State and Territory governments is based on a co-regulatory model. Rail operators and infrastructure managers are required to gain accreditation from a State's or Territory's rail safety regulator before they may operate in that jurisdiction.

Nationally, rail organisations and rail safety regulators have identified the need for rail safety reform, including legislative reform in order to improve national consistency of rail safety regulation, and to reflect contemporary developments in safety regulation.

The rail industry makes an important contribution to the South Australian economy, with an estimated annual turnover of approximately $500 million for the commercial rail industry (freight and passenger sectors). Overshadowing the economic imperative, high profile fatal rail crashes like those at Glenbrook, Waterfall and more recently Lismore and Kerang interstate, and in South Australia at the Salisbury level crossing, have focussed government, industry and public interest on improving the current rail safety legislative framework in order to improve safety outcomes.

Development of the Bill

Development of the South Australian legislation to repeal the *Rail Safety Act 1996* and implement the model national Bill has involved consultation with relevant South Australian government departments and rail organisations. Various provisions have been amended in order to take into account feedback received from rail transport operators and the Rail Tram and Bus Industry Union.

In the interest of accountability and effectiveness of the legislation, the Government has committed to further consultation with rail and union organisations and government agencies on the supporting rail safety regulations when they are drafted, following Parliamentary approval of the Bill.

The Government would like to acknowledge the efforts of all who have contributed to this process to date.

Objects of the Bill

The Bill aims to provide for the safe carrying out of railway operations and management of risks associated with those operations, and to promote public confidence in rail transport. It will result in improvements to the existing co-regulatory approach to regulation and accreditation of rail organisations and will ensure that rail organisations, who are best placed to identify, assess and control risks by the most appropriate and cost-effective means, take primary responsibility for these processes.

Implementation and impacts of the national model legislation

The National Transport Commission prepared a detailed Regulatory Impact Statement on the model Bill, with input from jurisdictions and rail organisations. It indicates that the model Bill refines the existing co-regulatory structure and improves its effectiveness and efficiency in some key areas, rather than implementing major new regulatory requirements. The National Transport Commission's analysis of the model Bill indicates that some provisions will contribute to, at most, a minor to modest increase in business compliance costs. In other cases, it is anticipated that compliance costs will be reduced, in particular for rail organisations that are compliant with existing obligations. Improved regulatory harmonisation between jurisdictions will also lead to improved efficiency for South Australian rail industry participants accredited to undertake rail transport operations in other Australian States or Territories.

Importantly, the Bill will contribute to improved rail and workplace safety as well as protection of existing rail infrastructure, through implementation of the following key model provisions.

The Bill clarifies the criteria for and purpose of accreditation, which is to attest that a rail transport operator has demonstrated the competence and capacity to manage risks to safety associated with its railway operation, as opposed to the current requirement to demonstrate competence and capacity to comply with certain standards. This redefines rail safety legislation as a safety regime rather than an accreditation regime.

Rail specific rights and obligations are defined in a manner that is consistent with the *Occupational Health, Safety and Welfare Act 1986* (SA), which requires employers to ensure health and safety in the workplace so far as is reasonably practicable. For example, general duties are introduced for rail transport operators and other parties in the chain of responsibility, including designers, contractors and manufacturers, to ensure the safety of railway operations, so far as is reasonably practicable. The Bill also provides that Occupational Health, Safety and Welfare legislation will prevail to the extent of any inconsistency, and that an offender is not liable to be punished twice under both Acts for the same act or omission constituting an offence.

Contractors will no longer be required to become accredited operators. They will instead be subject to the general safety duty and be required to comply with the safety management system of the accredited rail transport operator to whom they are contracted.

The Bill strengthens requirements for rail transport operators' safety management systems, including consultation requirements in development of such systems. Referencing of standards will be rationalised, for example by removing the requirement to comply with the Australian Rail Safety Standards. Rather the key elements of the standard will be set out in the legislation. This change is in keeping with regulatory best practice and is anticipated by the National Transport Commission to result in general reductions in associated business compliance costs for organisations that are compliant with existing regulatory requirements, by improving the clarity and transparency of the regulatory system.

In addition, the Bill allows for approval of compliance codes. Compliance with an approved code will provide certainty for rail operators, and in particular smaller organisations, that they are deemed to have complied with certain regulatory obligations, while allowing them flexibility to determine the most cost-effective means of doing so.

Enhanced audit and enforcement powers and options will make a range of responses available to enforcement officers and courts, to suit the variety of situations they face in the regulatory environment and better tailor their responses to the circumstances of an alleged breach. These changes will be matched by enabling review of a slightly broader range of Regulator decisions, and improving existing review mechanisms. Provision is also made to enable better sharing and reporting of data and information that is already recorded regarding rail incidents and accidents.

Issues left to jurisdictions to regulate

In addition to the key model provisions, the model Bill is silent on some issues that are reserved to jurisdictions to regulate pending development of nationally agreed policy positions. This Bill therefore retains South Australia's existing legislative position in relation to independent inquiries into rail accidents or incidents and provisions relating to drug and alcohol offences and testing, with some revision and correction of anomalies. For example, a new provision regarding independent investigation reports into serious rail safety incidents or accidents will require the Regulator to make a copy of such a report available for public inspection.

The Bill also maintains flexibility for operators to determine the most cost-effective means of undertaking workplace testing in order to implement their alcohol and drug management program and fulfil their obligations to manage risks to safety associated with drug and alcohol use in the context of rail transport operations. It introduces a new offence of having a prescribed drug (consistent with the Road Traffic Act) in one's oral fluid or blood while carrying out rail safety work, provides for a rail safety worker to be required to submit to a drug or alcohol test following an accident or incident, and aligns better with the Road Traffic Act procedures and evidentiary presumptions where appropriate. These changes better reflect the seriousness with which the industry, the Government and the community view the management of such risks to safety in the rail environment.

Local variations

In many instances, the model Bill specifically provides that local variations are allowed. This flexibility has been used in drafting provisions including:

- Provision that the Crown is to be bound, but not subject to criminal liability, in accordance with local policy;
- Provisions for Ministerial exemptions, and delegation of the Regulator's powers;
- Retention of existing Ministerial power to set fees by publication in the Government Gazette;
- Retention of existing enforcement powers under the current Act in addition to those contained in the model Bill, including the power to enter a place in an emergency, give certain directions, and require a person to answer questions;
- Protection from incrimination, and provision of indemnities, in accordance with local policy; and
- Provision for disallowance of compliance codes by Parliament.

In addition, the Bill varies from some national model provisions in order to comply with this state's legislative drafting practice, legal requirements or policy, or in order to reduce the compliance burden on industry. Examples include:

- Requiring the Regulator to consult the Minister prior to waiving or refunding accreditation fees, in recognition of the Minister's responsibility for the rail safety budget;
- Enabling the Regulator to consider accreditation issued in another jurisdiction in determining whether a rail transport operator fulfils the criteria for accreditation in this state;
- Clarifying that regulatory obligations under the Bill may be fulfilled by materials or documents produced pursuant to other legislative requirements in order to avoid duplication of regulatory requirements;
- Enabling the Regulator to release part or all of a report prepared by an operator into a notifiable incident only if the release is justified in the public interest, including on account of issues of public safety, or justifiable on some other reasonable ground;
- Providing for interaction between public infrastructure managers and rail transport operators regarding works near railways, and empowering the Regulator to stop works likely to threaten the safety or operational integrity of a railway, based upon the existing Rail Safety Act provision;
- Adapting the non-core model clause that imputes offences committed by bodies corporate or employees to directors, managers and employers within those organisations to better reflect the existing Rail Safety Act provision and defences, including a requirement that the body corporate be found guilty of an offence before a director can be liable;
- Granting immunity for nurses who in good faith report an unfit rail safety worker, in addition to the model Bill provision of indemnity for medical practitioners, optometrists and physiotherapists; and
- Enabling *pro rata* refund of accreditation fees paid under the current Rail Safety Act by parties who will no longer require accreditation once the new Act comes into force.

Consequential amendments

The Bill makes consequential amendments to the *Railways (Operations and Access) Act 1997* in order to revise and relocate existing provisions relating to installation and operation of traffic control devices and giving of directions by authorised persons for the control of traffic to the Rail Safety Bill as they concern the safe operation of a railway.

Conclusion

This Bill is a product of significant cooperation, consultation and effort within South Australia and at the national level. It builds upon and enhances the existing South Australian co-regulatory scheme for regulation of rail safety, providing for improved safety of rail operations and workplaces, and increased confidence in rail transport safety. These outcomes will benefit rail organisations and the community alike. I look forward to receiving bipartisan support during the debate and passage of this Bill.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

The title of the Bill is the Rail Safety Bill.

2—Commencement

The date for commencement is to be set by proclamation.

3—Objects

The objects of the measure include to provide for improved rail safety and to manage and control risks associated with rail operations and to promote public confidence in rail safety.

4—Interpretation

This clause sets out the meaning of particular terms used in the measure. Some important terms include: ***corresponding law*** which means a law of another jurisdiction that corresponds to this measure or otherwise declared by the regulations to be a corresponding law; ***interface agreement*** refers to an agreement about managing risks to safety identified and assessed under Part 4 Division 4 of this measure that include provisions for implementing and maintaining measures to manage those risks and the evaluation, testing and revision of those measures, and set out the respective roles and responsibilities of the parties to the agreement and the procedures by which the parties will monitor compliance and review the agreement; ***notifiable occurrence*** which refers to an accident that has caused property damage, serious injury or death or something prescribed by the regulations to be a notifiable occurrence; ***rail infrastructure*** includes facilities like railway tracks, signalling systems, service roads, electrical power supply, buildings, workshops, depots and yards, but does not include rolling stock; ***rail infrastructure manager*** means the person who has effective control of the rail infrastructure (whether or not they are the owner); ***railway*** includes a heavy or light railway, monorail, tramway, or a private siding; ***railway operations*** includes the construction of a railway, tracks or rolling stock, and the maintenance, management, installation, movement or operation of rail infrastructure and rolling stock; ***railway tracks and associated track structures*** refers to things like tracks, sidings, bridges, tunnels, stations, tram stops and drainage works; ***rolling stock*** means vehicles that use rails and includes trains and trams, maintenance trolleys, monorail vehicles, carriages and rail cars, but does not include a vehicle designed to be used on and off a railway; ***rolling stock operator*** means a person who has effective management and control of the operation or movement of rolling stock on rail infrastructure (but not someone who merely drives the rolling stock or operates signals).

5—Declaration of substance to be a drug

The Minister has the power to declare a substance to be a drug for the purposes of this measure by notice in the Gazette.

6—Railways to which this Act does not apply

This measure does not apply to an underground railway used for mining operations, a slipway, a rail used to guide a crane, an aerial cable operated system, railways in amusement parks or other prescribed railways.

7—Ministerial exemptions

The Minister has the power to exempt persons from this measure or particular provisions of the measure, subject to conditions.

8—Concept of ensuring safety

A duty to ensure safety imposed by the bill requires a person to eliminate or reduce risks to safety to the extent reasonably practicable. Determining what is reasonably practicable will involve considering the likelihood of the risk eventuating, the degree of harm that may result, what the person knows about the risk, the ways available to eliminate or reduce the risk and the cost of doing so.

9—Rail safety work

Rail safety work includes driving, controlling or moving rolling stock; signalling and signalling operations; coupling or uncoupling rolling stock; maintaining, repairing, modifying, inspecting or testing rolling stock or rail infrastructure; installation of components in relation to rolling stock; design, construction, repair, modification, maintenance, upgrading, testing and inspection of rail infrastructure; installation or maintenance of telecommunications systems relating to rail infrastructure or the supply of electricity to rail infrastructure, rolling stock or telecommunications system; certification as to the safety of rail infrastructure or rolling stock; the development, management or monitoring of safe rail systems for railways and monitoring of passenger safety on a railway or any other work prescribed by the regulations. The regulations may also prescribe work that is not to be rail safety work.

10—Crown to be bound

This measure binds the Crown in right of the State and in all its other capacities so far as the legislative power of the State extends. No criminal liability attaches to the Crown itself (as distinct from its agents, instrumentalities, officers and employees) under this measure.

Part 2—Occupational health and safety legislation

11—Act adds to protection provided by OHS legislation

Occupational health and safety legislation will continue to apply and must be observed in addition to the provisions of the Bill.

12—OHS legislation prevails

If there is any inconsistency between the occupational health and safety legislation and the provisions of the Bill, the occupational health and safety legislation will prevail.

13—Compliance with this Act is no defence to prosecution under OHS legislation.

Complying with this measure will not of itself be a defence in any proceedings for an offence against the occupational health and safety legislation.

14—Relationship between duties under this Act and OHS legislation

Evidence of a contravention of this measure may be admissible in any proceedings for an offence against the occupational health and safety legislation.

15—No double jeopardy

A person cannot be punished twice in respect of conduct that is an offence under both this measure and the occupational health and safety legislation.

Part 3—Administration

Division 1—Rail Safety Regulator

16—Rail Safety Regulator

This clause makes provision for the appointment of a Rail Safety Regulator (the Regulator) by the Minister, either as a specified person or someone who holds a particular office and may be a public servant.

17—Functions

The Regulator's functions include the administration, audit and review of the accreditation regime set up by this measure. The Regulator will also work with rail transport operators, rail safety workers and other persons involved in railway operations including interstate Rail Safety Regulators, to improve rail safety in South Australia and nationally. The Regulator's role also involves the collection and publishing of information and the provision of advice, education and training in relation to rail safety, as well as monitoring, investigating and enforcing compliance with this measure.

18—Annual report

The Regulator is required to provide the Minister with an annual report about his or her activities under the measure, to be laid before both Houses of Parliament. The report will include information on the development of rail safety, information on any improvements or changes and anything required by the regulations.

19—Delegation

This clause permits the Regulator to delegate his or her functions or powers in writing, with or with out conditions. This does not prevent the Regulator from acting in any matter and is revocable at will.

20—Ministerial control

The Regulator is subject to the general control and direction of the Minister in connection with administrative matters associated with the activities of the Regulator under this

measure. However, the Minister may not give a direction in relation to the requirements for accreditation, or a particular rail transport operator or rail safety worker, or in relation to dealing with a particular circumstance, incident or event, or so as to suppress information or recommendations associated with reporting under this measure.

21—Regulator may exercise functions of authorised officers

This clause gives the Regulator the power to exercise any function conferred on an authorised officer under this measure or the regulations.

Division 2—Authorised officers

22—Appointment

This clause provides for the appointment of authorised officers by the Regulator. This may be done by specifying a class of persons by notice in the Gazette as authorised officers. For example, South Australian police officers or rail safety officers of another jurisdiction. An authorised person need not be a government employee. The appointment of an authorised officer may be subject to conditions which, for example, limit the functions that may be exercised or the circumstances or manner in which functions may be performed.

23—Reciprocal powers

This clause operates in relation to other sates or territories that may have in force, rail safety legislation that corresponds to this measure. The Minister may enter into an agreement with the Minister of that other jurisdiction such that South Australian authorised officers may exercise functions conferred on rail safety officers of the other jurisdiction and vice versa.

24—Identification cards

Authorised officers are to be issued with identification cards by the Regulator.

25—Possession of identification card

Authorised officers must not exercise a function until they have been issued with an identification card.

26—Display and production of identification card

When exercising a function, an authorised officer must display the identification card if he or she is not wearing an approved uniform or badge, in which case he or she must produce it on request.

27—Return of identification cards

A person who has ceased to be an authorised officer must return the identification card to the Regulator. Failing to do so may result in a maximum fine of $750.

Part 4—Rail safety

Division 1—General safety duties

28—Safety duties of rail transport operators

A rail transport operator (which includes a rail infrastructure manager and a rolling stock operator) has a duty to ensure the safety of the operator's railway operations as far as reasonably practicable. Failing to do so may result in a maximum penalty of $300 000 for a body corporate or $100 000 for a natural person.

Subclause (2) sets out the sorts of things that may constitute an offence by an operator. For example, failing to develop or implement safe systems for carrying out the operator's railway operations; failing to ensure that the rail safety worker doing the work is competent or of sufficient good health and fitness or unimpaired by alcohol or drugs; failing to ensure that a rail safety worker complies with the operator's fatigue management program; failing to provide adequate facilities for persons at the operator's railway premises; or failing to provide safety workers with the necessary information, instruction, training and supervision.

Subclause (3) sets out the sorts of things that may be a contravention of the duty by a rail infrastructure manager. For example, failing to ensure that the design, construction, commissioning, use, modification, maintenance, repair, cleaning or decommissioning of the manager's rail infrastructure is done in such a way as to ensure the safety of the railway operations; or failing to establish systems and procedures for the scheduling, control and monitoring of the railway operations so as to ensure safety of the operations.

Subclause (4) sets out the sorts of things that may constitute an offence on the part of a rolling stock operator. For example, failing to provide or maintain safe rolling stock; or failing to ensure that the design, construction, commissioning, use, modification, maintenance, repair, cleaning or decommissioning of rolling stock is done safely; failing to comply with rules and procedures for the scheduling, control and monitoring of rolling stock established by the manager; failing to establish and maintain equipment, procedures and systems to minimise safety risks to the operator's railway operations, or failing to make arrangements to ensure safety in connection with the use, operation and maintenance of the operator's rolling stock.

29—Duties of rail transport operators extend to contractors

This clause provides that the duty of the rail transport operator to ensure safety extends to a contractor of the operator who undertakes railway operations in relation to the rolling stock or rail infrastructure of the operator.

30—Duties of designers, manufacturers, suppliers etc

This clause places a duty on a person who designs, manufactures, supplies, erects or installs something that he or she is aware will be used as or in connection with rail infrastructure or rolling stock, to ensure that it is safe to use for that purpose. The person must carry out any necessary tests or examinations to ensure that this is the case and to take such action to ensure that information is available about the use of the thing, the results of any testing or examinations and any conditions that are necessary to ensure that the thing is safe. Failing to satisfy this duty may result in a maximum penalty of $300 000 for a body corporate or $100 000 for a natural person.

Subclause (3) provides that a person who is merely financing the acquisition of a thing on behalf of another person is not bound by this provision as a supplier, but the duty applies instead to that other person. A person who decommissions any rail infrastructure or rolling stock must ensure that it is carried out safely and must carry out any testing or examinations to ensure compliance with this duty. Failing to comply may result in a maximum penalty of $60 000 for a body corporate and $20 000 for a natural person.

Division 2—Accreditation

31—Purpose of accreditation

This clause sets out the purpose of accreditation of a rail transport operator in relation to railway operations under the measure as being to attest that the operator has demonstrated the competence and capacity to manage risks to safety associated with those railway operations.

32—Accreditation required for railway operations

A person must not carry out railway operations unless he or she is a rail transport operator who is accredited under this measure or is otherwise exempt from compliance under this measure, or is a person who is carrying out those operations on behalf of an operator who is accredited or exempted. There is a maximum penalty of $300 000 for a body corporate and $100 000 for a natural person for breach of this provision. The requirements of this clause do not apply to a rail safety worker who is not a rail transport operator, but is carrying out rail safety work on behalf of an accredited or exempted rail transport operator.

33—Purpose for which accreditation may be granted

Accreditation may be granted to a rail transport operator for carrying out railway operations for a specified part or parts of a particular railway; for any service or aspect of railway operations specified; or for specified railway operations to allow site preparation, construction of rail infrastructure, restoration or repair work, testing of railway tracks or other infrastructure, or other activities that the Regulator considers appropriate. Accreditation may be granted for a specified period of time.

34—Application for accreditation

This clause provides for a rail transport operator to apply to the Regulator for accreditation in relation to specified railway operations. The application must specify the scope and nature of the railway operations and must include a safety management plan, and must state whether or not the applicant is accredited under a corresponding law. The application must also include any information required under the regulations and must be accompanied by the prescribed application fee. The Regulator may require further information or verification of any information supplied by statutory declaration.

35—What applicant for accreditation must demonstrate

Before granting accreditation, the Regulator must be satisfied (having regard to relevant guidelines) that the applicant is, or will be, the rail infrastructure manager or rolling stock operator in relation to the relevant railway operations and that the operator has the capacity and competence to manage safety risks and to implement the proposed safety management system. The applicant must also demonstrate he or she has the financial capacity or adequate insurance arrangements to meet potential accident liabilities and that he or she has also met the consultation requirements under this measure and any requirements under the regulations. In determining whether an applicant satisfies some of these requirements, the Regulator may take into account the fact that an applicant holds accreditation under a corresponding law.

36—Regulator may direct applicants to coordinate and cooperate in applications

Where in the interests of safety it is necessary for rail transport operators to coordinate their applications for accreditation, the Regulator may direct the applicants in writing to do so. A direction may include a requirement that the operators provide each other with information about their railway operations relevant to risks to safety. Reference to such information must then be included in the application. There is a maximum penalty of $15 000 for failing to comply with a direction of the Regulator or for failing to refer to the information.

37—Coordination between Regulators

If the Regulator receives an application for accreditation or variation of accreditation and the applicant is accredited or is seeking accreditation under a corresponding law of another State or Territory, the Regulator must consult with the relevant corresponding Regulator about the application to ensure consistency with the way in which the application is dealt, taking into account any applicable guidelines.

38—Determination of application

The Regulator must give written notice granting or refusing the application generally within 6 months of receiving the application. A notice granting the application must specify the prescribed details of the applicant and the scope and nature of the railway operations for which the accreditation is given and the manner in which they are to be carried out in addition to any conditions or restrictions. A notice refusing the application or imposing a condition or restriction must include the reasons for the decision and information about the right of review under this measure.

39—Conditions and restrictions

This clause provides that an accreditation is subject to any conditions or restrictions imposed by the regulations.

40—Penalty for breach of condition or restriction

Contravening or failing to comply with a condition or restriction may result in a maximum penalty of $300 000 for a body corporate and $100 000 for a natural person.

41—Annual fees

This clause provides that an annual fee fixed by the Minister and published in the Gazette must be paid by the accredited person. The accredited person may make an agreement with the Regulator in relation to the manner of payment of the fee. The Minister may fix different fees for different types of accreditations, or fix different ways of calculating fees or impose additional fees for late payment.

42—Late payment

If an accredited person fails to pay the annual fee, then his or her accreditation is suspended until the fee is paid, unless the person enters into an agreement with the Regulator or the Regulator otherwise exempts them from the operation of this clause.

43—Waiver of fees

The Regulator has the power to waive or refund the whole or part of any fee after consultation with the Minister.

44—Surrender of accreditation

An accredited person may surrender his or her accreditation in accordance with the regulations.

45—Revocation or suspension of accreditation

This clause gives the Regulator certain powers that are exercisable if he or she is no longer satisfied the accredited person is able to demonstrate the matters in clause 35 (competence and capacity to manage risks of safety etc.); or is unable to satisfy the conditions or restrictions of the accreditation; or is not managing rail infrastructure or operating rolling stock to which the accreditation relates and has not done so for at least 12 months; or has contravened this measure or the regulations. In these situations the Regulator may suspend the accreditation (in whole or in part) with immediate effect, or from a future specified time for a specified period, or revoke the accreditation or impose or vary conditions of restrictions to which the accreditation is subject. The Regulator may disqualify a person who has had his or her accreditation revoked from applying for accreditation for a specified period. Before making a decision under this clause, the Regulator must notify the person in writing of the proposed decision and the reasons for it, and that the person has 28 days to make representations to the Regulator showing why the decision should not be made. If, after considering any representations, the Regulator suspends or revokes an accreditation, the notice must set out the reasons for the decision and information about the right of review under this measure. If the person is also accredited in another jurisdiction, the Regulator must notify the corresponding Regulator of the suspension or revocation. The Regulator may withdraw a suspension of an accredited person by written notice.

46—Immediate suspension of accreditation

The Regulator may immediately suspend an accreditation for up to 6 weeks by notice in writing if he or she considers there is an immediate and serious risk to safety not to do so. The Regulator may reduce the period of suspension or increase it for not more than a further 6 weeks by notice in writing. Before increasing the period of suspension, the Regulator must notify the person of his or her intention and give reasons why. The person may within 7 days, or such longer period specified by the Regulator, make representations in writing as to why the suspension should not be extended. After considering the representations, the Regulator must give reasons for his or her decision to go ahead and extend the suspension and give information about the right of review under this measure. A suspension under this clause may be withdrawn by the Regulator by notice in writing.

47—Keeping and making available documents for public inspection

A rail transport operator is required to ensure that the current notice of accreditation or exemption or a notice of registration of a private siding or other prescribed document is available for inspection at the operator's registered office or principal place of business during ordinary business hours. Failing to do so may result in a maximum penalty of $2 500.

48—Application for variation of accreditation

An accredited person may apply to the Regulator for a variation of the accreditation, which must specify the details of the variation being sought, the prescribed details and application fee.

49—Where application relates to cooperative railway operations or operations in another jurisdiction

The requirements of clauses 36 and 37 (directions by the Regulator for applicants to coordinate an application for accreditation and the requirement for corresponding Regulators to consult on applications across jurisdictions) also apply to applications for variations of accreditation.

50—Determination of application for variation

The Regulator must give the applicant notice in writing of his or her decision generally within 6 months of receiving the application. A notice varying an accreditation must specify the prescribed details of the applicant and specify the variation to the accreditation so far as it applies to the nature and scope of railway operations or the manner in which they are to be carried out, and specify any conditions and restrictions imposed or varied by the Regulator and any other prescribed information. A notice refusing an application or imposing a condition or restriction must set out the reasons and the information about the right of review under this measure.

51—Prescribed conditions and restrictions

The regulations may prescribe conditions and restrictions to which an accreditation varied under Part 4 of the measure may be subject.

52—Regulator may direct amendment of a safety management system

The Regulator may direct a rail transport operator to amend the operator's safety management plan and in doing so must

give reasons for the direction and the right of the operator to a review of the direction. Failing to comply to a direction may result in a maximum penalty of $120 000 for a body corporate and $40 000 for a natural person.

53—Variation of conditions and restrictions

An accredited person may apply to the Regulator for a variation of a condition or restriction imposed by the Regulator on the accreditation and is to be made as if it were an application to a variation to the accreditation and the requirements of clause 48 apply (requirements regarding an application for variation of accreditation). After considering the application the Regulator may grant or refuse the application and in the case of a refusal, must include reasons for the decision and information about the right of review of the decision under this measure.

54—Regulator may make changes to conditions or restrictions

The Regulator may at any time vary or revoke a condition or restriction imposed by the Regulator or impose a new condition or restriction. Unless immediate action is required in the interests of safety, before taking action under this clause, the Regulator must give written notice of the proposed action and allow the accredited person to make written representations within 14 days (or other period as agreed) about the proposed action. After considering the representations, the Minister must give details of the decision and the reasons for it in writing and notification of the rights of review under this measure.

55—Accreditation cannot be transferred or assigned

Regardless of the terms of any act or rule of law to the contrary, an accreditation cannot be transferred or assigned to another person and cannot vest by operation of law in any other person. Any purported transfer or assignment will have no effect.

56—Sale or transfer of railway operations by accredited person

If an accredited person proposes to sell or transfer any railway operations for which the person is accredited, the Regulator may waive compliance with certain provisions of Division 2 in relation to the proposed transferee, but only if the Regulator is satisfied that the transferee has the capacity and competency to comply with the relevant requirements of Division 2. A waiver of compliance with requirements may be given subject to such conditions or restrictions as the Regulator thinks necessary.

Division 3—Private sidings

57—Exemption from accreditation

A rail infrastructure manager of a private siding is not required to be accredited in relation to railway operations carried out in the private siding or to comply with Division 4, 5 or 6 of Part 4 in relation to the private siding. (That is, requirements about safety management systems, information about rail safety and investigation and reporting by rail transport operators). However, if the private siding is to be connected with or have access to a railway or siding of an accredited person, the rail infrastructure manager must register the private siding with the Regulator and pay the annual fee fixed by the Minister and comply with the conditions imposed by the Regulator or prescribed by regulations in relation to the safe construction, maintenance and operation of the private siding (and such conditions may be the same or similar to the requirements under Division 4, 5 or 6 of Part 4. The rail infrastructure manager must also comply with the provisions of clause 62 in relation to the management of the interface with the railway of an accredited person and notify them in writing of any railway operations affecting the safety of the railway or siding of the accredited person. Failing to comply with this clause may result in a maximum penalty of $60 000 for a body corporate and $20 000 for a natural person. The Regulator must issue a notice of registration in relation to a registered siding and if prescribed by the regulations, must make the register available for public inspection during ordinary business hours.

Division 4—Safety management

58—Safety management system

A rail transport operator must have a safety management system for railway operations carried out on or in relation to the operator's rail infrastructure or rolling stock. The safety management system must be in a form approved by the Regulator and must comply with the prescribed requirements, risk management principles, methods and procedures. It must identify and assess any safety risks in relation to the railway operations on the operator's rail infrastructure or rolling stock and must specify the controls that are to be used by the operator to manage the risks that have been identified and to monitor safety in relation to the railway operations in addition to procedures for monitoring, reviewing and revising the adequacy of these controls. It must also include measures to manage risks to safety identified under clause 62; a security management plan (see clause 63); an emergency management plan (see clause 64); a health and fitness management plan (see clause 65); an alcohol and drug management plan (see clause 66); and a fatigue management plan (see clause 68). Failing to comply with this clause may result in a maximum penalty of $300 000 for a body corporate and $100 000 for a natural person. Before establishing or reviewing a rail safety management system, the operator must consult with persons likely to be affected by the system such as persons who carry out those railway operations or work at the operator's railway premises or with the operator's rolling stock, health and safety representatives, a registered association of an affected person (at the person's invitation) and any other rail operator with whom the operator has an interface agreement under clause 62 and members of the public, as appropriate. A safety management plan must be evidenced in writing and identify each person responsible for preparing any part of the system and the person or class of persons responsible for implementing the system. A rail transport operator may, in satisfying a requirement under this clause, incorporate a document or other material prepared for the purposes of another Act, if it satisfies the relevant requirements under this measure.

59—Compliance with safety management system

A rail transport operator must implement the safety management system. Failing to do so may result in a maximum penalty of $300 000 for a body corporate or $100 000 for a natural person. Similar penalties apply to a rail transport operator who fails to comply with their safety management system unless they have a reasonable excuse, (for example, demonstrating that compliance with the system in particular circumstances would have increased the likelihood of a notifiable occurrence happening).

60—Review of safety management system

A rail transport operator must review the safety management system in accordance with the periods prescribed by the regulations, or if no time is prescribed, at least once a year or as agreed by the operator and the Regulator. Failing to comply with this clause may result in a maximum penalty of $75 000 for a body corporate or $25 000 for a natural person.

61—Safety performance reports

This clause requires the rail transport operator to provide the Regulator with a safety performance report that contains a description and assessment of the safety performance of the operator's railway operations and comments on any deficiencies in the operations that are relevant to the safety of the railway, a description of any safety initiatives undertaken or proposed in relation to the railway operations and any other prescribed performance indicators. A report is required in relation to each calendar year or such other period agreed by the Regulator and the rail transport operator. There is a maximum penalty of $75 000 for a body corporate and $25 000 for a natural person failing to submit a report as required.

62—Interface coordination

This clause requires a rail transport operator to identify and assess safety risks that may arise from railway operations carried on by, or on behalf of, the operator that may arise because of railway operations carried out by, or on behalf of, another operator. The operator must determine measures to manage those risks as far as is reasonably practicable, and in doing so must seek to enter an interface agreement with the other rail transport operator. Not doing so may result in a maximum penalty of $300 000 for a body corporate and $100 000 for a natural person. The requirements under this clause relating to the preparation of an interface agreement do not apply if neither of the operators are a rail infrastructure manager. A rail transport operator or rail infrastructure manager that is required to identify and assess risks to safety

that may arise from operations carried out by another person may do so alone, jointly with the other person, or by adopting the identification and assessment of those risks carried out by the other person. An interface agreement may be entered into by 2 or more operators and may include measures to manage any number of risks to safety that may arise from railway operations because of the existence or use of any roads or related infrastructure. The rail transport operator must keep a register of all interface agreements to which the operator is a party that are applicable to the operator's railway operations.

63—Security management plan

This clause requires a rail transport operator to have a security management plan for railway operations carried out by the operator or in relation to the operator's rail infrastructure or rolling stock. The plan must incorporate measures to protect people against theft, assault, sabotage, terrorism and other criminal acts and other harm and must comply with this measure and any prescribed requirements. The operator must ensure that the plan is implemented and must ensure that the appropriate response measures of the plan are implemented if an incident contemplated by this clause occurs. Breaching this clause may result in a maximum penalty of $300 000 for a body corporate and $100 000 for a natural person.

64—Emergency management plan

A rail transport operator is also required to have an emergency management plan that must be prepared in conjunction with relevant emergency services and in accordance with the requirements of the regulations. Not doing so may result in a maximum penalty of $300 000 for a body corporate and $100 000 for a natural person. A similar penalty will apply if the rail transport operator fails to ensure that the appropriate response measures of the emergency plan are implemented in the case of an emergency.

65—Health and fitness management program

A rail transport operator is also required to have and implement a health and fitness program for rail safety workers who carry out rail safety work in relation to the operator's rail infrastructure or rolling stock that complies with this measure and the regulations. A maximum penalty of $30 000 applies for not doing so.

66—Alcohol and drug management program

A rail transport operator is required by this clause to prepare and implement an alcohol and drug management plan for rail safety workers that complies with this measure and the regulations. A maximum penalty of $30 000 applies for not doing so.

67—Testing for presence of alcohol or drugs

The Regulator may require a rail transport operator or a person undertaking railway operations on or in relation to the operator's rail infrastructure or rolling stock, to test (including on a random basis) for the presence of alcohol or a drug in any person on duty for the purpose of carrying out rail safety work. The testing must be conducted in accordance with the procedures set out in Schedule 2 of this measure or the regulations.

68—Fatigue management program

A rail transport operator is required by this clause to prepare and implement a program for the management of fatigue of rail safety workers who carry out rail safety work in relation to the operator's rail infrastructure or rolling stock. The program must be in accordance with prescribed requirements. A maximum penalty of $30 000 applies for contravening this clause.

69—Assessment of competence

A rail transport operator must ensure that each rail safety worker who is to carry out rail safety work in relation to the operator's rail infrastructure or rolling stock has the competence to do that work. (Maximum penalty $30 000). The clause sets out the manner in which the assessment of the worker's competence must be made.

70—Identification for rail safety workers

A rail transport operator must ensure that a rail safety worker has identification that allows verification of the competence and training of the worker by an authorised officer. This identification must be produced by the worker on request by an authorised officer.

71—Duties of rail safety workers

This clause sets out the duty of a rail safety worker to take reasonable care for his or her safety and the safety of others and to cooperate with the rail transport operator in any action taken by the operator in relation to a requirement under this measure. A rail safety worker must not recklessly or intentionally interfere with, or misuse, anything provided by the operator when carrying out rail safety work. A rail safety worker must not wilfully or recklessly place the safety of others on or near rail infrastructure at risk while carrying out rail safety work. There is a maximum penalty of $10 000 for breaching this duty. It is also an offence for a rail safety worker to have the prescribed concentration of alcohol or a prescribed drug present in their oral fluid or blood, or to be under the influence of alcohol or drugs so as to be incapable of effectively discharging a function or duty of a rail safety worker. (Maximum penalty $5 000). A person will be taken to be incapable of effectively discharging a function or duty if, owing to the influence of alcohol or a drug, the use of any mental or physical faculty of the person is lost or appreciably impaired.

72—Contractors to comply with safety management system

A person who is not an employee who undertakes railway operations in relation to rail infrastructure or rolling stock of a rail transport operator must comply with the operator's safety management system. The maximum penalty for an offence against this clause is $100 000 for a natural person and $300 000 for a body corporate.

Division 5—Information about rail safety etc

73—Rail transport operators to provide information

The Regulator may, by notice in writing, require a rail transport operator to provide the Regulator with information about measures taken to promote rail safety, the operator's financial capacity or insurance arrangements or other prescribed information relating to rail safety. A rail transport operator must also provide the Regulator, in a manner and form approved by the Regulator, and at the prescribed times and in respect of the prescribed periods, information prescribed by the regulations in relation to rail safety or accreditation. There is a maximum penalty of $40 000 for failing to comply with either of these requests.

Division 6—Investigating and reporting by rail transport operators

74—Notification of certain occurrences

This clause requires a rail transport operator to report to the Regulator all notifiable occurrences or other occurrence which may endanger the safe operation of the operator's railway premises or railway operations.

75—Investigation of notifiable occurrences

The Regulator may require a rail transport operator to investigate and report on notifiable occurrences or other occurrences that have endangered the safe operation of the operator's railway operations in order to determine the cause or contributing factors of the occurrence. The Regulator may provide a copy of the report to other persons or publish the report if it is in the interests of public safety to do so or justifiable on some other reasonable ground.

Division 7—Audit of railway operations by Regulator

76—Audit of railway operations by Regulator

This clause gives the Regulator the power to audit the railway operations of a rail transport operator and to prepare and implement an annual audit program. The regulations may establish procedures in relation to carrying out audits.

Part 5—Enforcement

Division 1—Entry to places by authorised officers

77—Power to enter places

This clause sets out when an authorised officer may enter a place in relation to the administration, operation or enforcement of this measure.

78—Limitation on entry powers—places used for residential purposes

The right of an authorised officer to enter a place used only as a residential premises must only be with the consent of the occupier or with the authority of a warrant.

79—Notice of entry

Entry by an authorised officer of railway premises other than a public place must be with reasonable notice, unless the occupier consents, or notice would defeat the purpose of entry, or a warrant has been issued or there is an emergency.

Division 2—General enforcement powers

80—General powers

This clause sets out the powers of an authorised officer that may be exercised in connection with the administration, operation or enforcement of this measure including searching and inspecting any part of a place and any rail infrastructure, rolling stock or road vehicle or other thing and using reasonable force to do so; give directions in respect of the stopping or movement of rolling stock or road vehicles; inspecting testing, filming or recording an image of rail infrastructure or rolling stock or a road vehicle or other thing; seizing anything an authorised officer reasonably suspects is connected with an offence against this measure or the regulations or to secure any such thing from interference, and requiring a person to answer questions.

81—Use of assistants and equipment

The authorised officer may be assisted by such assistants and equipment as the officer considers necessary.

82—Use of electronic equipment

An authorised officer may operate equipment to access information stored on tape or disk or other device in the exercise of his or her powers under clause 80.

83—Use of equipment to examine or process things

An authorised officer may bring equipment onto rolling stock, a vehicle or place needed for the examination or processing of things found in order to determine if they are things that may be seized.

84—Securing a site

In order to protect evidence relevant for compliance or investigative purposes, an authorised officer may secure the perimeter of a site. No-one may enter or remain in a secure site without the permission of an authorised person (which includes a police officer) or entry is to ensure safety, remove deceased persons or animals, or remove a road vehicle or protect the environment from significant damage.

Division 3—Offence provision and search warrants

85—Offence provision

Hindering or obstructing, using abusive language or assaulting, threatening or intimidating an authorised officer is an offence. Failing to comply with a requirement or direction of an authorised officer or refusing to answer a question without reasonable excuse is also an offence. (Maximum penalty: $10 000).

86—Search warrant

This clause sets out the procedures for obtaining a search warrant from a magistrate to enter railway premises or residential premises and to search and seize anything in accordance with the warrant.

Division 4—Powers to support seizure

87—Directions relating to seizure

This clause gives powers to an authorised officer to enable a thing to be seized including the power to direct a person to take a thing to a specified place within a specified time. Failing to comply with a direction under this clause may result in a maximum penalty of $10 000.

88—Authorised officer may direct a thing's return

An authorised officer may direct a thing to be returned to the place from where it was taken.

89—Receipt for seized things

An authorised officer must give a receipt for a thing seized.

90—Access to seized thing

Until a seized thing is forfeited, an authorised officer must allow its owner to inspect it or provide a copy of it in the case of a document, unless it is not reasonable or practical to do so.

91—Embargo notices

An authorised officer may issue an embargo notice in relation to things that cannot be physically seized or removed, which forbids the use, movement, sale, lease or transfer of the thing without the written consent of an authorised officer or the Regulator. There is a maximum penalty of $10 000 for contravening an embargo notice.

Division 5—Forfeiture

92—Return of seized things

A thing seized by an authorised officer must be returned as soon as possible unless it is evidence in proceedings for an offence against this measure or the thing is forfeited to the Crown or the officer is otherwise authorised by law or court order to retain, destroy or dispose of it.

93—Forfeiture

This clause provides for circumstances in which something seized by an authorised officer is forfeited to the Crown.

94—Forfeiture on conviction

On finding a defendant guilty of an offence against this measure, a court may order a thing seized to be forfeited to the Crown or otherwise disposed of.

95—Dealing with forfeited sample or thing

On forfeiture of a thing to the Crown, it becomes the property of the Crown and may be dealt with by the Minister as he or she thinks fit. Notice must be given to the owner of the forfeiture and informing the owner of how they may seek a review of the decision.

Division 6—Directions

96—Authorised officers may direct certain persons to give assistance

An authorised officer may direct a rail transport operator or rail safety worker to give them reasonable assistance to enable the officer to exercise a power under this Part of the measure. Such things may include unloading rolling stock, driving a train or accessing electronically stored information.

97—Power to direct name and address be given

An authorised officer may direct a person to give their name and address if they are found committing an offence against a rail safety law or leads the officer to reasonably suspect the person has committed an offence.

98—Failure to give name or address

Failing to comply with a direction to give their name and address without a reasonable excuse is an offence with a maximum penalty of $10 000.

99—Power to direct production of documents

An authorised officer may direct a person to allow the officer to inspect and copy documents required to be kept under a rail safety law or prepared by the person under a rail safety law for the management of rail infrastructure or the operation of rolling stock that the officer believes is necessary to understand a document required under a rail safety law.

100—Failure to produce document

Failing to comply with a direction to make available or produce a document for inspection without reasonable excuse is an offence with a maximum penalty of $10 000.

Division 7—Improvement notices

101—Improvement notices

An authorised officer may serve an improvement notice on a person if the officer reasonably believes the person is contravening a rail safety law or is likely to continue to do so, or is carrying out railway operations that threaten safety. An improvement notice may require a person to undertake remedial rail safety work or do any other thing to remedy the contravention or to carry out railway operations so that safety is not threatened. The clause further sets out the requirements as to the contents of an improvement notice.

102—Contravention of improvement notice

Contravening an improvement notice is an offence with a maximum penalty of $120 000 for a body corporate or $40 000 for a natural person.

103—Withdrawal or amendment of improvement notices

An improvement notice served by an authorised officer may be withdrawn or amended.

104—Proceedings for offences not affected by improvement notices

The service, amendment or withdrawal of an improvement notice does not affect any proceedings for an offence against a rail safety law.

105—Regulator to arrange for rail safety work required by improvement notice to be carried out

If a person fails to comply with an improvement notice that requires the person to carry out rail safety work to remedy an alleged contravention, the Regulator may arrange for the rail safety work to be carried out and the costs recovered from the person served with the improvement notice.

Division 8—Prohibition notices

106—Prohibition notice

An authorised officer may issue a prohibition notice in relation to an activity if the officer believes on reasonable grounds that the activity involves an immediate risk to safety in relation to railway operations or railway premises or at, on or in the vicinity of rail infrastructure or rolling stock. The notice may prohibit the carrying on of the particular activity

or the carrying on of the activity in a particular way until the authorised officer certifies that the matters that give or will give rise to the risk have been remedied. The clause sets out the requirements of a prohibition notice and the types of directions it may include as to the measures that may be taken to minimise or eliminate the risk.

107—Contravention of prohibition notice

A person on whom a prohibition notice is served must comply with the notice unless the person has a reasonable excuse. The maximum penalty for a body corporate is $300 000 and $100 000 for a natural person.

108—Oral direction before prohibition notice served

If it is not possible or reasonable to serve a prohibition notice immediately, the authorised officer may direct the person who has control over the activity involved to do or not to do a stated act. There is a maximum penalty of $20 000 for not complying with the oral direction, but the direction ceases to have effect if the authorised officer does not serve a prohibition notice in relation to the activity within 5 days.

109—Withdrawal or amendment of prohibition notice

A prohibition notice may be withdrawn or amended by an authorised officer by notice served on the person.

110—Proceedings for offences not affected by prohibition notices

The service, amendment or withdrawal of a prohibition notice does not affect any proceedings for an offence against a rail safety law in connection with any matter in respect of which the prohibition notice was served.

Division 9—Miscellaneous

111—Directions may be given under more than one provision

An authorised officer may give directions under 1 or more provisions of Part 5 of this measure at the same time.

112—Temporary closing of railway crossings, bridges etc

This clause provides that an authorised person who holds a specific authority of the Regulator or an accredited person (acting in accordance with the guidelines of the Regulator) may close temporarily or regulate a railway crossing, bridge or other structure for crossing or passing over or under a railway if satisfied it is necessary because of an immediate threat to safety. The authorised person must notify the person responsible for the railway crossing, bridge or other structure of its closure or regulation.

113—Restoring rail infrastructure and rolling stock etc. to original condition after action taken

This clause provides that if an authorised officer, or a person assisting an authorised officer, exercises a power under this Part of the measure in relation to rail infrastructure or rolling stock, railway premises or a road vehicle and damage was caused by the unreasonable exercise of the power or it was otherwise unauthorised, the officer must take reasonable steps to return it to the condition is was in immediately before the action was taken.

114—Use of force

A power to enter a railway premises must only be exercised with no more force than is reasonably necessary to effect the entry.

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

A provision in this Part of the measure that authorises a person to use reasonable force does not authorise a person who is not a police officer to use force against another person.

116—Protection from incrimination

A person is not excused from complying with a direction under Division 2 (General enforcement powers) or Division 6 (Directions) to answer a question, produce a document or provide information on the grounds that it may tend to incriminate the person or make them liable to a penalty. However, any information provided by a natural person, or in the case of a person who is directed to produce a document, the fact of the production, is not admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty (other than proceedings for making a false or misleading statement).

Part 6—Review of decisions

117—Interpretation

The review of decisions under this Part of the measure is by the Administrative and Disciplinary Division of the District Court.

118—Reviewable decisions

This clause sets out a table that contains the decisions under this measure that are reviewable and who is eligible to apply for the review of a reviewable decision.

119—Review by Regulator

A person who is eligible to apply for a review of a reviewable decision may apply to the Regulator for a review within 28 days of the decision. The Regulator may affirm or vary the decision or set it aside and substitute another decision in writing and set out reasons for the decision. The Regulator has the power to stay certain decisions under review and must decide an application for a stay by the end of the next business day following the day the application was made, or the stay will be taken to have been granted.

120—Application to District Court

An eligible person may appeal to the District Court, a reviewable decision made by the Regulator or a decision made by the Regulator on review (including a decision to stay the operation of a decision). The appeal must be lodged within 28 days of the decision being made.

Part 7—Inquiries

121—Appointment of investigator

The Regulator may appoint an independent investigator to investigate an accident or incident on, involving or associated with a railway that causes death or serious injury to a person or major property damage. The Regulator may act on his or her own initiative or at the request of a rail transport operator or the Minister. Before making an appointment the Regulator must consult with the Minister about the person to be appointed, the matters to be inquired into and the reporting arrangements for the investigation.

122—Procedures and powers of an investigator

This clause sets out the powers of an investigator in conducting an investigation including the power to issue a summons to require the attendance of a person or production of a document and the power to require a person to answer questions under oath or affirmation. It is an offence for a person to refuse to do so and there is a maximum penalty of $20 000 for doing so. It is not an excuse for refusing to answer questions or provide information that doing so may incriminate the person. However the fact of production of a document or information or the answer given in response to a requirement is not admissible in evidence against the person in proceedings for an offence.

123—Report

This clause provides that an investigator must prepare a written report for the Regulator at the conclusion of an inquiry which may contain recommendations and refer to safety actions and any other matters the investigator considers relevant. The Regulator must give a copy of the report (and any comments) to the Minister. Copies of the report may also be given to any other persons the Minister or the Regulator think fit and either the Minister or the Regulator may publish the report or any part of it. The Regulator must also ensure that a copy of the report is made available for public inspection and placed on a website within 28 days of receiving it. Before publishing or providing the report, the Regulator and Minister may take steps to prevent disclosure of certain information in the report that is necessary in the public interest, or to avoid prejudicing any proceedings before a court or tribunal or on some other reasonable ground.

124—Related matters

An investigation and report under this Part of the measure may occur despite any legal proceedings unless a court or tribunal orders otherwise. No action lies against an investigator, the Minister, the Regulator, authorised officer or a person who has provided evidence or information to the investigator in relation to the provision or publication of a report.

Part 8—General liability and evidentiary provisions

Division 1—General

125—Period within which proceedings for offences may be commenced

This clause applies to an offence against a rail safety law other than an offence prescribed by the regulations or other than an offence for which proceedings may only be commenced within 2 years after its alleged commission. Despite any other law, proceedings for an offence against a rail safety law to which this clause applies may be commenced within 2 years or further period of 1 year from when the Regulator,

police officer or authorised officer first obtained evidence of the alleged offence considered sufficient to warrant the commencement of proceedings.

126—Authority to take proceedings

Legal proceedings to recover any charge, fee or money due under this measure may only be instituted by the Minister or the Regulator or a person authorised by either of them. Legal proceedings for an offence against this measure or the regulations may also only be taken by the Minister or the Regulator, or a person authorised by the Minister or the Regulator.

127—Vicarious responsibility

This clause provides that if in any proceedings for an offence against a rail safety law, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show that the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority and that the director, employee or agent had the relevant state of mind. Conduct engaged in by a director, employee or agent on behalf of a body corporate will be taken to have been engaged in by the body corporate unless it can show it took reasonable precautions and exercised due diligence to avoid the conduct.

128—Records and evidence from records

The Regulator must keep records of the grant, refusal, variation, suspension, surrender and revocation of accreditations, and of any conditions or restrictions of accreditations, and of improvement notices and prohibition notices, under this measure. A certificate signed by the Regulator that at the time specified in the certificate that the particulars as to any matter required to be recorded under this clause did or did not appear on or from the records is evidence of what it certifies in any legal proceedings.

129—Certificate evidence

A statement in a certificate issued by the Regulator, a corresponding Rail Safety Regulator, an authorised officer or a police officer as to any matter that appears in records kept or accessed by the Regulator is admissible in any proceedings and is evidence of the matter.

130—Proof of appointments and signatures unnecessary

This clause provides that for the purposes of this measure and the regulations, it is not necessary to prove the appointment of an office holder such as the Regulator, Police Commissioner, police officer or and authorised officer. A signature purporting to be the signature of an office holder is evidence of the signature it purports to be.

131—Multiple offences

This clause provides that despite anything to the contrary in this or any other law, a person may be punished for more than one breach of a requirement of this measure or the regulations if the breaches relate to different parts of the same rail infrastructure, railway premises or rolling stock.

132—Offences by bodies corporate and employees

This clause provides for the liability of directors and employers where a body corporate or employee (respectively) have committed an offence. It also provides for the defences that may be raised by those persons.

Division 2—Discrimination against employees

133—Dismissal or other victimisation of employee

This clause provides that it is an offence for an employer to threaten, dismiss or treat unfavourably, an employee or prospective employee who has given assistance to a public agency about a breach of an Australian rail safety law, or made a complaint about a breach of an Australian rail safety law to the employer, fellow employee, registered association or public authority or official. There is a maximum penalty of $20 000 and a court may also make an order for damages or to reinstate an employee (if relevant) on conviction of the employer of an offence under this clause.

Division 3—False or misleading information

134—False or misleading information provided to Regulator or officials

This clause provides that it is an offence for a person to make a statement or provide a document that is false and misleading in a material particular to the Regulator or an official exercising a power under a rail safety law, and also if the person is reckless as to whether it is false or misleading. There is a maximum penalty of $10 000 or such other penalty as a provision of this measure may otherwise specifically provide.

Division 4—Other offences

135—Offence to impersonate authorised officer

It is an offence for a person who is not an authorised officer to hold himself or herself out to be, with a maximum penalty of $5 000.

136—Not to interfere with train, tram etc

A person must not without the permission of an authorised officer (in this clause a rail transport operator, authorised officer or police officer) or without reasonable excuse, move, interfere with, disable, or operate any equipment, rail infrastructure or rolling stock owned or operated by a rail transport operator or attempt to do any of these things. Maximum penalty is $20 000.

137—Applying brake or emergency device

A person must not without reasonable excuse apply a brake or use an emergency device fitted to a train or tram or make use of an emergency device on railway premises. Maximum penalty of $5 000.

138—Stopping a train or tram

A person must not without reasonable excuse cause or attempt to cause a train or tram in motion to be stopped. Maximum penalty $5 000.

Division 5—Court-based sanctions

139—Daily penalty for continuing offences

This clause provides for an additional penalty of not more than one fifth of the maximum penalty prescribed for an offence for each day during which an offence continues after a person has been convicted of that offence.

140—Commercial benefits order

If a person has been convicted of an offence against a rail safety law the court may make a commercial benefits order that requires the person to pay a fine of up to three times the amount a court estimates to be the gross commercial benefit the person (or associate of the person)received or would have received as a result of the offence. The clause sets out what a court may or may not take into account in estimating the gross commercial benefit that was or would have been received. The clause also sets out who is an associate of a person for the purposes of the clause including spouses, domestic partners, household members, partners and fellow trustees and directors.

141—Supervisory intervention order

This clause provides that a court may make a supervisory intervention order on the request of a prosecutor if the court considers a person found guilty of an offence against a rail safety law to be a systematic or persistent offender. An order under this clause must not exceed 1 year and may require a person to do specified things including staff training, installing monitoring equipment, or to implement particular practices, systems or procedures, or to undertake specified monitoring, compliance or operational practices subject to the direction of the Regulator, or to provide compliance reports to the Regulator. An order under this clause must only be made by the court if the court considers the order is capable of improving a person's ability or willingness to comply with the rail safety laws. Contravening a requirement of an order under this clause is an offence with a maximum penalty of $40 000.

142—Exclusion orders

A court may, on the application of the prosecutor, make an exclusion order against a person found guilty of an offence against a rail safety law if the court considers the person to be a systematic or persistent offender. The purpose of an order under this clause is to restrict the opportunities for the person to commit or be involved in the commission of further offences by prohibiting (for example) the person from managing rail infrastructure or operating rolling stock, or being a director or officer concerned in the management of a body corporate involved in managing rail infrastructure for a specified period. The court should only make such an order if satisfied that the person should not continue the things that are the subject of the proposed order and that a supervisory intervention order is not appropriate. Contravening an order may result in a maximum penalty of $40 000.

Part 9—Miscellaneous

Division 1—Management of rail corridors, crossings and public works

143—Installation of control devices
This clause provides that a rail transport operator may with the Minister's consent, or must, at the direction of the Minister, install and operate traffic control devices at a level crossing in connection with the operation of a railway. A rail transport operator must, at the direction of the Minister, also install and operate other devices or systems that control or prevent members of the public from accessing or crossing railway premises while rolling stock is approaching or passing. The Minister may also direct that a device or system be altered or removed by the rail transport operator. Failing to comply with a direction is an offence with a maximum penalty of $75 000 for a body corporate and $25 000 for a natural person. This clause does not limit any requirement imposed under Part 4 Division 2 (Accreditation) or Part 4 Division 4 (Safety management) of this measure or under Part 2 Division 2 of the *Road Traffic Act 1961* (Traffic control devices).
144—Power to require works to stop
A person other than a rail transport operator must not carry out works near a railway without the approval of the Regulator or the relevant rail infrastructure manager, if the works threaten or are likely to threaten the safety or the operational integrity of the railway. (Maximum penalty $50 000.) The Regulator may give a person carrying out works near a railway that the Regulator reasonably believes threaten, or are likely to threaten, the safety or the operational integrity of the railway, written directions to stop, alter or not commence such work. The regulator may, by notice in writing require a person who has the care, control, or management of the land where the works are situated, to alter, demolish or take away the works. There is a maximum penalty of $50 000 for failing to comply with such directions and in such cases the Regulator may arrange for any act required by a notice to be carried out and then recover the expenses incurred in doing so.
Division 2—Confidentiality
145—Confidentiality
This clause provides that a person engaged in the administration of this measure must not disclose or communicate information obtained in the administration except as authorised by this measure or another Act; with the consent of the person from whom the information was obtained or relates; for law enforcement purposes; rail safety inquiries or public safety, or to a court in connection with legal proceedings. There is a maximum penalty of $10 000. This clause does not prevent a Rail Safety Regulator from accumulating and aggregating data and authorising its use for the purposes of research or education.
Division 3—Civil liability
146—Civil liability not affected by Part 4 Division 1 or 4
Nothing in Division 1 or Division 4 of Part 4 (General safety duties or Safety management) is to be construed as conferring a right of action in any civil proceedings in relation to any contravention of these provisions or as conferring a defence to an action in civil proceedings.
147—Exclusion from liability
No liability attaches to the Minister, the Regulator, an investigator, an authorised officer or any other person acting in the administration of this measure for an honest act or omission in the exercise of a function or power under this measure. This includes, for example, exclusion of liability in negligence or for breach of a statutory duty or defamation. No such liability gives rise to a civil liability against the State or an authority of the State.
148—Immunity for reporting unfit rail safety worker
This clause provides that no action lies against a person (including a medical practitioner, a nurse, optometrist or physiotherapist) who in good faith reports to the Regulator, rail transport operator or other person employed by either of these persons, any information, test results or examination that discloses that a person is unfit to carry out rail safety work or that it might be dangerous to allow that person to carry out such work.
Division 4—Compliance codes and guidelines
149—Compliance codes and guidelines
This clause provides that the Minister may make an order, notice of which is to be published in the Gazette, approving a compliance code or guidelines for the purpose of providing practical guidance to persons with duties or obligations under this measure. A failure to comply with a compliance code or guidelines does not give rise to any civil or criminal liability. However, a person who complies with a compliance code may be taken to have complied with this measure. A compliance code (and any variations) must be laid before both Houses of Parliament within 14 days of notice of its approval being published in the Gazette, and the Houses may pass a resolution disallowing the approved compliance code.
Division 5—Other matters
150—Recovery of certain costs
This clause provides that the Regulator may recover, as a debt from a rail transport operator, the reasonable costs of the entry and inspection of railway infrastructure, rolling stock or railway premises in respect of which the person is accredited, other than the costs of an inspection of an accredited person under Part 4 Division 7 (Audit of railway operations by Regulator).
151—Recovery of amounts due
Every fee, charge or other amount of money payable under this measure or the regulations may be recovered by the Minister as a debt due to the Crown in a court of competent jurisdiction.
152—Compliance with conditions of accreditation
This clause provides that an accredited person will be taken to have complied with this measure or the regulations in relation to an obligation or duty if a condition of accreditation makes provision for or in respect of the duty or obligation and the person complies with that condition.
153—Prescribed persons
A person prescribed by the regulations for the purposes of this clause must give notice in the prescribed form and within a prescribed period to a rail transport operator of the commencement, or discontinuation, or completion of prescribed operations or activities that may adversely affect the safety of any rail infrastructure or rolling stock of a rail transport operator.
154—Powers of authorised persons
An authorised person may give directions to the drivers of motor vehicles and other persons that are necessary for the safe operation of any rail infrastructure or rolling stock or to deal with an emergency. Failure to comply with such a direction may result in a maximum penalty of $5 000. An authorised person must comply with any guidelines issued by the Regulator for the purposes of this clause.
155—Contracting out prohibited
A term of any contract or agreement that purports to exclude, limit or modify the operation of this measure is void to the extent that it would otherwise have effect.
156—Enforceable voluntary undertaking
This clause provides that a person may give the Regulator a written undertaking in connection with a matter relating to a contravention or alleged contravention of this measure by the person. The Regulator may apply to the Magistrates Court for an enforcement of an undertaking by order of the court. There is a maximum penalty of $20 000 for failing to comply with an order.
157—Classification of offences
Offences constituted by this measure are summary offences.
158—Regulations
This clause provides that the Governor may make regulations contemplated by, or necessary or expedient for, the purposes of this measure including regulations that make provision for or in relation to the factors set out in Schedule 1 of this measure. The regulations may refer or incorporate a code, standard or other document; be of general or limited application; provide that specified provisions of this measure do not apply, or apply in prescribed circumstances; provide that any matter or thing is to be determined, dispensed with or regulated or prohibited according to the discretion of the Minister, the Regulator or other prescribed authority, and prescribe fees that are differential or to be determined according to prescribed factors.
Schedule 1—Regulations
1 The regulations may make provision for requirements, standards, qualifications or conditions that must be satisfied in relation to accreditation and requirements as to the terms, conditions, restrictions or particulars applying under or with respect to them and other matters relating to their award, refusal, variation, suspension, cancellation or surrender.

2 A scheme for certificates of competency (or provisional certificates of competency) for persons employed or engaged in railway safety work, and for the duration, variation, suspension or cancellation of those certificates.
3 The prohibition of the carrying on of railway safety work or other prescribed activities except by or under the supervision of a person who holds an appropriate certificate of competency or who has prescribed qualifications, training or experience.
4 Safety standards or other requirements that must be complied with in connection with the construction, maintenance or operation of a railway, or in connection with the performance of any work or activity, or in relation to any rail infrastructure, rolling stock, trains, system, devices, appliance or equipment in relation to sidings.
5 The safeguarding, siting, installing, testing, altering, maintaining or removal of any rail infrastructure, rolling stock, system, device, appliance or equipment.
6 The records and documents to be kept by any person and the manner of keeping and inspecting those records and documents.
7 The furnishing of returns and other information that is verified as prescribed.
8 The registration of plans and other documents required under this measure.
9 The recording, investigation and reporting of accidents and incidents.
10 The health, fitness and functions of railway employees.
11 The regulation of the conduct of passengers and other persons on railways or on land or premises associated with a railway.
12 The trespass on, or entry to railways, or on land, premises, infrastructure or rolling stock associated with a railway.
13 The regulation or prohibition of the carriage of goods, freight or animals on railways.
14 The unauthorised use of railways or rolling stock.
15 The display of signs and notices.
16 The opening and closing of railway gates.
17 The regulation of vehicles, animals and pedestrians crossing railways.
18 The regulation of crossings.
19 The loading, unloading or transportation of freight.
20 The identification of rolling stock, rail infrastructure, devices, appliances, equipment or freight.
21 The causing of damage to, or interfering with or removing, rolling stock, rail infrastructure, devices, appliances, equipment or freight.
22 Procedures associated with inspections, examinations or tests under this measure.
23 The form and service of notices and other documents under this measure.
24 Empowering the Regulator to prohibit a person from acting (or from continuing to act) as a rail safety worker for a specified period, or until further order of the Regulator.
25 Fixing fees and charges for the purposes of this measure or in respect of any matter arising under this measure, including a fee that the Regulator may recover from an accredited person as a debt if the accredited person fails to comply with a requirement of this measure within a specified time.
26 Generally, evidence in proceedings for an offence against the regulations.
27 Fixing expiation fees, not exceeding $750, for alleged offences against this measure or the regulations.
28 The imposition of penalties, not exceeding $10 000 for a contravention of, or failure to comply with, a regulation.

Schedule 2—Provisions relating to alcohol and other drug testing

Part 1—Preliminary

1—Preliminary

This clause sets out the meaning of certain terms that are used in Schedule 2 including ***alcotest*** which means a test by means of apparatus approved under the *Road Traffic Act 1961* or this Schedule for the purpose of conducting alcotests; ***authorised person*** means a person appointed as an authorised person under clause 2 of this Schedule or a police officer; ***breath analysing instrument*** which means an apparatus of a kind approved under the *Road Traffic Act 1961* or this Schedule as a breath analysing instrument; ***drug screening test*** which means a test by means of an apparatus of a kind approved under the *Road Traffic Act 1961* or this Schedule for the purpose of conducting drug screening tests, and ***oral fluid analysis*** which means an analysis of oral fluid by means of an apparatus of a kind approved under the *Road Traffic Act 1961* or this Schedule for the purpose of conducting oral fluid analyses.

2—Authorised persons

This clause provides that the Regulator may appoint an authorised officer, an officer of the Department or other person holding office in the Public Service, a person with qualifications or experience considered by the Regulator to be appropriate, or a person nominated by an accredited person to be an authorised person for the purposes of this Schedule. An authorised person also includes a member of the police force.

3—Urine testing

This clause provides that the results of a urine test carried out on a rail safety worker under this measure are only to be used for the purpose of disciplinary proceedings and are not admissible in proceedings for an offence. A urine test carried out under this Act must be conducted in accordance with the requirements set out in the regulations.

Part 2—Testing

4—Authorised person may require alcotest or breath analysis

This clause provides that an authorised person may at any time require a rail safety worker who is about to carry out, is carrying out, attempting to carry out or has carried out rail safety work or is involved in a prescribed occurrence, to undergo testing by alcotest or breath analysis (or both). A rail safety worker must comply with the reasonable directions of the authorised person in relation to the conduct of the testing. The testing must not be commenced more than 8 hours after the worker has ceased to carry out the rail safety work or 8 hours following a prescribed occurrence. A person required under this clause to submit to an alcotest or breath analysis must not refuse or fail to comply with all reasonable directions of an authorised person in relation to the requirement, and in particular, must not refuse or fail to exhale into the apparatus by which the alcotest or breath analysis is conducted in accordance with the directions of the authorised person. There is a maximum penalty of $5 000. This clause also provides that it a defence to a prosecution for failing to comply with a direction that the direction was unlawful or that the person was not allowed the opportunity to comply after being given the prescribed oral advice in relation to the consequences of refusing and the person's right to request the taking of a blood sample, or the person otherwise had good reason for refusing to comply with the direction. If a person refuses or fails to comply with the requirement or direction under this clause by reason of some physical or medical condition of the person and immediately makes a request of the authorised person that a sample of his or her blood be taken by a medical practitioner, an authorised person must do all things reasonably necessary to facilitate the taking of a sample of the person's blood. A person is not entitled to refuse to comply with a requirement or direction on the grounds of self incrimination or because the person consumed alcohol after the person last performed rail safety work or was involved in a prescribed occurrence, but before the requirement or direction was made.

5—Authorised person may require drug screening test, oral fluid analysis, blood test and urine test

This clause provides that an authorised person may at any time require a rail safety worker who is about to carry out, is carrying out, attempting to carry out or has carried out rail safety work or is involved in a prescribed occurrence, to undergo a drug screening test, oral fluid analysis, blood test or urine test (or any combination of these). A rail safety worker must comply with the reasonable directions of the authorised person in relation to the conduct of the testing. The testing must not be commenced more than 8 hours after the worker has ceased to carry out the rail safety work or 8 hours following a prescribed occurrence. A drug screening test or an oral fluid analysis may only be conducted by a person authorised to do so by the Regulator or in the case of an authorised person who is a police officer, an officer so authorised by the Commissioner of Police under the *Road*

Traffic Act 1961. A person required under this clause to submit to testing must not refuse or fail to comply with all reasonable directions of an authorised person in relation to the requirement, and in particular, must not refuse or fail to allow a sample of oral fluid, blood or urine to be taken in accordance with the directions of the authorised person. There is a maximum penalty of $5 000. This clause also provides that it a defence to a prosecution for failing to comply with a direction or requirement that the direction or requirement was unlawful or that the person was not allowed the opportunity to comply after being given the prescribed oral advice. This advice is in relation to the consequences of refusing to cooperate and the person's right to request the taking of a blood sample instead of a drug screening test or oral fluid analysis, or the right to request an oral fluid analysis or breath analysis instead of a blood test in connection with drug testing or alcohol testing (respectively), or the person otherwise had good reason for refusing to comply with the direction. If a person refuses or fails to comply with the requirement or direction under this clause by reason of some physical or medical condition of the person and immediately makes a request of the authorised person that a sample of his or her blood be taken by a medical practitioner, an authorised person must do all things reasonably necessary to facilitate the taking of a sample of the person's blood. Likewise, if a person refuses or fails to comply with a requirement to give a blood sample by reason of some physical or medical condition of the person and immediately requests an oral fluid analysis in relation to drug testing or a breath analysis in relation to alcohol testing, an authorised person must do all things reasonable to facilitate the conduct of the oral fluid analysis or breath analysis (respectively). A person is not entitled to refuse to comply with a requirement or direction on the grounds of self incrimination or because the person consumed alcohol or a drug after the person last performed rail safety work or was involved in a prescribed occurrence, but before the requirement or direction was made.

6—Concentration of alcohol in breath taken to indicate concentration of alcohol in blood

This clause provides that if a person submits to an alcotest or a breath analysis and the alcotest apparatus or the breath analysing instrument produces a reading in terms of a number of grams of alcohol in 210 litres of the person's breath, the reading will, for the purposes of this measure and any other Act, be taken to be that number of grams of alcohol in 100 millilitres of the person's blood.

7—Breath analysis where drinking occurs after rail safety work is carried out

This clause allows for the fact that a person required to submit to a breath analysis may have consumed alcohol in the period between the completion of rail safety work or the prescribed occurrence giving rise to the request to undergo testing, and the actual performance of the test (the "relevant period"). In proceedings for an offence where the results of a breath analysis are relevant, a court may take into account the quantity of alcohol consumed by the person during the relevant period and its likely effect on the concentration of alcohol indicated as being present in the person's blood by the breath analysis, and may find the person not guilty of the offence charged.

8—Oral fluid analysis or blood test where consumption of alcohol or drug occurs after rail safety work is carried out

This clause allows for the fact that a person required to submit to an oral fluid analysis or blood test may have consumed alcohol or used a drug in the period between the completion of rail safety work or the prescribed occurrence giving rise to the request to undergo testing, and the actual performance of the test (the "relevant period"). In proceedings for an offence where the results of an oral fluid analysis or blood test are relevant, a court may take into account the fact that the person consumed alcohol or used the drug during the relevant period and may find the person not guilty of the offence charged.

9—Compulsory blood testing following a notifiable occurrence

This clause sets out the duty of a medical practitioner to take a blood sample from a rail safety worker who has suffered an injury as a result of a notifiable occurrence and the worker attends or is admitted into a hospital.

10—Processes relating to blood samples

This clause sets out the procedures to be followed in taking a sample of blood for the purposes of this Schedule.

11—Processes relating to oral fluid samples

This clause sets out the procedures to be followed in taking a sample of oral fluid for the purposes of this Schedule.

12—Processes relating to urine samples

This clause provides that the provisions prescribed by regulations will apply where a sample of urine is taken under this measure.

13—Authorised person to be present when sample taken

This clause provides that a blood sample taken under particular clauses in this Schedule must be done in the presence of an authorised person.

14—Cost of blood tests and urine tests under certain clauses

The regulations may prescribe a scheme for the payment of the costs of taking a blood or urine sample and the subsequent analysis of the sample.

Part 3—Evidence

15—Evidence

This clause sets out the presumptions that may be made about the proof of certain factors in relation to the conducting of alcohol and drug testing, the conclusions that may be drawn from certain test results and the contents of certain certificates.

Part 4—Miscellaneous

16—Blood samples may be taken by nurses outside Metropolitan Adelaide

Except in the case of a compulsory blood sample taken following a notifiable occurrence under clause 9, a person required to provide a sample of blood outside Metropolitan Adelaide may have the sample taken by a registered nurse instead of a medical practitioner.

17—Protection of medical practitioners etc from liability

No proceedings lie against a medical practitioner or a registered nurse or a person acting on the direction of either of these persons in relation to anything done in good faith and in compliance with the provisions of this Schedule. A medical practitioner does not have to take a blood sample if he or she thinks it would be injurious to the medical condition of the person. Nor is a medical practitioner obliged to take a blood sample of a person who objects and persists in that objection after the practitioner has told the person that to do so, without genuine medical grounds, may constitute and offence against this measure.

18—Approval of apparatus for the purposes of breath analysis etc

This clause provides that the equipment used to conduct breath analyses, alcotests, oral fluid analyses and drug screening tests and kits that constitute a blood test kit may be approved by the Governor by notice in the Gazette. If equipment has been approved under the *Road Traffic Act 1961* it does not require further approval for the purposes of this measure.

19—Oral fluid, blood sample or urine sample or results of analysis etc not to be used for other purposes

This clause provides that oral fluid, urine and blood samples taken under this Schedule and any forensic material taken incidentally must only be used for the purposes contemplated by this measure, in connection with the management and control of any work or activity associated with railway operations or for the purpose of disciplinary proceedings against a rail safety worker.

20—Regulations

Without limiting any other provision, this clause provides that the regulations may make provision in relation to the testing of persons and the analysis of test results under this measure. The regulations may also set out requirements in relation to the destruction of oral fluid, blood or urine samples taken under this measure including any other forensic material taken incidentally during a drug screening test, oral fluid analysis, blood test or urine test.

21—Regulations

This clause provides that the regulations may make provision for any other matter associated with the testing of persons under this measure for the presence of alcohol or a drug and

the analysis and use of test results and the steps that may be taken into account of any testing or evidence or information produced as a result of the testing.

Schedule 3—Related amendments, repeal and transitional provisions

Part 1—Preliminary

1—Amendment provisions

This clause is formal and provides that the provisions of the Acts referred to in the headings are amended by this measure.

Part 2—Amendment of *Railways (Operations and Access) Act 1997*

2—Amendment of section 4—Interpretation

This clause deletes the definition of ***traffic control device*** from the *Railways (Operations and Access) Act 1997*.

3—Repeal of Part 2 Division 3

This clause deletes Part 2 Division 3 of the *Railways (Operations and Access) Act 1997* (Control of traffic).

Part 3—Repeal of *Rail Safety Act 1996*

4—Repeal of *Rail Safety Act 1996*

This clause repeals the *Rail Safety Act 1996*.

Part 4—Transitional provisions

5—Interpretation

This provides that the ***1996 Act*** means the *Rail Safety Act 1996*.

6—Existing accreditations

This clause ensures that accreditation held under the 1996 Act is recognised under the new measure and that the Regulator may, by notice in writing to the rail transport operator, make variations or impose new restrictions or conditions. The Minister may also in his or her absolute discretion refund the whole or any part of a fee paid by a person in relation to accreditation under the 1996 Act if accreditation is not required to be held by that person under this measure.

7—Private sidings

This clause ensures that private sidings registered under the 1996 Act are recognised under the new measure, subject to any variations or new conditions or restrictions the Regulator imposes by notice in writing to the relevant rail infrastructure manager.

8—Other provisions

The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of this measure.

Mr GRIFFITHS secured the adjournment of the debate.

ELECTRICITY (FEED-IN SCHEME—RESIDENTIAL SOLAR SYSTEMS) AMENDMENT BILL

The Hon. P.F. CONLON (Minister for Energy) obtained leave and introduced a bill for an act to amend the Electricity Act 1996. 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.

Nationally and internationally, a variety of initiatives are emerging from governments looking to respond to climate change. South Australia remains in the vanguard with its climate change legislation, and its strengths in centralised and decentralised renewable energy generation.

The legislation that is coming before the House today represents another step in the development of a coherent and purposeful strategy to keep South Australia at the forefront of governments facing the momentous challenge of climate change.

Adelaide Thinkers in Residence such as Professors Stephen Schneider and Herbert Girardet supported the introduction of a "feed-in-tariff"—a premium price paid to those who are prepared to invest in solar panels. Also, the Chairman of Green Cross International, Mikhail Gorbachev, wrote to the Government and recommended the introduction of the feed-in scheme.

Feed-in schemes have been implemented in many jurisdictions internationally as a means of promoting renewable power generation. By 2005, at least 32 countries and 5 States or Provinces had adopted such policies, more than half of which have been enacted since 2002. However, this legislation, which stipulates a premium feed-in tariff, is a first for our part of the world in providing a specific bonus for owners of solar panels.

In Europe, at least sixteen EU states have introduced feed-in mechanisms to support renewable energy sources including solar electricity.

The Government has investigated similar schemes around the world but has not found one that could be directly implemented in the context of Australia's National Electricity Market. By consulting the electricity and renewables industries, regulators and energy officials, a scheme has been developed that is suited to the competitive electricity market that exists in South Australia.

Other jurisdictions are following our lead. The Victorian Government has introduced an amendment to its Electricity Act to guarantee small renewable energy generators a "fair price" for any excess electricity they produce. The form it might take is yet to be specified and it is our hope that the lessons learnt from South Australia going first with the specific scheme will be disseminated widely around Australia and South East Asia.

The intent of the Bill is to introduce amendments to the *Electricity Act 1996* to create a "feed-in scheme" for residential electricity customers who operate a small-scale grid-connected photovoltaic electricity system.

The Bill will allow domestic customers to receive 44 cents per kilowatt-hour of electricity generated, and fed back into the grid, by their small solar photovoltaic systems. This is a fixed guaranteed incentive, which reflects double the price of electricity standing contract tariffs projected to apply over the time of the feed-in scheme, including an allowance for normal increases in retail prices.

The premium will be paid on the "net exported" energy from the PV systems—that is, the energy returned to the electricity grid after supplying the household's own consumption needs at any point in time. This will have the effect of valuing every reduction of one kilowatt-hour of energy consumption by a household during the day at a minimum of 44 cents—a strong incentive to manage demand.

For the purposes of this Bill, the qualifying small solar photovoltaic generator is defined as a grid-connected photovoltaic system with capacity up to 10 kilovolt-amperes for a single-phase connection and up to 30 kilovolt-amperes for a three-phase connection.

Therefore, there are three essential requirements to a solar photovoltaic system under this Bill:

- It should be operated by a domestic customer
- Its capacity should be up to 10 kilovolt-amperes for a single-phase connection and up to 30 kilovolt-amperes for a three-phase connection
- It should be grid-connected and should comply with standard requirements.

The Bill puts an obligation on distribution service network providers to credit eligible customers against the distribution charges otherwise payable for the supply of electricity.

The Bill makes it a condition of electricity retail licenses to pass the full amount of the incentive on to customers and reflect these reduced charges in the customer's invoice. It is also hoped that at least some retailers will choose to add to this minimum value of 44 cents.

Should the customer be in credit, this credit will be carried over to the next billing period. The customer will be entitled to be issued a payment if the customer is still in credit by the expiration of 12 months.

The Bill also makes a provision for reporting requirements to the distribution service network providers. It is envisaged that the distributor will provide the Government with information required to evaluate the operation of the scheme.

Currently, ETSA Utilities serves the vast majority of electricity customers and is a monopoly operating under a regulated regime. The Bill exempts electricity distributors that supply electricity to less than 10 000 domestic customers from participating in the scheme in consideration of the fact that distribution network providers in remote areas often service smaller customer groups where the costs of the feed-in scheme may exceed its value.

In accordance with the national competition principles, we are not forcing retailers to offer contracts to PV owners as part of this scheme. However, we recognise that if an existing customer of a retailer installs and wishes to connect a solar PV system, the retailer will be obliged to pass on the feed-in incentive for as long as the retail contract between the retailer and the customer remains in place. Electricity retailers will have an opportunity to assess the advantages and disadvantages of participating in the scheme relative to their

business objectives. Accordingly, only retailers that perceive there to be value in the scheme would be expected to accept or keep customers with photovoltaic systems. In assessing whether there is value in the scheme, retailers would be expected to take implementation costs into account. The implementation "cost per customer" may be higher for smaller retailers.

However, we believe that retailers will take the opportunity to participate in the scheme. Two electricity retailers, AGL and Origin, are already offering their customers a net-metering arrangement.

There has been some criticism that this scheme should have gone further by providing a higher rebate for a longer period, and applied to gross production. As this is a new policy of this kind for Australia, we cannot be certain how customers will respond until it has had a chance to operate. Therefore, the Government has determined that it will review the scheme's operation after the first two and a half years or when the installed capacity of residential small-scale grid connected solar PV systems reaches 10 Mega Watts, whichever comes first.

In order to deal with ever changing technologies and Federal Government policies, it has been decided that the scheme will be of 5 years duration and be reviewed in order to assess how effective the scheme has been and to accommodate this changing environment.

Realising that electricity retailers and the distributor will require some time to establish the processes, it is expected that the scheme would commence no later than 1 July 2008. We are hopeful, however, that retailers and the distributor would be able to put required changes in place earlier that 1 July 2008. Regardless of the commencement date, the scheme will conclude on 30 June 2013, which will allow householders to take advantage of the full five years of rebates under the scheme.

In conclusion, the scheme will enhance the State's international reputation for leading the response to climate change, by playing to our strength in renewable energy generally and, in this case, in deployment of solar energy for homes.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

The measure will be brought into operation by proclamation.

3—Amendment provisions

This clause is formal.

Part 2—Amendment of *Electricity Act 1996*

4—Insertion of Part 3 Division 3AB

This clause inserts a new Division into Part 3 of the Act (Electricity Supply Industry).

The following definitions are relevant to the operation of this Division:

domestic customer means a customer—

(a) who acquires electricity primarily for domestic use; and

(b) who satisfies other criteria (if any) prescribed by the regulations for the purposes of this definition;

excluded network means a distribution network that supplies electricity to less than 10 000 domestic customers;

qualifying generator means a small photovoltaic generator—

(a) that is operated by a domestic customer; and

(b) that complies with *Australian Standard—AS 4777* (as in force from time to time or as substituted from time to time); and

(c) that is connected to a distribution network in a manner that allows electricity generated by the small photovoltaic generator to be fed into the network,

other than where the distribution network is an excluded network;

small photovoltaic generator means a photovoltaic system with capacity up to 10kVA for a single phase connection and up to 30kVA for a three phase connection.

The Division will make it a condition of an existing or future licence authorising the operation of a distribution network, other than an excluded network, that the holder of the licence will allow a domestic customer to feed electricity into the network through the use of a ***qualifying generator***. A domestic customer who qualifies under this scheme will be credited with $0.44 per kWh.

It will then be a condition of the licence of the electricity entity that sells electricity as a retailer to the domestic customer (including a licence on the commencement of this measure) that the credit will be reflected in the charges payable by the domestic customer for the supply of electricity.

The amendments also provide that the scheme will cease to apply to electricity fed into a distribution network after 30 June 2013.

Mr GRIFFITHS secured the adjournment of the debate.

PRINCE ALFRED COLLEGE INCORPORATION (CONSTITUTION OF COUNCIL) AMENDMENT BILL

The Hon. J.D. LOMAX-SMITH (Minister for Education and Children's Services) obtained leave and introduced a bill for an act to amend the Prince Alfred College Incorporation Act 1878. Read a first time.

The Hon. J.D. LOMAX-SMITH: 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 *Prince Alfred College Incorporation (Constitution of Council) Amendment Bill 2007* will make minor, but necessary amendments to the legislation under which Prince Alfred College is incorporated. The changes proposed in the legislation will support recent reforms implemented by the College that modernise the school's corporate governance arrangements.

The *Prince Alfred College Incorporation Act 1878* has been amended by Parliament only once previously, by the *Uniting Church in Australia Act 1977*. This legislation facilitated the formation of the Uniting Church by creating a union of individual Christian churches, including the Wesleyan Methodist Church under which the school was established and also updated provisions relating to the constitution of the Prince Alfred College School Council.

The key purpose of the Bill before you is simple—it removes some prescriptive detail relating to the composition of the school Council from the legislation. The revocation of this provision will modernise the school's incorporating legislation and enable the school community to make changes to the composition of its School Council without reference to Parliament in the future. The composition of the School Council will be set out in the School Council's Constitution, which can be amended with approval of the South Australian Synod of the Uniting Church of Australia.

This approach of prescribing membership requirements of an incorporated governing body within its Constitution is consistent with that of other similar bodies through legislation, such as the *Associations Incorporation Act 1985* and particularly for school governing councils under the *Education Act 1972*.

The South Australia Synod of the Uniting Church in Australia has approved the proposed changes, as required by section 19(3) of the Act.

The Bill also provides for other minor and consequential amendments that have been included on the advice of Parliamentary Counsel, including updating the definition of *Synod*. It is also appropriate to remove the out-dated Constitution from the legislation.

As members would be aware *Prince Alfred College Incorporation Act 1878* is a private Act not committed to any Minister. However on the invitation of the College I am very happy to take carriage of this Bill on the school's behalf in my capacity as Minister for all schools. I propose you support these minor but necessary changes.

I commend the Bill to Honourable Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

The measure is to come into operation on assent. However, it is advisable to provide that certain amendments are backdated to the day on which the School Council varied its Constitution under section 19(1) of the Act as those variations

were, strictly speaking, inconsistent with section 17(2) of the Act.

3—Amendment provisions

This clause is formal.

Part 2—Amendment of *Prince Alfred College Incorporation Act 1878*

4—Amendment of section 3—Interpretation

This amendment up-dates the definition of ***Synod***.

5—Amendment of section 17—Constitution

The composition of the Council is to be altered in a manner that will cause an inconsistency with the requirement of section 17(2) of the Act, which currently provides that not less than one-third but not more than one-half of the ordinary members of the Council must be ministers of The Uniting Church in Australia. All requirements as to the composition of the Council are now to be determined under the Constitution, which cannot be varied without the approval of the Synod under section 19 of the Act.

6—Schedule

The Constitution set out in Part 2 of the Schedule of the Act is being altered, and may be altered from time to time into the future. Part 2 will therefore become out-of-date and in any event there is no need to continue to set out the Constitution in an Act of Parliament.

Schedule 1—Amendment of Constitution

1—Amendment of Constitution

This provision will provide complete certainty as to the commencement and operation of the Constitution of the School, as varied by the School Council on 24 September 2006.

Mr GRIFFITHS secured the adjournment of the debate.

SOUTH AUSTRALIAN PORTS (DISPOSAL OF MARITIME ASSETS) (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 25 July. Page 659.)

Mr GRIFFITHS (Goyder): I will speak on behalf of the opposition in regard to this bill. Unfortunately, the Leader of the Opposition, who prepared the briefing paper for the party and would usually have had responsibility for the carriage of this bill through the house, is unable to be here at this time, so he has asked me to act in his place. I also confirm that there is no requirement by the opposition for any amendments.

The South Australian Ports (Disposal of Maritime Assets) Act 2000 provided for the disposal of the assets of the South Australian Ports Corporation. That act also established the Port Adelaide Container Terminal Monitoring Panel. Membership of the panel was detailed in the act and, since 2000, there has been a number of changes to the industry, including mergers and acquisitions, that have resulted in some nominees no longer existing. Whilst the panel still exists, there is some doubt over its ability to operate in accordance with the act as a result of these changes. This bill, as the opposition understands it, amends the act to allow for the membership of the panel and the appointment of persons to the panel to be prescribed by regulations under the act. This will remove the uncertainty surrounding the membership of the panel. Section 26 of the act provides for a limitation of cross-ownership.

It is considered that the provision under the act creates uncertainty for a container terminal operator or owner who owns simultaneous interests in the competing ports of Melbourne and Fremantle, and it potentially works against ongoing investment in the container terminal. The bill addresses this issue by removing the prohibition on holding a cross-ownership interest. Instead, a cross-ownership interest would simply trigger the application of the limitation of ownership provisions in the act, allowing for the minister to consider the implications of cross-ownership. If the owner/operator is unable to satisfy the minister, this may ultimately lead to divestiture or confiscation of the relevant assets.

I note in the second reading explanation that the legislation will also promote ongoing efficient port operations and encourage further investment in the Port Adelaide container terminal. It is important for South Australia that this occurs, not only for the efficiency of the operation but also the investment that needs to occur there. We all want to grow the economy of South Australia and, if this bill contributes towards that, it has the opposition's support. We acknowledge the assistance of Mr Rod Hook, who provided a briefing on this bill to the Leader of the Opposition. I acknowledge the fact that we consulted with Mr Vincent Tremaine of Flinders Ports on the bill, and we also confirm his support. With those few words, on behalf of the opposition, I confirm our support for the bill in its current form.

Dr McFETRIDGE (Morphett): I rise to support the bill. I want to place on the record a couple of comments that were passed on to me by Shipping Australia Limited regarding part 8 of the act. Part 8 of the Act establishes the cross-ownership restriction on the Adelaide container terminal, which gives the minister the discretionary power to order the operator to divest its assets in the terminal if it has a 25 per cent ownership stake in a container terminal in either Melbourne or Fremantle. The response of Shipping Australia is as follows:

> We support the South Australian government's move to allow the current operator, DP World Adelaide Pty Ltd (DPW), to continue operating, thereby giving them security to increase their long-term investment in the Adelaide Container Terminal. However, in order that we can monitor any future capital investment in equipment. . . .we would ask that in return, DPW supply a 10-year forward program listing their proposed investment program for new cranes and other equipment. As Flinders Ports SA (FPSA) is part of any terminal expansion, we would also ask them to supply a 10-year forward program listing their proposed terminal improvements. . .

The only other issue is that Flinders Ports has been given approval to lift its port charges. I have to say that, compared with other increases in port charges around Australia, the increase involving Flinders Ports is minimal. However, because Flinders Ports has been able to increase its charges, Shipping Australia seeks some feedback (and I know this is a matter between Shipping Australia and Flinders Ports) about what Flinders Ports is going to do about port infrastructure upgrades—and it is my understanding that significant changes are about to happen.

The Hon. P.F. CONLON (Minister for Infrastructure): I thank opposition members for their support for the bill. This bill and the container terminal at Outer Harbor are another piece of what has been a very quiet but outstanding success story for South Australia. Dubai Ports World took over the container terminal subsequent to its purchase of P&O, which I think is an indication of the size and capacity of the operator we have down at the container terminal at Port Adelaide. At the invitation of that organisation, I visited Dubai and had discussions around the arrangements that are now embodied in this bill. For those who have never seen the container port in Dubai, it is an eye opener: it is mile upon mile of container cranes in a massive harbour that has been dug out of the desert. What that indicates is that we now have an operator

at the container terminal in South Australia that has a worldwide capacity to grow shipping.

I place on the record my appreciation of the work Rod Hook has done not only on this matter but also on a number of associated things, including the arrangement we came to to deepen the Port of Adelaide to 14.2 metres. Since that time not only are we seeing the investment we have talked about from DP World but we have also seen three new shipping lines coming into the port—and to be adding shipping lines instead of losing them was virtually unheard of during the last couple of decades. We are now seeing record numbers of container movements out of the port, investment by Dubai Ports World and new investment by Flinders Ports: a bullish future for the port which is, again, something we have not seen for a very long time. I am very pleased that this is another piece of what has been an outstanding story down there.

We have two new bridges over the Port River, including the rail bridge (which I know is a favourite of the member for Schubert) which will go to a new deep-sea grain facility. These bridges will be finished well ahead of the grain facility. In fact, I might point out that, while our project is perhaps not meeting its deadlines, it is going a lot better than the private sector project. It is going to hit them a lot earlier than the private sector does (that is my understanding), and that is a good thing.

We have a great investment in the Port River Expressway and a future investment in the Northern Expressway, which all goes together to give us a world-class and extremely competitive port for our exporters. This is at a time when it is more important than ever, given the difficulties that people are facing with the drought in terms of agricultural products, that we are as competitive as we can be on the world stage.

I thank the opposition for its support. I thank the port operators for the success we are seeing there. I point out that, of course, while we welcome the investment and we trust everyone, it is probably appropriate to quote the great old Bedouin saying, 'You should trust everyone but tie up your camel.' What we do with this bill is that we trust everyone but we tie up our camel. There are provisions in it for us to be advised of any poor performance. We do not believe that will occur but we have the capacity to be advised of poor performance and act upon it. What we have removed is the constraint upon investment and we are seeing investment flow as a result of that. I thank the opposition for its support.

Mr Venning interjecting:

The Hon. P.F. CONLON: I am sure the member for Schubert would like to have a look at the container terminal, and I am sure that DP World would be happy to arrange it. It is a very impressive sight, even if it is a little smaller than the one in Dubai.

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

VICTIMS OF CRIME (COMMISSIONER FOR VICTIMS' RIGHTS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 24 July. Page 608.)

Mrs REDMOND (Heysen): I indicate that I am the lead speaker and, I suspect, the only speaker for the opposition on this bill, largely because we consider it a reasonably uncontentious bill and one which we will be supporting. Subject to a couple of questions which I may wish to pose to the Attorney-General, if he can answer those in his response in due course, I suspect that we will not need to go into committee on this bill and, therefore, it should not delay the house terribly long.

The bill, of course, as the title suggests, establishes the Office of the Commissioner for Victims' Rights. Essentially, in my view, this bill is somewhat overdue because the Commissioner for Victims' Rights has been acting in that position for some months, and it seems to me that it would have been more appropriate to have that position formed in the legislation prior to the appointment of the person, Mr Michael O'Connor, the former—

The Hon. M.J. Atkinson interjecting:

Mrs REDMOND: Mr Michael O'Connell, sorry. The Attorney-General correctly points out that it is Michael O'Connell, who was previously the Victims of Crime Coordinator under the victims of crime legislation, but is now taking on the new office of Commissioner for Victims' Rights. I gather from something Mr O'Connell said during the briefing—and I thank the Attorney for making departmental officers available for that briefing and to conduct the meeting—that, in fact, his appointment preceding the legislation was authorised pursuant to section 67 of the Constitution Act. One of the questions that I have is simply whether there were any formalities in relation to his appointment prior to this legislation coming in. Was there a gazettal of the appointment and, if so, when was it? I did not happen to catch the answer, but I will wait until I hear the Attorney's response. In any event, it is of no great import. The fact is that he has been acting in this job for some months, and this legislation, albeit a little belated now, puts in place the relevant legislation for him to take on the role of Commissioner and to more fully defines exactly what that role is to be. Indeed, I think it is some time since the Attorney issued a media release about what this bill is to do.

It seems that, largely, the bill puts into a legislative framework what is already the practice in terms of what the Commissioner has been doing for some months, and the arrangements, for example, under which the DPP has been dealing with victims. We have, of course, had in this state a number of circumstances where it has been felt by victims that they were not adequately dealt with by the legal system. I do not think that anyone would argue that it is not appropriate for victims to have more of a voice in our judicial and legal processes, particularly in relation to the two issues that, in fact, the Hon. Nick Xenophon in the other place raised when he introduced a bill last year, which sought to deal with these very issues of victims' rights and how you define those rights without inappropriately interfering with proper and due legal process.

According to the second reading report, the new Commissioner's role will be much broader than that of the coordinator, which is what we had previously. As I understand the structure of the previous legislation, we had the office of the victims of crime coordinator, but we also had an advisory committee. Essentially, the advisory committee was there to advise the Attorney-General on initiatives which could advance the interests of victims. The coordinator was there to do what is called 'marshalling' government resources so that they can be applied for the benefit of victims in the most efficient way. During the briefing I asked just what this idea of marshalling means and what is actually encompassed by marshalling of government resources. The explanation was that, in fact, marshalling is a term brought into the legislation by the Hon. Trevor Griffin, the former Liberal attorney-

general, and it seems to be a concept which does not have a great deal of definition; nevertheless, it remains there.

We have this Commissioner now appointed who specifically has enhanced powers to assist victims in dealing with the DPP, or other prosecutors. Commonly, of course, prosecutions not done by the DPP would be undertaken by police prosecutors (generally the more summary offences). We were advised that the arrangements between the DPP and the assistance provided to victims in their dealings with the DPP are, in fact, those things which happen informally now but without any statutory authority.

The Commissioner will also have the ability to monitor the effect of the law and of court practices and procedures on victims, and to carry out such other functions as may be assigned by the Attorney-General, or assigned under other acts. So far as I know, there are no other acts specifically at this stage assigning any particular duties to the Commissioner, but that is potentially an area where the Commissioner may have some function in the future. I would imagine that, in monitoring the effect of the law and of court practices and procedures on victims, one of the issues which the Commissioner will be examining will be the effect of delays in the court system, because I know, from my own experience as a practitioner, that it is extremely difficult for people involved in court processes if those processes drag on beyond what they need to be. I think this is more so the case in criminal than in civil jurisdictions.

In civil cases, if you are running a claim for an injury from a road accident, for instance, it is often the case, particularly with the more significant road accidents, that it is some considerable time between when the accident occurs and when the matter proceeds to trial. Most matters, of course, do not proceed to trial, but if a matter is going to trial it is a fair distance between when your accident occurs and when the matter actually comes on for hearing in the court. But largely, that is because of the need for the victim's circumstances to be settled and clarified, rather than because of delays forced on the victim by the court processes.

So, someone with a very serious injury may indeed take two or three years to have their injuries settled, repaired as best they can be, and the final outcome of their injuries diagnosed and assessed and arrangements made to try to settle the matter before it ever comes to court. So that there can often be a two or three-year delay—or more—in bringing one of those matters to court. In fact, the longest one I ever had in a civil case was over 16 years. Obviously, I did not run it for the whole time, but I had one where a young toddler was hit by a car and we essentially had to wait for that toddler to grow up to see what capacity he had to work in order to assess the damages which were going to be attributable to the accident which had imposed the injuries on him.

In the case of criminal proceedings—my experience and talking with colleagues—the general feeling is that the quicker things can come to court the better. So that delays in criminal actions are largely not to do with any need on the part of the victim, but are largely due to delays caused by court and listing processes. Some of this will have to do with lack of resources, and I have spoken before about the need for more resourcing in the courts, in the Courts Administration Authority, legal funding, the DPP and so on, but also simply because the exigencies of the availability of witnesses and listing procedures, particularly in the longer and more complex trials, and even more so where you have got jury trials, can often mean that there are considerable delays.

The point I wanted to make was that I would assume that the Commissioner for Victims' Rights will therefore, as part of that role in monitoring the effect of the law and court practices and procedures on victims, devote a fair bit of activity to monitoring the effect of delays in the system and, I would presume, making some sort of assessment as to what is causing those delays and how they might be reduced.

The Commissioner is also specifically given power in this legislation to require a public agency or official to consult with him about victims in general or about a particular victim or a class of victims. If the Commissioner is satisfied that the agency or officer has failed to comply with part two in circumstances where compliance would have been practicable (part two deals with the obligation to consult with the victim and so on) and if they fail to do the right thing by the victim in the first instance, and they have not apologised or otherwise dealt with the victim in a satisfactory way, the Commissioner may, by issuing a notice in writing, recommend that the agency or official issue a written apology to the relevant victim. That is a reasonably far reaching power.

It is still only a recommendation, but I would imagine that the appointment of Michael O'Connell in this role means that we would have appointed someone with a fair knowledge of victims' matters, who has a reasonable understanding of court processes and so on and someone who has a pretty good reputation within the legal community. If that person then sends a formal notice to an organisation, whether it be the DPP or the Police Prosecutions Branch or whoever it is, having investigated the matter and decided that an apology is in order, I would think it highly likely that, upon receipt of such a notice, the agency would be inclined to send the apology as recommended rather than to resist the recommendation of the Commissioner. We will have to wait to see whether in practice that turns out to be the case. One would hope, of course, that the other provisions of this legislation and the nature of the Commissioner's role would mean that those sorts of things are not going to happen in the first place and that it will not be necessary on many occasions for such a notice to be sent in any event.

One of the interesting developments in this legislation is that the Commissioner is specifically able to engage legal counsel to represent victims, for instance, at things like meetings with the DPP; so, in addition to putting in the funds to establish the office, at the briefing we were advised that in January 2007 the government made available $250 000 (which is new money) for legal representation of which some $50 000 has been spent to date. It is unclear where this money comes from, and the doubling of the victims of crime levy announced in the last budget might be the source of those funds, but I will say more about that in a little while.

The whole thing about the funding of this office is really the area that I would like the Attorney to address when he responds to avoid our having to go into committee. I say that because I have a suspicion that, whilst I have great respect for the new Commissioner, I think that the role and having the title of 'Commissioner' probably indicates that he is being paid a fair bit more than he was being paid as the Victims of Crime Coordinator, so I would like to get from the Attorney some detail about the cost of the Victims of Crime Coordinator and the cost, if any, of the advisory council which was set up to advise the Attorney on victims' issues compared to the cost of running the office of the Commissioner, including the cost of the Commissioner's position. I would like to have a more thorough knowledge of where that is coming from.

I ask for that particularly because, having had a look through the victims of crime levy budget, I notice that although there has been a doubling of the levy in theory, for a start, it does not seem to flow very easily. In the cash flow statement and administered items in the budget it shows that, under the Victims of Crime Fund, levies for fines and penalties was an estimated $9.186 million in 2007—and that has been more than doubled to $20.591 million in 2008—but the amount of compensation being paid to victims is increasing by only $326 000, from $12 million in 2007 to $12.326 million in 2008. The collections will increase by over $10 million, but the amount of compensation paid out to victims will go up only marginally.

I question the government's genuine intention to improve the lot of victims if it is not improving the amount of compensation. It would be commonly agreed that money will never compensate people for what they suffer as victims. If you talk to anyone, whether injured in a car accident or as a result of a criminal activity, they always say that they would much rather have the health and well-being they had prior to their injury than any amount of compensation. That is almost a truism, but at the end of the day the legal process can only provide money and sometimes an apology, which might make people feel better, but money does matter in terms of trying to right the wrong that has been done to people.

I have said on a number of occasions in this place that I have some difficulty with the way our compensation systems are structured because it makes no sense to me from a philosophical viewpoint that, if you have a person injured in a car accident, they will get a certain amount of compensation if the injury is the result of someone else's negligence. They could have exactly the same injury in an industrial accident and get a different amount of money or exactly the same injury as a result of shopping in a supermarket but get another amount of money, and they could get no compensation if they were injured completely of their own fault while at home and did not have an insurance policy to cover them.

It puzzles me that our lowest scale and the least amount of compensation one will get under any scheme is as a victim of crime. Where someone has acted in a criminal way towards you and you suffer the same injury, you get the least amount of compensation compared with getting it as a result of an accident or some other circumstance. It varies in scale and it does not make a lot of sense to me, particularly with catastrophic injury, where someone becomes a quadriplegic with a level of brain injury. Not much is served by society taking large amounts of money through insurance to put into a trust for that person to meet their expenses over the rest of their life. The quality of their life is not changed if they have sufficiently catastrophic injuries.

It does not make a lot of sense at the high end of the scale if we have some claims that are huge when the person cannot reasonably change the nature of the way the rest of their life will be lived as a result of the injuries they have sustained. That is a philosophical argument for another day and not one I will seek to address either through this legislation or any other legislation likely to come before this parliament in the next few years.

I really wonder about the bona fides of the government when it talks about its interest in victims, given that, in theory, it intends to double the amount of money to over $20 million, taken in levies for fines and penalties and put into the Victims of Crime Fund. Indeed, the amount going in will well exceed—on the government's estimation—the amount coming out of that fund. I suspect that the extra money is in fact being used to fund the Office of the Victims of Crime Commissioner, and that is why I am interested in what the actual costs of running that office might be.

In any event, what brought me to that comment was the idea that the Commissioner can engage legal counsel to represent victims at a meeting with the DPP. The government has allocated money for that purpose. Indeed, the Commissioner has already spent some money for that purpose by engaging, as I understand it, people who are already engaged as solicitors by the victims to represent them in meetings with officers from agencies such as the DPP. I think that is a good thing, and it will assist victims, because often people do not understand the legal process. They do not feel confident or competent to engage with very experienced lawyers who often talk jargon in relation to the matter of the prosecution of the offender.

When I was in practice, I would often go into court and deal with someone's relatively minor criminal matter. We would get a decision—a summary judgment—from a magistrate instantly. I would then have to spend 15 to 20 minutes outside the court explaining to the person whom I represented what was meant by what was said in the court, because it is so quick. We all know what is happening, but to them it is just gobbledygook, and they do not really know what has happened, what the orders mean and what they are supposed to do, and they really need it explained. I used to explain it and then send them a letter confirming the detail so that they had no misunderstanding. So, I think that it is a good thing that the Commissioner is able to engage legal counsel so that people feel that they have a sufficiently knowledgeable voice about the processes to engage with the DPP, the police prosecutor, or whoever it might be, and deal with those issues.

The Commissioner himself is not a member of the public service, but his office staff are public servants. As I understand it, the model is generally similar to that which applies in the Office of the Equal Opportunity Commissioner. I have some concern about new section 16E, which guarantees the independence of the Commissioner, but which is worded in such a way as to allow interference. It provides, firstly:

> Subject to this section, the Commissioner is entirely independent of the direction or control by the Crown or any minister or officer of the Crown.

That is good, except for the words 'subject to this section'. This section then provides:

> The Attorney-General may, after consultation with the Commissioner, give directions and furnish guidelines to the Commissioner in relation to the carrying out of his or her functions.

I am somewhat comforted by the fact that any such directions or guidelines are to be published in the *Gazette* and laid before parliament. It appears to allow the Attorney-General or the government considerable interference. In fact, it seems to me that it allows the sort of direction, on the broadest interpretation, that occurred in Nemer. No doubt the Attorney-General will raise the fact that I did not support the direction in the Nemer appeal. For the benefit of the Attorney, I reiterate that I was not the Liberal spokesperson on legal affairs at the time of my comments, and I did not bind the Liberal Party as such. One of the great things about the Liberal Party, of course, is that we have that freedom. We are not bound to follow the party room. I used my freedom on that occasion to say that, but, quite apart from that, I would not have interfered in that case. If I were the attorney-general at the time I would not have given that direction—I make no bones about that—but I was not the attorney-general, I was

not the shadow attorney-general and I was not the legal spokesperson at time.

The Hon. M.J. Atkinson: But that is a discretion.

The SPEAKER: Order!

Mrs REDMOND: Notwithstanding that I still prefer the reasoning of the Chief Justice in the ultimate appeal, I acknowledge and absolutely accept it was a finding of the Full Court. The Attorney-General seems to have some difficulty with the idea that as a practitioner there is commonly a situation—

The Hon. M.J. Atkinson interjecting:

Mrs REDMOND: Often there are situations where you do not necessarily agree with the finding of the court but, nevertheless, it is binding. I have no qualms about the fact that it is binding. If it upsets me terribly, then one day when I am attorney-general—if I am ever lucky enough to do that—I will decide, first, whether I would ever direct and, secondly, whether I want to narrow the scope of the DPP's legislation to prevent that sort of direction.

The Hon. M.J. Atkinson interjecting:

The SPEAKER: Order!

Mrs REDMOND: That is a question for another day. All I am trying to indicate at this stage is that I am somewhat comforted by the terms of new section 16E which requires the Attorney-General, if he decides to direct the Commissioner for Victims' Rights to do anything, to publish that direction in the *Gazette* and for it to be laid before parliament. Indeed, that is a comfort. At the briefing it seemed to me that a number of people representing various members of the upper house, the minor parties and the Independents felt that the legislation, even now, does not go far enough.

I looked at the Xenophon bill that was introduced in 2006. The Hon. Mr Xenophon talked about two particular areas; that is, the issue of plea bargaining and the ability of victims to be involved in discussions about plea bargaining and the issue of agreed facts. It was clear that in some cases the outcome in the court was probably within the range of what would be reasonable, given the agreed facts put to the court, but the problem was that the agreed facts did not bear a great resemblance to the facts as they occurred. It is appropriate for victims to understand and be engaged in that process, not necessarily directly in negotiations with the offender, but they at least should be engaged in discussions about what the agreed facts will be—if it is going to proceed by way of plea—so that they understand that these things have consequences. They should be fully informed and be able to engage with the prosecuting authority as to the consequences of any particular set of agreed facts. Of course, the Attorney-General has never been in practice and has never engaged in negotiations about agreed facts.

The Hon. M.J. Atkinson interjecting:

The SPEAKER: Order!

Mrs REDMOND: You always know I keep talking for longer because you are interjecting. Often in the summary jurisdiction negotiations about agreed facts occur with a very busy police prosecutor who might have dozens of files with which he is not familiar. The facts are laid out ready to present to the court and a deal is done, such as, 'My client will plead to charge 3, provided you drop charges 1 and 2.' The prosecutor is interested in getting a conviction. So, as long as they get a conviction, generally you would be able to get somewhere in relatively minor cases, and I am talking about the summary jurisdiction. You would have to remove certain things from the facts as laid out before the police, otherwise it would involve charges 1 and 2, for instance. There is an agreement; it is done verbally and very quickly. Thousands of these matters occur every day in our courts of summary jurisdiction.

Problems clearly arise in complex cases—serious criminal matters, indictable cases, or cases being dealt with by the DPP and, indeed, by some of the police prosecutors. These sorts of things cannot happen in a matter of minutes. Over the years, I have been involved in negotiations that would have taken less than a minute in terms of discussing with the police prosecutor what we would plead to and what the agreed facts would be. It might have been rough justice but, generally, it was something approximating justice. I do not know that a lot more time would have produced a much better or different result.

I say that simply as background to the issue of the agreed facts and the issues that the Hon. Nick Xenophon identified when he introduced his bill. He introduced a draft bill early in 2004. Largely, I did not think that there was a great deal of difference between what the government now seeks to achieve with this legislation and what the Hon. Nick Xenophon sought to achieve with his proposal.

The Hon. M.J. Atkinson: That's because we value his ideas.

Mrs REDMOND: As the Attorney says, that is because they have taken up his ideas—and that is typical of this government. It never likes to see a private member's bill get up and the private member get the credit for the legislation: it always like to take it, revamp it and get the credit for it, rather than letting the Independent person get the credit for it.

The only other issue I want to cover briefly is the specific section that deals with the right of a victim to request the DPP or other prosecuting authority to take an appeal. I will be interested to see whether anyone moves any amendments in the other place, because this was an issue that was raised in a briefing. My view is that the government probably has it about right, in that the person must make the request within 10 days because, obviously, there is a limited time for appeal. It is no good requesting an appeal after the time has expired for it to be lodged. However, whilst they can request it, they cannot compel it.

I am open to suggestions as to an appropriate system that allows victims to go further than that, but my preliminary view is that the idea that a victim could compel an appeal does not make a lot of sense. I think that, at the end of the day, every victim would be dissatisfied with an outcome in some way and, potentially, want to compel an appeal if they could. I think that we must leave it to the specialists to say whether or not there is any likelihood of success on an appeal. I think that that is probably about the right balance. Another bill will be introduced tomorrow in relation to other aspects impacted by the current tranche of victims legislation. However, I think that I have just about covered everything I wanted to say about the Office of the Commissioner and the Commissioner for Victims' Rights established in this bill.

I guess the big question—and perhaps we will have to wait to see what happens in practice—is whether it will actually improve the victim's position. My suspicion is that it legislatively guarantees what already is the victim's position, so I do not know whether the bill itself actually does anything to markedly improve that. As I said, it does things like putting into legislation the requirement for the DPP to consult, and so on. With those comments, I conclude my remarks, and look forward to hearing from the Attorney in response regarding the cost structure under which this will all operate.

Ms FOX (Bright): This bill will establish a Commissioner for Victims' Rights. The position of Commissioner will replace the position of Victims of Crime Coordinator, and will have a much broader role in expanding victims' rights and advocating the plight of victims.

The interim Commissioner for Victims' Rights and former Victims of Crime Commissioner, Mr Michael O'Connell, is well known for the passion he shows in working to advance victims' rights in our state. He is highly regarded by his peers and by victims in both South Australia and nationally as a spokesperson and advocate for victims. Since his appointment as Interim Commissioner for Victims' Rights, Mr O'Connell has already lectured in Japan, and he is currently coordinating, and will host, the Australasian Society of Victimology Conference entitled 'Alternative approaches to justice: are victims better off?'. The conference, which will be held in South Australia this month, will feature international and local speakers. Mr O'Connell continues his tireless efforts towards increased rights for victims of crime as Interim Commissioner for Victims' Rights, so it is good that he has paved the way for a permanent Commissioner to advocate the interests of victims with this bill.

The bill will extend the power of the Commissioner and allow even more improvements to victims' rights in our state. It will also allow the courts, the Office of the Director of Public Prosecutions and South Australia Police to be more focused on upholding victims' rights. The bill will authorise the Commissioner to assist victims of crime when they deal with the DPP, police and other government agencies. The Commissioner for Victims' Rights will monitor and review the effective court practices and procedures as well as the law on victims of crime and their families—the often forgotten secondary victims. The bill will also allow the Commissioner to recommend an apology to a victim by a public agency or official if he or she believes that the agency or official has failed to comply with the declarations of principles for victims. The Commissioner could also require the DPP to consult with him about the interests of victims. I believe this will help shift the balance towards victims and will assist victims in their dealings with government agencies—particularly during difficult matters such as so-called 'plea bargaining'.

The role of the Commissioner is to be independent of the general direction or control by the Crown or any officer or minister of the Crown. The Commissioner will be able to make independent and uninfluenced recommendations, so the public can be confident that the Commissioner will represent them with only their welfare in mind and without conflict of interest. It also makes clear to the Commissioner that he is free to make independent recommendations for change to advance the rights of victims. In addition, the bill allows the Commissioner to stand in proceedings in which the Full Court of the Supreme Court is asked, or proposes, to establish or review sentencing guidelines. The Commissioner for Victims' Rights would ensure all victims become an integral part of reforms to our justice system. He would ensure that victims remain involved with the justice system, are informed of their rights, and are given a voice. The needs and interests of victims will be a major consideration in policy making, the courts, government administration and the community.

Victims of crime have high expectations of our justice system, and the Commissioner for Victims' Rights would ensure that their needs are met. This bill is a first for Australia, and will strengthen this state's already well regarded laws for the protection of victims of crime. I commend this bill to members.

Mr KENYON secured the adjournment of the debate.

[Sitting suspended from 1 to 2 p.m.]

MEMBERS' TRAVEL REPORT

The SPEAKER: I lay on the table the House of Assembly members' annual travel report 2006-07.

AUDITOR-GENERAL

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

Leave granted.

The Hon. M.D. RANN: I rise to inform the house that His Excellency the Governor's Deputy, in Executive Council this morning, appointed Mr Simon O'Neill to one of South Australia's most senior public positions as the state's new Auditor-General. Mr O'Neill has been Acting Auditor-General since February this year when Ken MacPherson stepped down after reaching the statutory retirement age of 65. The government conducted a national search for a successor to Ken MacPherson and Mr O'Neill was selected from a field of high quality candidates. I am also delighted to inform the house that the Governor in Executive Council today also approved the appointment of the former auditor-general Ken MacPherson as South Australia's Acting Ombudsman. I could not think of anyone better to do the job, someone with 16 or 17 years experience as auditor-general now stepping in to fill the gap as Acting Ombudsman. The government decided Mr MacPherson was very well qualified and suited to fill the role left by the former acting ombudsman Suzanne Carman, who, unfortunately, has been forced to step aside on grounds of ill-health. We all wish her well for a speedy recovery.

Simon O'Neill began his professional career in the Auditor-General's department as an audit clerk in 1972, moving up through the ranks of the department before being appointed Deputy Auditor-General in 1997. That knowledge and experience in working in this high profile office is invaluable. In a sense, Simon O'Neill has been groomed to take on this role, spending the past 10 years working closely with Ken MacPherson as his deputy. Simon O'Neill is someone who understands the importance of the role the Auditor-General has in maintaining the financial integrity of state government. We have come to expect independent and forthright reports to parliament on the performance of these agencies from our Auditor-General, and I look forward to that tradition continuing under our new Auditor-General.

Combined with the government Ombudsman, South Australia Police Anti-Corruption Branch, the Police Complaints Authority and the Government Investigation Unit within the Crown Solicitor's office, the Auditor-General helps to provide very effective deterrents to corruption. The appointment of Simon O'Neill will further ensure that we have in place the right people to ensure government and its agencies continue to be properly accountable.

In terms of the role of Acting Ombudsman, I would firstly like to thank Suzanne Carman for stepping up to the role following the resignation of Eugene Biganovsky in June. She has, I am told, carried out the job with all the diligence and with the professionalism we have come to know from this

senior public official. I know that, from her work in the area of antiterrorism, where she was the critical link between South Australia, the other states and the commonwealth, we are talking about an outstanding public servant. Since it became apparent that her ill-health would not enable her to return to the role, it was fortunate that South Australia had someone of Mr MacPherson's calibre at such short notice to fill this important public post.

Ken MacPherson, the former auditor-general of South Australia, will now step in to be the state's Acting Ombudsman—and there could not be anyone more qualified. Ken MacPherson was an outstanding auditor-general who served South Australia well for 17 years until his enforced retirement at age 65 earlier this year. He indicated at the time that he believed he still had much to contribute to the state and I am pleased that such a role has been found for him, albeit on a temporary basis. There could be few people in Australian public life who would have such an intimate understanding of the operations of government and its agencies.

Ken MacPherson, who is a qualified solicitor and accountant, began his career in the commonwealth taxation office in Brisbane in 1961 before he moved across to work in the office of the commonwealth Deputy Crown Solicitor. Throughout the next two decades he held senior positions in a range of commonwealth and state government agencies interstate. In June 1990 he was appointed auditor-general in South Australia—a post he held until he retired in February. Mr MacPherson gained an enviable reputation nationally for his fierce independence and rigorous attention to detail as auditor-general—qualities that will prove valuable in his new role as Acting Ombudsman. Mr MacPherson will remain in the post until the appointment of a new Ombudsman can be made.

EDUCATION REFORM

The Hon. J.D. LOMAX-SMITH (Minister for Education and Children's Services): I seek leave to make a ministerial statement.

Leave granted.

The Hon. J.D. LOMAX-SMITH: I rise to inform the house of legislative reforms that the Rann government is introducing to support the governance and management of our education system so that young people are better prepared for the future. As members are aware, the government is embarking on a number of major reforms within our education and children's services system. Central to those reforms is a commitment by the Rann government to strengthen the opportunities, skills and values of young South Australians at a critical time in the state's history and economy. We are working with school communities to invest more effectively and more efficiently in education so that young people are equipped for a better future and we strengthen the social and economic prosperity of the state.

Our reforms include a stronger focus on improving opportunities for children right from the start through measures such as children's centres, which integrate health, family and education services, and a greater emphasis on literacy and numeracy in the early years of schooling. At the other end of the spectrum, we are working across all school sectors—government, Catholic and independent—to introduce a new senior secondary school certificate. This qualification will build on the best of our existing SACE to enable young people to gain skills, both at school and beyond the classroom, through training and in tertiary institutions within the community and the workplace. Our $84 million School to Work reforms also include 10 new trade schools for the future, and these will build on the achievements of our secondary schools in developing real skills for real jobs in areas of skills shortages.

Across a host of industries and trades from mining to defence, health and community services, we know that there is an increasing demand for more highly skilled people in a global economy. As part of our reforms to encourage young people to increase their skills we lifted the school leaving age to 16 in 2003. At a time when workforce demand is for higher skilled people we must go further if young people are to be better equipped and ready for skilled careers and citizenship.

However, the pace and scope of reform and investment means that legislation to support governance of our education system needs to catch up. Our existing Education Act is 35 years old and was put in place in 1972. The legislation that supports governance of the current SACE is 24 years old. As any parent or teacher knows, the information and global economy for today is a far cry from that which was in place in 1972. We need a more creative, flexible and cross-agency approach to service delivery, governance and management than current legislation enables. I acknowledge that the former Liberal government did look at updating the Education Act and Children's Services Act but in fact made no significant changes.

The Rann government has listened to and worked with communities and across education sectors to develop modern legislation that will support our reforms. The first stage of legislative reform will extend the age at which all young people must be engaged in education or training. By amending the Education Act 1972, we will ensure that all young people in South Australia are in school, work or training until they have completed an approved qualification or turned 17 years of age. In addition to traditional school lessons, a student's education could include TAFE courses, part-time work, apprenticeships, university studies, or alternative education programs within the community. This will add strength to the government's $84 million investment in 'school to work' reforms to ensure that more young people are prepared for the future. Introducing the bill now for implementation in 2009 will provide the necessary time for the education and training system, including government, Catholic and independent schools, to plan and develop further opportunities for senior students.

As a community, we can no longer afford to have young people out of school, out of work, or out of training. We cannot afford for them to be at risk of not achieving their potential. As we progressively introduce modernising legislation for education and children's services, our community can be confident that we will have a sound legislative foundation that underpins the delivery of quality education and care for young Australians and the future prosperity of our state.

LEGISLATIVE REVIEW COMMITTEE

Mrs GERAGHTY (Torrens): I bring up the sixth report of the committee.

Report received.

PUBLIC WORKS COMMITTEE

Mr KENYON (Newland): I bring up the 271st report of the committee, entitled Adelaide Festival Centre: Dunstan Playhouse Refurbishment.

Report received and ordered to be published.

Mr KENYON: I bring up the 272nd report of the committee, entitled Flood Damage Rectification in Various National Parks.

Report received and ordered to be published.

VISITORS TO PARLIAMENT

The SPEAKER: I draw to members' attention the presence in the chamber today of students from Gilles Street Primary School, who are guests of the member for Adelaide, and students from Noarlunga TAFE, who are guests of the member for Reynell.

QUESTION TIME

DESALINATION PROJECTS

Mr HAMILTON-SMITH (Leader of the Opposition): Will the Premier repeat to the house the promise he made to the media yesterday that his government will definitely build a 50 gigalitre desalination plant in Adelaide within five years irrespective of cabinet's decision on the findings of the government's desalination working group to be presented in October? The government's working group is yet to advise cabinet of the cost, location and the environmental impacts of his desalination plant. Due diligence is not yet complete and cabinet is yet to agree to the proposal.

The Hon. M.D. RANN (Premier): Here is the man, the Leader of the Opposition, who promised a desal plant without a study and who was five times wrong in terms of his costings. So, what I said yesterday—

Members interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN: Here is a man who produced a piece of paper, who said that a desal plant was going to be a certain amount of money and, in fact, it is five times more expensive. So, yes, I stand by my statement yesterday. Yes, I stand by my statement to the media. Yes, I stand by my statement in this parliament.

Mr HAMILTON-SMITH: In light of his response, can the Premier describe to the house the component parts of his proposed desalination plant and, in particular, how much will be spent respectively on the desalination plant itself, the intake and outlet pipes, and the freshwater distribution infrastructure needed to connect it to the network? You promised it, tell—

Members interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN: I am very pleased to educate the Leader of the Opposition who, increasingly, is appearing like '*The Chaser* Comes to Parliament', such are his bizarre performances. What I said yesterday is that we are embracing a desalination plant. We are looking at a 50 gigalitre desalination plant, but we are building it in a way so that its intakes and out-takes will allow it to be modularised in the future if necessary. What I announced yesterday is what I announced back in March of this year, and that is that we are having experts look at all of the engineering, all of the things relating to brine dispersal, all of the things that I said yesterday. Apparently, the Leader of the Opposition did not read my statement in this house which was somewhat more thorough than the farrago, the tissue, that he produced earlier this year. He announced a desal plant with no costing, no numbers, no location. What we are announcing is that we are doing it properly. We will have a desal plant and we are getting expert advice and, as I announced yesterday, that will be a report to cabinet in October and then a decision made in November. All the details will be laid out, and we will make sure that we will give a special briefing to the Leader of the Opposition because he only had to look at his 19-point plan. He announced things that were already happening; he announced things that would just be plain dopey, and he got his costings massively wrong, and he wants to be the Premier of South Australia.

MINING INDUSTRY

Ms BREUER (Giles): Can the Premier inform the house about the latest developments in South Australia's burgeoning mining industry?

Members interjecting:

The Hon. M.D. RANN (Premier): Well might members opposite laugh, because we know that members of the Liberal Party in this state do not have a commitment to mining. They see mining as some kind of mirage in the desert. That is what they believe. That is why they are so anti-mining. I want to compare this government's record on mining with theirs.

Today, the Australian Bureau of Statistics published figures that confirm that South Australia's mining industry is continuing to break all records. Today, mining exploration expenditure is officially at a new, all-time high. In punching well above its weight in the nation's mining industry, for 2006-07 our exploration spending was up $260.7 million. For the past two quarters, we have been ahead of every other state or territory except the mining giant Western Australia. That means that our expenditure has outstripped the performance even of the great mining state of Queensland.

South Australia's annual figure was a whopping 15.2 per cent of the national total. We have seen, of course, over recent years a massive increase in expenditure. For the year to June 2006, our expenditure was $146.5 million and, as I said, today it stands at over $260 million. The latest quarterly figures suggest we have not hit our speed limit yet. For the June quarter—

Members interjecting:

The SPEAKER: Order! The house will come to order.

The Hon. M.D. RANN: They don't like good news. The unemployment figures came out the other day and showed the lowest unemployment on record and the highest number of people in jobs on record. The only sad face around town was the Leader of the Opposition's. And the same is true with mining. As I say, they might think that our mining boom is a mirage in the desert, but we are making it happen. For the June quarter, we hit another all-time quarterly high of $84.1 million, which was a rise of more than 20 per cent on the previous quarter, and accounting for just under 17 per cent of the national total for exploration spending in the June quarter.

Before Labor came to office, in the calendar year 2001, what happened when the Leader of the Opposition was a minister? Let us look at the difference. It is $260 million now but, in the calendar year 2001 when the Leader of the

Opposition sat around the cabinet table (or so we are told), exploration expenditure was just above $30 million. What a difference a change in government makes—$30 million a year under the Liberals, and $260 million a year under us!

This once again illustrates the wisdom of this government's innovative partnership with the mining industry through the internationally recognised PACE scheme. Of course, I want to pay tribute, because I believe in being generous, to Robert Champion de Crespigny, who came and saw Paul Holloway, me and other senior ministers and said, 'Let's put some effort into mining exploration in this state. Let's make sure that we do everything we can to make exploration the keynote of what we are doing in resource development because, when you explore, you go out and find things.' We were the most under-explored place in the world, other than Siberia, under the Liberals, such was their contempt for the industry. That is why I went to the national Labor Party conference in April of this year and led the charge, with Kevin Rudd, to change the ALP policy to end the 'no new mines' policy and allow uranium mining in this state. The last time I looked at the figures I think about 160 exploration uranium licences had been issued, and of course we know there has been another fantastic find at Beverley.

Earlier this week, I met with the head of SinoSteel, who believes it will have a new uranium mine west of Peterborough open for business by about 2010, and I look forward to inviting the Leader of the Opposition to attend that exciting event; it is going to be great for Peterborough. South Australian mining companies are becoming recognised as national leaders. At the National Mining Awards held in Sydney last night—

Members interjecting:

The Hon. M.D. RANN: Okay. We saw yesterday *Variety* magazine coming out and saying that the Adelaide Film Festival was one of the '50 top unmissable film festivals in the world', ahead of Melbourne, Sydney and—

An honourable member interjecting:

The Hon. M.D. RANN: I do not know whose idea it was, but it is a terrific one. At the National Mining Awards held in Sydney last night, in conjunction with the Excellence in Mining and Exploration Conference, two South Australian companies were recognised. RMG Services was awarded the Discovery of the Year for its Carrapateena copper and gold deposit. I think it would be great to see all members—

The Hon. P.F. Conlon: A PACE program project.

The Hon. M.D. RANN: A PACE program project. The Managing Director of RMG Services, Mr Rudy Gomez, said:

> It is a great honour to be recognised by the industry, but in receiving this award, we also recognise the fundamental role played in the success of Carrapateena by the support that the Rann government has given through the PACE program.

Geodynamics, which is seeking to develop hot rocks or geothermal energy sources, was awarded the prize for Frontier Explorer of the Year for innovation in exploration. Geodynamics is an innovative company, receiving well deserved world recognition.

South Australia is going to be Australia's next mining giant. What happened in the past was that exploration expenditure was $30 million a year, and under us it is $260 million and growing. We got behind PACE so that we could demonstrate that this government is backing our mining industry in a partnership for jobs and prosperity for the future, and I will welcome the Leader of the Opposition to the opening of SinoSteel's new uranium mine west of Peterborough.

DESALINATION PROJECTS

Mr HAMILTON-SMITH (Leader of the Opposition): My question is again to the Premier. Did the Premier have cabinet's sign off—and, in particular, the Treasurer's sign off—before yesterday's promise to fund and build a 50-gigalitre desalination plant, or was it policy on the run? On 28 June, the Treasurer, Kevin Foley, told the estimates committee that there would be no commitment on a desalination plant until a detailed and thorough analysis was completed. The Treasurer said:

> It would be reckless to commit to a desal without undertaking that work.

The Treasurer is overseas. He thinks you are reckless, Premier; I hope you phoned him.

The SPEAKER: Order! If the Leader of the Opposition persists in making those comments at the end of his explanations, I will simply not allow his explanations. The Premier.

The Hon. M.D. RANN (Premier): My statement to the house yesterday, as well as in the news conference yesterday, has the total support of the Treasurer and, indeed, the entire cabinet, as you would expect.

The SPEAKER: The member for Ashford.

Members interjecting:

The SPEAKER: Order! The member for Ashford.

PUBLIC HEALTH SYSTEM

The Hon. S.W. KEY (Ashford): Thank you, Mr Speaker. My question is to the Minister for Health. How many extra doctors and nurses are working in the public health system since the Rann Labor government came into power in 2002?

The Hon. J.D. HILL (Minister for Health): I thank the member for her question.

Ms Chapman interjecting:

The Hon. J.D. HILL: I am always happy to answer questions from the deputy leader. I wish that she would ask them, though, in question time rather than when I am answering another question. Any health system in the world is only as good as its workforce. In South Australia, as we all know, we have excellent hospitals and an excellent health care system, and that is because of the professionalism of doctors, nurses and allied health staff. We also know that there is currently a worldwide shortage of health professionals, and in South Australia we can never be immune from that shortage. However, I am pleased to say that in recent years the South Australian government has been extraordinarily successful in recruiting hundreds and hundreds of extra doctors, nurses and allied health workers.

In fact, today I announce that between June 2002 and June 2007—that is, over five years—we have been able to recruit an extra 2 406 more nurses, an increase of 22.7 per cent in the number of nurses in our hospital system. In addition, we have been able to recruit 699 more doctors, a 33.5 per cent increase in doctors in our health care system, and we have recruited an extra 595 more allied health professionals, a 30.9 per cent increase. Never before have so many doctors, nurses and allied health staff worked in our health system. That is a tremendous achievement, and puts our state in a good position to take on the health challenges of the future.

We know that in some professions world shortages will become worse. In the longer term we know that the ageing of the nursing workforce is a real challenge for South Australia. For example, the average age of nurses in our state is 45. We also know that approximately 40 per cent of all

health care workers will retire over the next 15 years. As I said to a workforce group today, as I approach 58 years of age, 45 looks relatively young to me. As a cohort, 45 is an age which makes us worry.

The Hon. P.F. Conlon: You are doing very well.

The Hon. J.D. HILL: Thank you very much; that is the good health care system that we have. That is why today I hosted a health workforce summit, bringing together health authorities and workforce experts to plan ahead to make sure we meet the staffing needs of our hospitals and community health services well into the future. I congratulate all the doctors, nurses and allied health professionals who work in our health care system, under a lot of pressure, to provide hard work and dedication to the service of the people of our state.

MOUNT BOLD RESERVOIR

Mr HAMILTON-SMITH (Leader of the Opposition): My question is again to the Premier. Has the $850 million Mount Bold reservoir expansion blown out by $250 million to a cost of $1.1 billion? In the June budget the government advised South Australia that the cost of its Mount Bold reservoir expansion would be $850 million. Yesterday the Premier told parliament that the combined cost of the 50 gigalitre desalination plant and the expansion of the Mount Bold reservoir would be $2.5 billion. He then told the house that the desalination component would be $1.4 billion, leaving $1.1 billion for the Mount Bold project.

The Hon. P.F. CONLON (Minister for Infrastructure): One of the things we know about opposition members is that they cannot stand good news. They love bad news, and they do not like anyone exposing their stupidity. But, it sits ill in the mouth of a group that purports to be the alternative government who went out a year ago and announced that it will build a desal plant, and said it will cost $400 million, because that is what it cost in Western Australia. Unfortunately, it never occurred to them that they were not actually building it in Western Australia. It sits ill in the mouth of their having done that with no regard to whether it could be done, how it would work and what it would cost. Then to say that after—

Mr Hamilton-Smith interjecting:

The SPEAKER: Order!

The Hon. P.F. CONLON: The information released by the Premier was on the grounds of an enormous amount of work, but it still indicated that those prices could only be seen as indicative until finished and involved looking at the number of reservoirs, including Mount Bold. That involved a series of works that would be necessary if one built a desal plant and extended reservoirs to deliver that water to the places where it was needed. I have some news for members: when you are the government you have to do all that work.

An honourable member interjecting:

The Hon. P.F. CONLON: A blow-out? He is talking about blow-outs. That is the same man who, in an election campaign, declared he would duplicate the Victor Harbor Road for $130 million. The RAA's costing is that it will cost north of $350 million, and this is the man who wants to talk about blow-outs. This is the person who this year alone has announced support for nuclear power (which would double the price of electricity) and he has announced that he would build a desal plant without costing it and without knowing that he can.

The SPEAKER: Order! There is a point of order.

Mr WILLIAMS: A point of order, Mr Speaker: we asked a question seeking information, and all we have got is debate about things nothing to do with the question.

The SPEAKER: Order! I agree. The minister is now debating the question.

The Hon. P.F. CONLON: Can I say—

Mr Williams: Get on with your blow-out.

The SPEAKER: Order!

The Hon. P.F. CONLON: —that it is very hard to conduct oneself in an orderly fashion, which I normally do, when one is faced with the rabble on the other side. The truth is—

Members interjecting:

The SPEAKER: Order!

The Hon. P.F. CONLON: —that they had 24 hours to think of questions, and this is the best they can do. I will close by saying—

Members interjecting:

The SPEAKER: Order! Has the minister completed his answer?

Mr HAMILTON-SMITH: As a supplementary question to the Premier, has the government received preliminary advice from consultants that the cost of its Mount Bold reservoir plans could be as high as $1.6 billion?

Members interjecting:

The SPEAKER: Order!

The Hon. P.F. CONLON: It is really quite pathetic stuff. What we are dealing with is a circumstance that has come about in terms of water in Australia that was foreseen by no-one, and is—

Members interjecting:

The SPEAKER: Order!

Members interjecting:

The SPEAKER: Order! The minister.

The Hon. P.F. CONLON: It is contested that it was foreseen by no-one; but, of course, we remember that short time ago when the Leader of the Opposition was Iain Evans going to an election. Apparently it was foreseen but certainly not by them. Do members remember their election policy about the impending massive drought? Does everyone remember it, because it was nothing—

The SPEAKER: Order! There is a point of order.

Mr WILLIAMS: Yet again—

The SPEAKER: I do not need 'yet again', the honourable member just needs to tell me the point of order, which I presume is that the minister is debating.

Mr WILLIAMS: The point of order is that the minister is debating and not answering the question.

The SPEAKER: Order! The minister is debating. I encourage all members to desist from constant interjection. No sooner was the minister on his feet and before he even got a word out there was a howl of interjections from members on my left. It is pretty hard for me to pull up the Minister for Infrastructure when members are showing such blatant disregard for the standing orders themselves. The Minister for Infrastructure has the call, and he will desist from debate.

The Hon. P.F. CONLON: Sir, in fact what I was doing was responding to interjections. I apologise. I shall try not to do it, but the interjections do not help. The point I am making and the central point of the issue is that South Australia and Australia face unprecedented conditions in terms of water.

An honourable member interjecting:

The Hon. P.F. CONLON: Well, members opposite can argue and interject all they like, but the truth is that every

government in Australia is responding in a new way to unprecedented circumstances. Massive infrastructure investment is being made by a number of the states—

Mr Hamilton-Smith interjecting:

The Hon. P.F. CONLON: This is entirely my point. This is one of the most pressing issues in Australia and members opposite wish only to score political points. They do not wish to know the facts, and the facts are that every government in Australia—

Members interjecting:

The Hon. P.F. CONLON: Sir, it is very hard for me not to debate if I am not being allowed to offer facts.

The SPEAKER: Order!

The Hon. P.F. CONLON: Every government in Australia—

Mr Goldsworthy interjecting:

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

The Hon. P.F. CONLON: It really is pathetic. They are pathetic. Every government in Australia is responding in new ways to the new and unprecedented circumstance. The federal government under John Howard—I understand he is still the Prime Minister the last time someone checked—announced an unprecedented $10 billion program and taking over the Murray. Unprecedented—it was not on the cards a little while ago. Victoria is putting billions of dollars into infrastructure. What we are doing is exactly the same. We are being obliged through massively changed circumstances in Australia to take the issue seriously and to treat it seriously, and to come up with solutions. The truth is—

Members interjecting:

The SPEAKER: Order! I warn the member for Finniss and the member for Kavel.

The Hon. P.F. CONLON: The truth is that, unlike the opposition, we have not simply put out a press release and responded. We have had to do an enormous body of work. The truth is that we have looked at desal. plants and expansions in catchment. The cost of Mount Bold's expansion will depend on how big the project is; how big the expansion is. We have been entirely honest with people, because, as much as they sneer and laugh, it is a most important issue facing Australia. It should not be sneered at, laughed at and played politics with, because what is important is that we have done a massive body of work, and because of intense—

Members interjecting:

The SPEAKER: Order!

The Hon. P.F. CONLON: You really are pathetic.

Members interjecting:

The SPEAKER: Order! If this continues, I will vacate the chair.

The Hon. P.F. CONLON: That work has indicated a number of solutions to us, and one of the things that the Premier has said is that there is sufficient body of work to know that a desal. plant will be part of that solution. Because of intense speculation about this, we have provided as much detail as we can at this point and indicated that the further detail will be provided and, I think, a final decision in about November. Make no mistake, this is not a game. This is not a game for the opposition to play. This is about the best way of securing water security for South Australia. If you do not like it, we do not apologise, but we will do it in the proper fashion. We will spend the money necessary. We will not spend more than is necessary. We will do the proper planning, and we think that it is wise, given the speculation, to provide as much information as we can now—and it is absolutely pathetic to seek to punish someone for doing that.

Members interjecting:

The SPEAKER: Order!

ENTERTAINMENT CENTRE

Mr BIGNELL (Mawson): My question is to the Minister for Tourism. What is the state government doing to ensure the Adelaide Entertainment Centre meets the needs of the community into the future?

The Hon. J.D. LOMAX-SMITH (Minister for Tourism): I am really pleased to inform the house that the state government has given the green light to a $6.8 million upgrade of the Adelaide Entertainment Centre site. The Entertainment Centre was established in 1991 when it was opened by the then premier of South Australia (Hon. John Bannon). During its existence, it has been a focal point for entertainment and media activity. We now have invested significant energy into the planning of the precinct to ensure it remains a vibrant entertainment and media precinct into the future. The first steps to revitalising the site are well underway. As many people would know, the heritage hotel now houses a fine restaurant and there are new studios for Channel 7 in Adelaide, with additional office accommodation well underway for construction.

This will attract more people and commercial business activity into the area. This week the installation of 8 000 new seats in the centre's main arena has been completed. This project has been supported by $1.5 million of state government funding and is in addition to the $6.8 million upgrade announced today. The upgrade of shops on the entertainment site along Port Road has also been completed and has now been fully tenanted. The additional projects to be undertaken as part of the upgrade include: major upgrades to the foyer, the back stage area and the corporate facilities; installation of additional ladies' lavatories (which, from my experience, there are never enough of in any public building); creation of additional car parking; new staging and curtains; renovations of administrative areas; and a restoration of the heritage revelations chapel.

The year 2006-07 was a record breaking year for the Entertainment Centre, with more than 370 000 concert goers being entertained by international and local acts. The centre generated record revenues and profits. The state government acknowledges the importance of the entertainment facility as a community focus, and that is why the profits generated in 2006-07, as well as the proceeds from the lease of the Channel 7 development site, are being reinvested in this valuable public asset. In 1991 critics of the Entertainment Centre claimed that it would become a white elephant. Instead it has become the most popular entertainment venue in South Australia. Through its sound management and strategic development of the Adelaide Entertainment Centre precinct, the state government is working to ensure it remains a high-quality entertainment venue into the future.

DESALINATION PROJECTS

Mr HAMILTON-SMITH (Leader of the Opposition): Will the Premier confirm that the interim report from the desalination working group states that there are significant environmental issues with the Upper Spencer Gulf desalination plant and that it should not proceed?

The Hon. M.D. RANN (Premier): Everyone knows that the environmental issues have to be dealt with—and you deal with it by lengthening the pipe. That is the whole point. That is what I revealed yesterday to parliament. No advice whatsoever has been given to me that there should be no go-ahead for the desalination required to sustain the expansion of Olympic Dam. It is critically important to the future of our state. Absolutely no advice has been given to me that there should be no go-ahead for it. Can I say something about what we just heard. I was Leader of the Opposition for nearly eight years. Imagine if I had come into the parliament or done a press release or media conference about a project and then there was a fivefold blow-out in its costings! That is what the Leader of the Opposition did—a fivefold blow-out, a 500 per cent costing error by the Liberals. It is absolutely outrageous that the Liberals in this state will come out with a policy and then find that there is a fivefold—500 per cent—blow-out—a 500 per cent costing error. Those opposite are unfit for government.

The SPEAKER: Order! The Premier is not the answering the substance of the question.

LOOK AFTER YOUR WORKMATES CAMPAIGN

The Hon. P.L. WHITE (Taylor): My question is to the Minister for Industrial Relations. What initiatives are in place to raise awareness of occupational health, safety and welfare across South Australian workplaces?

The Hon. M.J. WRIGHT (Minister for Industrial Relations): I am pleased to inform the house that the state government has launched a mass media occupational health, safety and welfare awareness campaign. The Look After Your Workmates campaign was commissioned by the SafeWork SA Advisory Committee. It was a shot in and around Adelaide at local businesses, with the people at those workplaces in starring roles. The beauty of the message is that it is simple, emotive and universal. This is a campaign about turning awareness into action amongst workmates. The campaign focuses on employees looking out for risks and hazards in the workplace that could harm their workmates.

Our research shows that mateship is a quality which is alive and well in our workplaces, so it is an effective medium to help change attitudes on workplace safety. We know that people are more likely to listen to their friends—people they trust in the workplace—who understand the work they do. As such, workmates are often in the best position to alert each other to any potential dangers. Advertisements have been booked for metropolitan and regional television, radio, press, billboards and other relevant media, such as construction site worksheds. We are confident that, if South Australians take on board the message, 'Look after your workmates', over time we will see their actions reflected in the continued reduction of workplace death and injury.

WATER RESOURCES

Mr HAMILTON-SMITH (Leader of the Opposition): Will the Premier now form a Premier's water council and take personal charge and responsibility for the water portfolio, given the failure of so many of his cabinet ministers to get it right on water supply?

The Hon. M.D. RANN (Premier): There is a Premier's water council: it is called the cabinet.

Members interjecting:

FOSTER CARERS

The SPEAKER: Order!

Ms THOMPSON (Reynell): My question is to the Minister for Families and Communities. What is South Australia doing to assist foster and relative carers to be recognised for their care for children?

The Hon. J.W. WEATHERILL (Minister for Families and Communities): As members would be aware, last week was National Child Protection Week and this week is, indeed, Foster Carers Week. Over the last five years, we have seen the number of children coming into alternative care growing at an extraordinary rate—by over 10 per cent per annum, from something like 1 100 to 1 700 children now in our care. Over that same period, while we have had a lift in foster carers and relative carers who have been prepared to open up their homes and, indeed, their hearts to these most vulnerable people in our community, we need more.

As part of our Keeping Them Safe in Our Care initiative, there has been not only an additional over $100 million over four years but also a range of additional supports to recognise kinship and relative carers to make it easier for foster carers to get rid of some of the bureaucratic hoops they have to jump through and also to provide them better support. This week, as part of Foster Carers Week, we have embarked upon a drive to increase the number of foster carers. The way we are doing that is to hear from foster carers the stories of the positive impact that caring has had on their lives and, of course, on the children in their care. One of the great ways of recruiting additional foster carers is word of mouth—for some foster parents to be able to talk to other foster parents about their stories.

We have also played a lead role nationally in recognising grandparents, who are a crucial part of the relative carers who make up a very important part of caring for these young people who cannot be cared for in their own home. This morning, as we were at a function to celebrate the wonderful work that foster carers and relative carers do, I was reminded of some of the difficulties that grandparents face. I spoke to two grandparents caring for their severely disabled grandchild whose parents had simply been unable to care for him. The grandfather was a small business owner and the grandmother was in full-time work. Jointly, they had tried their best to care for their baby grandson. Unfortunately, full-time care for a child with such a profound disability meant that both grandparents needed to cease full-time work.

So, these grandparents, who had worked their entire lives, commenced caring for this baby on a full-time basis. They are now in receipt of commonwealth benefits to sustain them as they care for the child. Had they been parents, they would have been entitled to a full parenting allowance, notwithstanding leaving work, but, alarmingly, the commonwealth threatened to withdraw their income entitlements. The current federal government has demanded that this family actively engage in training work programs or their benefits will be taken away. This is the new commonwealth world of welfare to work. Not only do we have a commonwealth government that is unwilling to ease the burden on families to be able to care for their children but, when they try to pick up the pieces within their broader family network, they are punished for doing so by commonwealth policy. What we are trying to do in South Australia is recognise grandparents for the wonderful work they do. What we would like is for the commonwealth government to get off their backs.

WATER RESTRICTIONS

Mr HAMILTON-SMITH (Leader of the Opposition): My question is again to the Premier. Will he rule out a return to the bucket regime of water restrictions imposed by ministerial directive and instead agree to future restrictions being brought to the parliament by regulation?

The Hon. M.D. RANN (Premier): I think that it has been widely accepted around the nation that one of the big problems with the River Murray over the years is that it has been run by a bunch of politicians. That is what has caused the problems with the River Murray: the lowest common denominator always applied. We saw upstream states rule out action that was for the benefit of the River Murray and that would have benefited South Australia. If you sincerely believe that the upper house of South Australia should somehow become the determinant of water restrictions, there will be no water restrictions because people will make decisions on the basis of what makes it popular, rather than doing the right thing. If that is public policy to allow the upper house of South Australia to determine the level of water restrictions, then basically there would be no water restrictions in this state, and that would not be the right thing to do. There are water restrictions all around Australia. You saw the letter that I received from John Howard in April, prohibiting all outside watering—you saw that—saying that Malcolm Turnbull should be responsible for its implementation.

Members interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN: So, the answer is: if that is your policy, to let a group of politicians in the upper house determine what the level of water restrictions is, then basically you are not fit to govern in this state. I cannot believe that you would get away with a fivefold costing error—a 500 per cent blow-out on your costings—and that you get away with it. The fact is that you will not get away with it when you come under scrutiny in an election campaign because we, on this side of the house, have a taxi meter on your expenditure. What we are seeing is going to be a nuclear power plant that is going to double the price of power in this state; you are going to get rid of water restrictions; you say you are going to give everyone what they want, that there is going to be a desal plant—your first test, your big policy announcement—and you had a 500 per cent costing blow-out. You hope that the journalists will let you get away with it.

Members interjecting:

The SPEAKER: Order!

$1 MILLION BOOK INITIATIVE

Ms BEDFORD (Florey): Will the Minister Assisting in Early Childhood Development inform the house on the success to date of the $1 million book initiative launched earlier this year?

The Hon. J.M. RANKINE (Minister Assisting in Early Childhood Development): This certainly is a good news story and it is the Rann Labor government delivering on one of its election commitments. In March this year I had the pleasure of launching the $1 million book program at Cafe Enfield. This $1 million book program has provided something like 83 000 books to every childcare centre and kindergarten across South Australia. When I went out to Cafe Enfield and a group of three-year-olds opened the parcel of books that were allocated to that centre, there were absolute squeals of delight as the children saw that within that parcel were books. To date, books have been distributed to 750 preschools and childcare centres across South Australia. It was an enormous task organising these books and ensuring that we had the best titles available for centres—and they selected their titles from a list developed by public libraries—making sure that we had economies of scale. With the assistance of the public libraries, we were able to buy a lot more books than we first thought we were able to.

Literacy is of particular importance to this government because it is well-known that reading books with young children in a caring environment contributes not only to their intellectual development but, importantly, to their social and emotional development. Recent Adelaide thinker-in-residence, Dr Fraser Mustard, focused on the scientific evidence that shows very clearly that the early years of a child's life have a crucial impact on their lifelong development. Strong beginnings for children in their early years lay the foundations for their learning ability, employment prospects, whether or not they might enter the justice system, and their long-term health outcomes. Good early experiences can bring long-term benefits to children, their family and the community. This is an economic and social issue. The $1 million book initiative supports a range of other state government initiatives to promote reading and building children's literacy skills including:

- the $35 million strategy to target literacy improvement from preschool to year 3;
- a $2.17 million investment in thousands of new books for schools and preschool libraries;
- The Premier's Reading Challenge, completed by more than 90 000 children last year;
- distribution of $9 000 worth of new books to 18 Aboriginal and APY lands schools as part of this year's Book Week celebrations;
- The Advertiser's Little Book Club to promote reading to young children; and
- setting up our very innovative Children's Centres across the state.

We have opened centres at Keithcot Farm, Hackham West, Elizabeth Grove, Angle Vale and Café Enfield, providing a range of high quality education and care, as well as health and family services, for children from birth through to school age entry. To celebrate the success of the $1 million book initiative, many childcare centres and preschools have hosted local launches in their communities, and it has been my very great pleasure to attend a number of those.

WATER RESTRICTIONS

Mr WILLIAMS (MacKillop): Will the Premier explain what happened on Monday that sparked a reversal of government policy that on the weekend was still firmly in favour of outdoor watering bans and non-committal on desalination? In the *Sunday Mail* a government-paid advertisement warned that there would be no lifting of the tough restrictions on outside watering: a day later they were lifted. On Saturday, water security minister Karlene Maywald told ABC Radio the government would not commit to desalination until the working group handed down its report in October. We are still in September.

The Hon. K.A. MAYWALD (Minister for Water Security): I thank the member for his question. On the matter of water restrictions, the government considered, on Monday, further advice that we had received from our departments in

regard to the current inflows in the Adelaide Hills/Mount Lofty Ranges catchment, and the final figures that have been provided to us from the Murray-Darling Basin Commission on the end-of-August inflows into the Murray-Darling system. That has enabled us to do two things and to consider two further adjustments to our water restrictions.

One of the things that we do is review this very closely and on a very regular basis, and we do it on a regular basis because the system changes. We anticipate the expected outcomes at the end of the month in the third week of the month, generally speaking, and we analyse that and determine what we are going to strike the restrictions at for the first of that month. That is what we did last month. In August we had a look at the data. In the third week of August we anticipated what the end-of-August data would provide and what the inflows would be, and struck the restrictions on that basis. Further information and data that has come forward to us in regard to the results in the Adelaide Hills over the last three months, and also the results of August for the Murray-Darling Basin catchment, enabled us to provide some relief.

On Monday we decided to bring forward the announcement for what we were going to do and provide to the community of Adelaide for 1 October. We have not backflipped on our 1 September announcement. Our 1 September announcement, for 1 September, continues for the month of September.

Mr Williams interjecting:

The SPEAKER: Order! The minister has the call.

Mr Williams interjecting:

The SPEAKER: Order! I warn the member for MacKillop. Having just called him to order and called the house to order, I do not expect him to start interjecting as soon as I have called the minister. The Minister for Water Security has the call.

The Hon. K.A. MAYWALD: Thank you, sir. So, on Monday, with this information, we decided that we would bring forward our announcement for 1 October rather than doing it in the third week of September, because there had been intense speculation in the public arena and there was concern about what might happen over summer. We brought forward our announcement to this week to provide people with advance notice of what would happen in October. That was a good thing to do. It was a good thing to let people know that there was going to be some relief from 1 October in relation to drippers as we move into the hotter months. The announcement of the Premier back in June regarding the starting date of the no outside watering with sprinklers and drippers ban from 1 July stated that it was a temporary ban. It was a temporary ban, to be put in place over the winter months, to let nature do the watering for us to save water for the hotter months when we would need it most—through the hotter months of late spring and summer. South Australians have done a fantastic job, saving about 23 billion litres of water. I have consistently praised the South Australian public for what they have undertaken in regard to saving water.

Members interjecting:

The Hon. K.A. MAYWALD: You may not think 23 billion litres is important. The opposition obviously does not think that the effort put in by South Australians is important. I think it is very important and very commendable, and I think that South Australians should be congratulated for their continuing efforts.

DESALINATION PROJECTS

Mr WILLIAMS (MacKillop): Again, my question is to the Premier. Can the Premier confirm that, despite a year of ongoing requests from the federal water minister, Malcolm Turnbull, South Australia's water security minister, Karlene Maywald, has still not made a submission for federal funding assistance for desalination projects?

The Hon. M.D. RANN (Premier): I am more than happy for the federal government or the federal opposition to make commitments to funding expenditure in South Australia but, whereas you believe the answer to South Australia's water problems is to issue a press release and form a committee, we believe in getting the details right and doing the work.

Mr WILLIAMS: I have a supplementary question. Premier, why is that you are holding discussions with the opposition leader in Canberra about possible funding of desal plants in South Australia, yet your government has failed to make a submission to the current government for a desal plant for Adelaide?

The Hon. M.D. RANN: We have had discussions with the federal government in relation to desalination. In fact, I had discussions with Malcolm Turnbull on that subject earlier in the year. However, all of us agree that you have to put the hard yards in to work out the details, and that is exactly what we are doing and what we announced. But I do remember the big story. When I was sitting in a hospital room in New Zealand a few weeks ago, apparently I was involved in phone hook-ups with other premiers. That is not true. Apparently, I was in Sydney. That is not true. Then, apparently, this week I was going to be making some grand statement with the federal opposition leader; I was going to be appearing and announcing the funding of a desal plant with a party leader standing next to me. Well, I can reveal today that that is exactly what happened yesterday: I stood side by side with the National Party leader in this state and together we made the announcement.

ADULT LEARNERS WEEK

Mr O'BRIEN (Napier): My question is to the Minister for Employment, Training and Further Education. What were some of the highlights of Adult Learners Week, which was recently held in South Australia?

The Hon. P. CAICA (Minister for Employment, Training and Further Education): I thank the member for Napier for his question, and I acknowledge his active interest in all aspects of education, including lifelong learning. I am delighted to inform members of the house about the success of Adult Learners Week in South Australia.

An honourable member interjecting:

The Hon. P. CAICA: Well, they could. Adult Learners Week, which is now in its twelfth year, was held from 1 September. It was a wonderful opportunity for us here in South Australia to celebrate, promote and advance all forms of adult and community learning. The state government is strongly committed to adult community education. In talking to some members of the opposition, I know they are strongly committed as well because they, like us on this side, recognise the valuable contribution it makes to individuals, to our communities and, indeed, to our economy.

It is true that some people within our community have not been involved in formal learning for a period of time, and it is adult community education that provides them with the

first steps towards further education, training and, indeed, employment. For many people it is also the key to overcoming educational, social and economic disadvantage by addressing skills gaps in areas such as literacy, numeracy and language. This year the state government will invest more than $2 million in community learning projects. The funding will support approximately 8 500 South Australians over the next year to reconnect to learning and to develop skills that will help them to participate effectively in their communities and to gain sustainable employment.

The events and activities of Adult Learners Week are designed to promote the benefits of learning in the home, at work and in the community, and they help participants to discover the many pathways that are available to them. This year, more than 120 events took place. I do not intend to recount all of them—

An honourable member interjecting:

The Hon. P. CAICA: I know the member for Napier is very interested. I would like to include a couple of them. For example, the Mall of Learning, staged in Rundle Mall, showcased programs and services on offer from numerous training and community organisations throughout the week. The Renmark and Paringa Community Centre devised programs that positively engaged local Aboriginals. This included Family Time, a program to assist participants to gain a qualification in Community Services Certificate II, and Youth Arts to assist young Aboriginal people overcome barriers to employability.

Digital photography was offered to people with acquired brain injury. This program was developed by the Eastwood Community Centre as a means of re-engaging people with acquired brain injury in a learning situation. The program involved developing skills in digital photography and computer-aided editing, with some participants going on to develop web links to the centre and to write their own life stories.

It was with great pleasure that I had the opportunity of presenting those projects, in particular the Indigenous Learning Provider of the Year and the Adult Learning Program of the Year awards at the Adult Learners Week Awards Dinner held a couple of weeks ago. The calibre of this year's entries was absolutely outstanding. I make particular mention of the adult learner of the year, Mrs Phyllis Turner, who, this year at the age of 94, graduated with a Masters degree in Medical Science. Mrs Turner is thought to be the world's oldest recipient of a Masters degree, and is really a shining example of why the government remains committed to supporting people of all ages to engage in learning throughout their lives. I understand that the people with whom she has been involved in the university are encouraging her to advance to a PhD, and we will follow that with interest. It was an outstanding week of critical importance to the future wellbeing of South Australia through lifelong learning programs.

DESALINATION PROJECTS

Mrs PENFOLD (Flinders): Will the Minister for Water Security advise when answers can be expected to letters sent to her dated 6 March and 22 March 2007 from the private company which has been seeking to build a desalination plant in Ceduna since 2005? In 2005 Cynergy Pty Ltd put forward a proposal to SA Water to construct a zero emission renewable energy powered 2.5 megalitres per day desalination plant near Ceduna. Cynergy wrote to the minister after what it called a series of contradictory actions and statements emanating from SA Water, and the minister stated the following on ABC Radio on 13 February 2007:

> We are certainly not opposed to a privately funded desalination plant being built using renewable energy. It sounds a terrific option to me, now that the proponent has sought access to SA Water pipes and that detail is being worked through between SA Water, but there is certainly no opposition to the plant going ahead.

However, despite receiving an acknowledgment to its letters, the minister has never followed through with a response, and this opportunity to provide water for Eyre Peninsula is still languishing.

The Hon. K.A. MAYWALD (Minister for Water Security): Yesterday the Premier announced that we were supporting desalination for Eyre Peninsula through the BHP desalination plant.

Members interjecting:

The SPEAKER: Order!

The Hon. K.A. MAYWALD: The Premier announced yesterday that the state government would be supporting two desalination plants in South Australia: one for Adelaide and one for the Upper Spencer Gulf. The project to which the member refers is a private consortium wishing to do a private investment in the state. Those pieces of correspondence to which she refers are being considered, and they will get a response in due course.

Members interjecting:

The SPEAKER: Order!

HIEU VAN LE, Mr

Ms SIMMONS (Morialta): Will the Minister for Multicultural Affairs inform the house whether Mr Hieu Van Le will continue in his role as Chairman of the Multicultural and Ethnic Affairs Commission—

Members interjecting:

The SPEAKER: Order!

Ms SIMMONS: I have not finished; I am just waiting for some quiet.

Members interjecting:

The SPEAKER: Order!

Ms SIMMONS: Will the minister inform the house whether Mr Hieu Van Le will continue in his role as Chairman of the Multicultural and Ethnic Affairs Commission, given his recent appointment as Lieutenant-Governor of South Australia?

The Hon. M.J. ATKINSON (Attorney-General): I am pleased to say that Hieu Van Le presided over his first Executive Council today—and just in case *Hansard* did not record it, the member for Finniss interjected, 'Why wouldn't he?' Well, that is not the view of one of his former Liberal parliamentary colleagues. The last Friday in August was a special day for South Australia, and it was an important day for multiculturalism in our state. Many here were fortunate to attend to witness the swearing in of our new Lieutenant-Governor, Hieu Van Le. It was also a very special day for Lan, his wife, and his sons Don and Kim. Mr Hieu's story is now known to many of us. It is distinctive and inspiring, and those who heard his outstanding speech of acceptance could not remain unmoved.

Mr Hieu and his wife are Australians as a product of the Vietnam War. When they left Vietnam in 1977 they were in their early 20s. By their own admission they had never known a day without the sound of rocket and gunfire, the sounds of war. The decision to leave was courageous and also fraught

with danger. It meant the young couple married early and, with the support of family, travelled to the seaside fishing village of Baria, a popular departure point for those wishing to flee.

Last year, Mr Speaker, you and I visited Vietnam with a delegation, that included the members for Norwood and Morialta, Mr Hieu, and also the councillor for Parks Ward on the City of Port Adelaide Enfield, Mr Tung Ngo. We took time to visit that very departure point. The beach was open, and when we visited the sea was flat. The risk of discovery must have been high.

Shortly after departure the captain of the flimsy wooden vessel crowded with 50 people confided that he could go no further. He was a local fishermen and had reached a point beyond which he had never travelled. Return was unthinkable, to go on seemed impossible. Mr Hieu's leadership and determination was evident as he gently took responsibility for navigating the craft. With nothing more than a schoolboy recollection of geography he sketched a crude map of the South China Sea. He determined that they should travel west into the setting sun and declared that eventually they would 'bump into' Malaysia. The trip was arduous and they risked capture by patrol boats, or worse, pirates.

Eventually they set sail for Australia, a trip that took a further month to complete. As the boat neared Darwin they encountered two men in a tinnie heading off for a day's fishing. Lan and Mr Hieu reached Australia with nothing but each other and, as Mr Hieu put it, their 'invisible suitcase of heritage and dreams'. The rest is history. Mr Hieu's academic qualifications were not recognised in Australia, so he went back to university. He gained a Bachelor of Economics and later an MBA. He was employed as an accountant and then with the Australian Taxation Office as an auditor. He subsequently joined the Australian Securities and Investment Commission. In 1995 Mr Hieu was appointed as a member of the South Australian Multicultural and Ethnic Affairs Commission. In 2003 he became its deputy chairman, and in 2006 its chairman. This is an extraordinary tale about an extraordinary man—nay an extraordinary couple, and Mr Hieu is now our Lieutenant-Governor.

I know Mr Hieu's appointment has been welcomed across all political divisions in this parliament, although I do notice that the Australian Democrats' candidate for the Senate put out a news release condemning the appointment of a 'war governor'. The member for Unley shakes his head. It is not often that candidates for the Australian Senate are also supporters of Sadam Hussein and serve the Baath Party of Iraq, but I digress. I know Mr Hieu's appointment has been welcomed across those political divisions and most of us value diversity. Lan and Mr Hieu were part of the first wave of Asian migrants to reach Australia. They are both symbols of what is best about multiculturalism and South Australia.

The achievements of Mr Hieu can also be seen as the achievements of South Australia, and I think he will serve our state very well, with His Excellency the Governor, Kevin Scarce. Both men have been described as boat people of a sort, the difference between them being the size of their boats! I am pleased to advise the house that Mr Hieu will remain in his position as Chairman of the South Australian Multicultural and Ethnic Affairs Commission, and at the end of August his appointment was extended to 31 December 2009. I am also pleased to say that his most able deputy on the commission, Mr Peter Ppiros of Renmark, has also had his appointment extended to December 2009. I am sure that all members will welcome these reappointments.

I will also add that a copy of Mr Hieu's exceptional speech of acceptance presented at his swearing-in is available on the Multicultural SA website and I encourage members to acquaint themselves with it.

Ms PORTOLESI: Hear, hear!

GRIEVANCE DEBATE

WATER RESOURCES

Mr PENGILLY (Finniss): Water being the subject of the week, I would like to put forward my suggestions regarding the possible location of any desalination plant that might be put in place to supply Adelaide. I would like to make the suggestion that the government seriously looks at the Cape Jervis option. My reason for putting forward that option is that, as in the ministerial statement, they have talked about the brine going into the gulf and having to put in a long pipeline, etc. My view is that, if you put the desal. plant at Cape Jervis in what is very deep water—300 feet just off Cape Jervis—you do not have a problem with the brine because of the exceptional flow up and down Backstairs Passage. It also has the environmental advantage of Starfish Hill wind farm, which could be used and which could be expanded to augment the power for the desalination plant. You could also put in a supply line through the western Fleurieu.

My idea would be—and I do hope that government members opposite listen—that you could pump that water to Myponga and put it through the filtration plant whether at Cape Jervis or Myponga. As the minister only said last week, the water from Myponga comes back to Sellicks Beach and to Happy Valley reservoir. I do not believe that it is an impossible idea to put it there. We will have to put in a vast amount of infrastructure, whatever we do. Bear in mind that the current desalination plant at Penneshaw (which is just across the other side) already drops its brine into deep water and it is only a small plant. I believe that it actually could be a viable alternative to the suggested ideas that have been put forward both by the opposition and the government, without any firm target at this stage of where to put such a desalination plant. If we are half smart about this, we will think it through and get the best possible outcome for South Australians. My view is, if you—

The Hon. K.A. Maywald interjecting:

Mr PENGILLY: Thank you, minister. I am pleased that you are supporting me and I am hopeful that you will take it to cabinet. I am concerned that today the Minister for Infrastructure did not refute the blow-out to $1.6 billion. Where will the costings come from? This thing will cost a lot of money. It will take a lot of power. The option of using some electricity from Starfish Hill and the option of looking at wave power generated through Backstairs Passage as well—

Mr Koutsantonis interjecting:

Mr PENGILLY: The option of using wave power generated through Backstairs Passage may be an option. I understand that in Europe they have generators moored offshore and use the tidal flows through the English Channel up to northern Europe quite regularly. I say to members of the

government, Premier Rann and the minister: instead of poo-pooing everything we put up and poo-pooing the desalination plant we put forward some months ago, instead of having a crack at everything we do, listen to and consider the options and think a bit further than you are already to come up with a few visionary ideas on this matter. There is extremely deep water in the Cape Jervis area, bearing in mind it is the old Onkaparinga Channel which is 300 feet deep and straight offshore. The tidal flows are absolutely gigantic. One cannot get a sinker on the bottom out there when the tide is flowing—which is important.

I think the added benefit of providing water to the south, coming through from Cape Jervis, needs to be thought about. The south is developing rapidly. Myponga Dam currently services Goolwa, Yankalilla, Normanville and Victor Harbor; and some water does go back into the Sellicks Beach area. The dam is being underutilised. The government has announced already that there is a major upgrade to filtration down there. Quite clearly, if a desal plant is built, we would have to have a bigger filtration plant. No-one argues about that in any way, shape or form. However, I am concerned that there is not much vision in this government. It does not want to think too far past whatever ideas are thrown up within its own ranks. I am throwing up this idea in the best interests of South Australia. It is a good possibility. I hope the minister and the Premier, instead of going on radio and telling people everyone else's ideas or that it is ridiculous idea, they think about it.

GAWLER SHOW

Mr PICCOLO (Light): I take this opportunity to congratulate Simon O'Neill on his appointment as Auditor-General and Ken MacPherson on his appointment as the Acting Ombudsman. I want to acknowledge in the gallery a couple of people who are my guests today. I acknowledge the presence of Mrs June Argent, who was a school services officer—

The DEPUTY SPEAKER: Member for Light, you may not notice the presence of people in the gallery.

Mr PICCOLO: Sorry.

Mr Koutsantonis: Who can you not mention?

Mr PICCOLO: I cannot mention Mrs June Argent, a school services officer from my former high school, or Mr Daniel Smith.

Mr Venning: Do they live in the Barossa?

Mr PICCOLO: They live in the wonderful town of Gawler, of course.

Members interjecting:

The DEPUTY SPEAKER: Order! Member for Light, please proceed with your speech in accordance with standing orders.

Mr PICCOLO: I would like to talk about the Gawler Agriculture, Horticulture and Floriculture Society Incorporated which held its 151st show on 1 and 2 September. The show is run entirely by volunteers. Over 200 volunteers make this important community event occur. It is probably the most successful show outside the Royal Adelaide Show and it runs for two days. The show society is run by a committee of 18 volunteers led by Mr Graham Parham. Some volunteers who make the event occur include members of the Lions Club who look after the gates, the scouts in the town who donate their time by collecting rubbish around the site, the girl guides who provide and sell programs and the Probus Club that helps set up the show. The volunteers are aged from five to 80. Despite the ban on horses this year the show still attracted over 25 000 patrons over the two days. The show represents excellent value, with a family ticket costing only $25.

Also at the show were Charlotte Beryl, the Young Ambassador, and Kate Maynard, the Youth Ambassador. The show was officially launched by the former president of the South Australian Farmers Federation, John Rush. In addition to launching the show this year, Mr Rush also launched the Beyond the Front Gate Appeal. This appeal is important in supporting people in rural communities hit by drought. It raises funds to help those communities, not only farmers directly but also those affected by the drought in the townships, and provides information packs to assist rural people in accessing services. The program was put together by Mr Pat Mells, a leading citizen of the town. The show attracted over 6 000 entries, 1 200 of which were from young people, which is great for the community.

No show or community event would be successful without the support of sponsors, and I would like to acknowledge the sponsorship of the show by Harvey Norman, the Town of Gawler, Ahrens Engineering, the Showmans Guild, *Bunyip Press*, Virgara Wines (which are now also in the house), McDonald's Gawler, and Renniks Hire.

I would also like to mention that Gawler High School celebrates its centenary and acknowledge the wonderful contribution made by Sandra Lowery, the Principal. She was the first woman principal, and this year she not only celebrates 15 years as principal of the school but also retires, and I would like to place on record the enormous contribution she has made. Recently, she was acknowledged by the Zonta Club of Gawler and Barossa as the Woman of Achievement for 2007. Ms Lowery will be replaced by Mr Greg Harvey, the Deputy Principal, and I wish him and the school well under the new leadership team.

DESALINATION PROJECTS

Mrs PENFOLD (Flinders): My statement that South Australia should already have desalination plants to augment our state's water supplies has been labelled 'ridiculous' today on ABC Radio by the government. However, it is not me who is ridiculous: it is the water decisions made by this inept, expensive and arrogant Labor government which, because of stupidity or ideology, will not make the sensible, inexpensive and environmentally friendly decisions that would have seen desalination plants across regional South Australia. Instead, it has ignored the opportunities that have been offered to it, preferring instead to pray for rain.

The saga at Ceduna calls into question the integrity of the government and the government monopoly, SA Water, and is outlined in the two unanswered letters from Cynergy sent to the Minister for Water Security, which in part state:

Dear Minister

. . . on 3 March 2006 we submitted a letter to SA Water's Mr J Ringham seeking approval to 'allow the transportation of Australian Standard compliant, potable water of the desalination plant through SA Water's existing pipeline system in Ceduna's environs.' On 18 April 2006 we submitted a further letter to Mr J Ringham answering questions he raised during a meeting with the proponents of 7 March 2006. This meeting was attended by representatives of the proponents Cynergy Pty Ltd and Lloyd Energy Systems Pty Ltd, Eyre Regional Development Board and the District Council of Ceduna with whom the proponents have executed a Memorandum of Understanding.

This letter responded to three questions raised by Mr Ringham, that is 'What is the expected selling price of water from the facility, what would the price be if daily throughput was increased to say 3 ML per day and were we against SA Water purchasing the water produced'. No further requests for information have been received nor was any response to our letter of 3 March 2006 received until a telephone call on 21 February 2007 and a fourth a letter dated the same day.

Subsequently we wrote to and met with Minister Conlon in his capacity as a member of Cabinet's Major Projects Committee seeking his support for the project to allow the transmission of high quality drinking water from the facility through SA Water's Ceduna distribution system. This action followed advice from Minister Conlon's Chief of Staff that SA Water had informed SA Government Ministers that the proponents were seeking a cash contribution from SA Government and were seeking SA Water to purchase the water produced to allow the project to proceed. This is incorrect and we believed the misinformation had been corrected in a meeting with Minister Conlon on 25 May 2006.

In his letter of 21 February 2007 Mr Ringham writes: 'I wish to confirm that SA Water is at this stage unable to make a commitment to take water from the proposed desalination plant to be sited west of Ceduna.' As noted above, we do not seek water off-take arrangements with SA Water but only access to the Ceduna pipeline distribution in Ceduna and its environs. Thus SA Water has amended our request for its own reasons and still not responded to our original request. We note that other companies have been granted similar access arrangements by SA Water in the past.

In his telephone conversation of 21 February Mr Ringham advised that SA Cabinet's Major Projects Committee had instructed SA Water not to enter into new off-take arrangement for water supply or new desalination facilities until the outcome of SA Government's application to the National Water Commission for funding for BHP Billiton's Whyalla desalination plant was determined. I am advised that SA Water has commenced negotiations with Tuna Processors at Port Lincoln during the week commencing 26 February 2007 seeking to access their desalination facility. This contradicts SA Water's written advice. . .

Our proposed desalination facility requires no contribution from the SA public purse, uses 100% renewable energy power supply and discharges no brine waste to the local environment. We would expect to commission the facility within 24 months of receiving agreement to access SA Water's Ceduna pipeline system. Thus we are capable of delivering high quality drinking water years before the BHP Whyalla plant could be completed and at a significantly lower delivered cost.

We note that you stated during your radio interview 'that detail is being worked through. . . but there's certainly no opposition to the plant going ahead'. From the actions of SA Water in response to our request of 3 March 2006 to date, I would strongly differ to your public comment. SA Water is certainly not seriously considering our request and may indeed be opposing it. This is demonstrated by its changing our request from a pipeline access request to a water supply proposal in dealing with us as proponents and your ministerial colleagues.

Time expired.

SCHUBERT ELECTORATE

Mr KOUTSANTONIS (West Torrens): I always love to follow the member for Flinders because I enjoy her speeches immensely. I rise today in defence of a close personal friend of mine and colleague in this house, the member for Schubert. First, I want to send my warm wishes to Leslee Robb and her family. I hope everything turns out well for her. I think both sides of the house have a warm affection for her. She has always been very friendly and nice to everyone in this place, and I think that everyone in the building wishes her the very best.

As to my good friend, the member for Schubert, I have been hearing some very strange rumours about his future, and I am a bit concerned. He is a close personal friend of mine. I have the utmost regard for him and his lovely wife and family. I think that, Ivan, if I may be that personal, is probably one of the finest members of parliament in this house, and I say that objectively as a passionate Labor supporter. It is on the public record that the Vennings have always been to the right of the Liberal Party; they have always supported the right wing of that group. He supported, against the right wing of the group, a new leader. He made his decision about that, whatever the reason. My view to him was that he is too old to rat, but he did what he thought was best.

But I have heard some disturbing rumours about his preselection. People in the Liberal Party are waiting, after the new leader of the Liberal Party here, the member for Waite, went over to Canberra and gave a lesson in Deception 101 to Alexander Downer on how to knock off your leader. The only other bloke who wants to call a spill before an election campaign was who? Martin Hamilton-Smith before the last state election campaign wanted to call a spill. Of course, it was up to Rob Lucas to end that little debacle.

Anyway, I have checked Sportsbet and I have noticed that David Fawcett is now odds-on favourite to lose his seat. David Fawcett is a prime ministerial favourite and a darling of the right. I understand that Mr Fawcett has almost conceded defeat and is clearing out his office and has given up on the seat. But he is not packing up his political career. He is not packing his bags and is not expected to move that far. He does not live in his seat now, so the fact that he does not live in Schubert should not be a problem. What I have heard is that Mr Moriarty and Mr Hamilton-Smith are plotting to bring some new blood into the parliament. That is always a good idea, but do you do it at the expense of one of your most loyal supporters who jumped ship after a lifelong commitment to a cause? John Olsen had no greater supporter than Ivan Venning. Was he rewarded? No, he was not. This new leader has had no greater supporter than his whip. What is his reward? They are going to knock him off at his preselection. Why? They say he is too old. They say he is not doing enough.

Well, I say the Liberal Party needs Ivan Vennings in the parliament, and it needs Ivan Vennings to go out there and win those safe Liberal country seats. Because, do you know what happens if you don't? You lose them. You lose them to popular mayors such as Rory McEwen, and local activists such as Karlene Maywald. That is what happened to the Liberal Party. City Liberal Party MPs tried to knock off country Liberal MPs. And I can tell you, Madam Deputy Speaker, that they are waiting for the federal election. Nick Minchin, Iain Evans—all the defeated right-wingers—are not going to sit back and let the wets run the South Australian Liberal Party. If anyone in this chamber thinks that Vickie Chapman is the most beloved and welcome Liberal in South Australia, you have to be kidding yourself. They are waiting, and it will begin in earnest.

They are already ringing us up trying to help us beat Chris Pyne, and Chris Pyne's lot is ringing us up trying to help us beat Andrew Southcott. My phone is running hot. I need to have two charged batteries in my car every day just to take phone calls from disgruntled Liberals. It is on, Madam Deputy Speaker, and the moment the federal election is over it will begin in earnest. And if anyone thinks that Martin Hamilton-Smith has an easy ride to the next state election they are kidding themselves. They are waiting. Imagine Nick Minchin not being a minister, with nothing to do. What do you think he is going to do—sit back and try to rebuild the federal Liberal Party? No, he is going to come back and tend to his garden, and his garden is the state parliament. He has

lost it to the wets, he has lost it to Moriarty, and he wants revenge.

Time expired.

HEALTH CARE BILL

Mr VENNING (Schubert): I note the comment from the member for West Torrens in relation to Leslee Robb, and I thank him for that. We, and the whole house, wish Leslee well, and are very concerned on this day, and everyone's thoughts and prayers for Leslee would be very much appreciated. She is a very popular person in this house and everyone loves her, and we certainly feel very much for her at this time.

In relation to the other comments that the member for West Torrens made in relation to my future, I have no anxiety whatsoever. Of course, I am not going to make any comment about what my future might be, whereas I could say I appreciate the member's support in that. All I can say to anyone who wishes to know is that I have not made up my mind whether or not I will retire, and I will certainly consider my party, whatever I do, because my party has looked after me, and my colleagues have also. The most important thing is to ensure, if and when the time comes, that the seat remains with the Liberal Party. I appreciate the member's other comments. I know they were tongue in cheek, but I will accept them as they were meant.

I am very concerned about the draft health care bill's proposal to abolish hospital boards in country areas, and to replace them with health advisory councils will spell the end for many country hospitals. This proposed wind down of country health would rate as one of the most important issues that I have dealt with, and is a serious concern because these hospitals are the lifeblood of our communities. I am totally opposed to abolishing hospital boards. Wherever there is an effective local hospital board operating, why get rid of local management if you have an effective delivery of service?

Under the current system the local hospital board has control of the cheque book and attracts funds to the hospital from various sources, both public and private, and often decides where the money will be spent, or at least has some input into where it is spent. The makeup of these local hospital boards usually involves one or two of the local doctors, council representatives, policemen, heads of departments and other community volunteers who put themselves up for regular election.

Under the draft bill, the country communities will continue to have a voice through local health advisory councils. However, the emphasis on real decision making will be limited and all the real responsibility will be transferred to the Department of Health. Two options have been proposed, but neither allows for regional communities to continue having their say, which is something they can do currently through local hospital boards. Option 1 seeks to introduce a mix of both incorporated and unincorporated health advisory councils (HACs). The alternative option is to establish an incorporated country health community assets authority as a single asset holding body for country South Australian health care services. The government says that these options have come about due to the rising cost of health care and the increasing demand and complexity of health services. Inevitably, it will mean that communities will have a relatively less central role in maintaining and controlling their assets but that they can still have a role in the planning of appropriate services.

In relation to the Country Health Community Assets Authority and health advisory councils, the bill provides under Part 4—Health Advisory Councils (HAC), Division 2—Functions and Powers:

> 30(2) A HAC must, in the performance of its functions, take into account the strategic objectives (including any health care plan or plans) that have been set or documented within the government's health portfolios. . .
>
> (4) subject to this act, a HAC has the power to do anything necessary, expedient or incidental to performing its functions.

So, to meet rising costs, we are now to have these new health advisory councils which, at the end of the day, will be nothing more than councils which will be directly responsible to the minister—and a rubber stamp to that minister. Don't rural communities know what their needs are more than some bureaucratic outsider who lives and works in Adelaide? Surely the government can understand that, if a local board no longer has a say in how the money is spent, a lot of the money currently flowing into the hospitals will dry up, particularly money received through bequests, donations and fundraising, and bearing in mind that the hospital concerned will lose its local identity.

What is going to happen to all those people who have given many years of solid voluntary services to these boards—all those people who, until now, have had the desire and enthusiasm to help their community? What will local hospital auxiliaries do? Will they keep raising money when they no longer have a say in how it is spent? I do not think so. Bringing an end to local ownership of hospital assets runs counter to the government's stated desire to encourage local community involvement through the government's proposed health advisory council system. Under this system, bureaucrats will be making decisions because the health advisory councils will be flat out sucking up to the minister and will have no formal connections with country communities. I will oppose this measure with all my might. It is a move in the wrong direction, and I hope that we will be able to defeat this bill.

RUSSIA WEEK

Mr BIGNELL (Mawson): Last week I had the honour of representing our Deputy Premier and tourism minister at Russia Week in Queensland. Russia is now a $4 trillion economy, and its growth in demand for goods and services is matched in few places in the world. Apart from being interested in our exports such as wine, beef, cheese and other food, the Russians are very keen to undertake joint ventures with Australian companies. There are numerous opportunities for our economy across a broad range of areas, including agriculture, aquaculture, food and wine, minerals, education, ICT, and also opportunities for our financial institutions and human resources companies to become involved with companies and government organisations that are undergoing massive change across Russia.

To perhaps put the Russian opportunity into perspective, I will give one example of the 150 Russian delegates I met at the forum last week. I spoke with a man who runs a cheese company that has a 300 million euro per annum turnover. In the first six months of this year, demand for cheese rose 17 per cent. With more and more Russians receiving more money and discovering more consumer goods, this gentleman does not see those sorts of increases slowing in the next eight to 10 years. He asked me whether I could introduce him to cheese companies because he is looking to source 30 000

tonnes of cheese. So, these are the opportunities just with the cheese market, which we could hardly match, but I will be writing to the South Australian Dairy Farmers Association. As the son of a dairy farmer and someone who grew up on a dairy farm, I am sure they would be interested in at least having discussions with this gentleman. An effort was made to import some Australian cows last year but, unfortunately, the severe Russian winter meant that 20 per cent of those cattle perished. So, they are now looking at not only importing our milk but also, hopefully, starting up a joint venture with Australian dairy farmers.

My involvement with Russia began last year when I went on a private trip to Moscow and St Petersburg. I met up with Bob Tyson, our great Australian Ambassador in Moscow, and also with Dan Tebbut, who heads up Austrade in Moscow. They mentioned to me that Valeryi Loginov, the President of the Russian Union of Grapegrowers and Winemakers, had approached Austrade about seeking support from South Australia to help rebuild their wine industry.

Austrade then mentioned that to me, and I came back and wrote to the Premier. From that we had Vic Patrick and David Travers travel from South Australia to Russia to look at putting together a South Australian-Russian wine plan. When I met the agriculture minister for Russia at a roundtable on agribusiness last week in Brisbane, he mentioned that a lot of the Russian-Australian trade was fairly one-sided, with us being the big beneficiaries on the export side. However, His Excellency Mr Alexei Gordeyev wanted some more support from Australian businesses and governments to support the growth of industries in Russia. I gave him a copy of the South Australian government's Russian wine report, written in Russian, and he was very impressed that we were helping out in the promise of root stock and in sending over people who could help with their technology to get the Russian wine industry back on its feet after some severe frosts in recent years and after it was pretty much whittled away in the Gorbachev years.

His Excellency Mr Gordeyev was very impressed to see that the South Australian government had taken the initiative and helped out in that way. McLaren Vale will host several Russian winemakers at next year's vintage. There is also some interest from a Russian company in buying a vineyard in McLaren Vale. I led a South Australian business delegation made up of winemakers from McLaren Vale and other parts. This included Fox Creek Wines, half of whose exports now go to Russia; Wirra Wirra Wines; Charles Melton Wines; Peter Lehmann Wines; and Virgara Wines. Tony Virgara, who comes from Angle Vale, was up there giving the Russians a taste of our fantastic red wines. Sophia Provatidis, who runs Majestic Opals, really wooed the Russians with her glorious opals. I am sure that we will see some increased sales of opals and other minerals to Russia. Larissa Vakulina, who runs Expo-Trade, has probably one of the most successful companies in South Australia doing trade with Russia. Her business sells sheep skins and other products, including meat, to the Russians. This is an area that I think will grow and grow. It is a huge economy that is growing all the time.

LEGAL PROFESSION BILL

The Hon. M.J. ATKINSON (Attorney-General) obtained leave and introduced a bill for an act to regulate the practice of the law; to repeal the Legal Practitioners Act 1981; and for other purposes.

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

That this bill be now read a second time.

As the principal source of legal assistance, the legal profession plays an important role in the way that justice and the rule of law are delivered and perceived. The freedom in the profession to advise and represent its clients is a bulwark to the independence of the courts, and is essential for a fair and effective legal system. The Legal Profession Bill repeals and replaces the Legal Practitioners Act 1981.

It represents a major milestone in achieving consistency and uniformity in regulating the legal profession in Australia. The bill is part of a national scheme to assist lawyers and law practices to practise across state and territory borders and to encourage efficient business practices that will serve the interests of consumers. The mosaic of state and territory-based regulatory regimes has, until now, led to anti-competitive practices and disincentives affecting both practitioners and consumers alike.

The bill will modernise the legal profession and make it more accountable to consumers. This timely initiative has been driven by the evolution of a national and international legal services market. It will establish a regulatory framework that removes state and territory barriers while meeting the needs of the profession and protecting the interests of consumers through disclosures and oversight. The bill deals with:

- reservation of legal work and legal titles;
- admission of legal practitioners;
- legal practice requirements;
- interjurisdictional issues;
- incorporated legal practices and multidisciplinary partnerships;
- requirements for foreign lawyers;
- community legal centres;
- trust money and trust accounts;
- cost disclosure and review;
- other prudential requirements;
- complaints and discipline; and
- external intervention, investigation and examination.

This proposal arises from a decision taken by the Standing Committee of Attorneys-General (SCAG) in July 2001 to devise national uniform laws regulating the legal profession to reduce or remove barriers to national practice. These are the model provisions. SCAG worked closely with the Law Council of Australia in working up the model legal profession provisions. I wish to thank the Law Council and the Law Society of South Australia for their comprehensive and well-organised contributions, which have made the task that much easier.

A consultation version of the model provisions—drafted mainly by New South Wales officers—was released in 2003 to more than 100 interested parties. These included professional associations for legal practitioners, regulatory authorities, consumer organisations and heads of courts and tribunals. A first version of the model provisions was endorsed by the standing committee in August 2003, and in July 2004 all Australian attorneys-general signed the Legal Profession Memorandum of Understanding. Under the

memorandum each state and territory agreed to use its best endeavours to introduce legislation to give effect to the model provisions.

Versions of the model provisions have since been produced. South Australia has waited until the model was effectively settled by all jurisdictions before introducing our bill because other states that introduced their equivalent legislation early have had to go back to parliament on occasion to amend the legislation to align with changes to the model. The bill is the culmination of many years of hard work and cooperation across all the Australian jurisdictions in preparing the bill which carries out the national model provisions for South Australia.

I have consulted many interested parties, including the senior judicial officers, the Law Society, the Bar Association, the Legal Practitioners Conduct Board, the Legal Practitioners Disciplinary Tribunal, the Legal Services Commission, the SA Council of Community Legal Services and the Aboriginal Legal Rights Movement, among others. I seek leave to incorporate the remainder of my second reading explanation and explanation of clauses in *Hansard* without my reading them.

Leave granted.

I will first turn to the South Australian regulatory framework before moving on to the national reforms.

The regulatory framework

The Bill retains the current regulatory framework as far as possible. This Government has chosen not to overhaul the framework as some jurisdictions have, primarily because it is working perfectly well even though it is complex. Many of the provisions in Chapter 7 of the Bill simply replicate the equivalent provisions of the *Legal Practitioners Act 1981*.

The Supreme Court will continue to be the ultimate regulatory authority for lawyers and law practices under the Bill, while the Law Society will continue to administer the day-to-day requirements of the profession and its clients. The Legal Practitioners Education and Admission Council will continue to have the important role of developing uniform national standards for qualifications necessary to practice in Australia. The opportunity to update some matters has been taken, such as including the Dean of the new law school in the University of South Australia as an ex officio member of the Admission Council. The Board of Examiners will continue to report to the Supreme Court on potential admissions. The Legal Practitioners Conduct Board and the Legal Practitioners Disciplinary Tribunal will also continue with their present structures and with similar powers.

Funding arrangements will continue as at present. The combined trust account and the statutory interest account will operate as they do now, as will the Litigation Assistance Fund, the professional indemnity insurance scheme and the legal practitioners' guarantee fund.

The national reforms

A number of earlier reforms to the traditional regulatory approaches in the various jurisdictions, such as mutual recognition, have already made some progress toward overcoming barriers to national legal practice. Both governments and the legal profession have driven these reforms.

The Standing Committee's national legal profession project has considered how improvements could be made to harmonise the regulation of the legal profession and further reduce barriers to national practice. The focus of the project has been on the administrative aspect of regulating the legal profession–setting the operational obligations of lawyers–rather than mandating local regulatory structures or funding arrangements.

This is why the Standing Committee agreed that there would be categories of provisions: core provisions that must be textually uniform; core provisions not necessarily textually uniform; and non-core provisions. The national model provisions represent the bulk of this Bill and I will address each of these topics in turn as I provide an overview of the Bill.

Reservation of legal work and legal titles

Part 1 of Chapter 2 of the Bill deals with the reservation of particular titles to legal practitioners and the reservation of legal work in favour of legal practitioners.

Why is reservation of titles and legal work important? Because consumers must be able to identify whether the person who is providing them with legal services is entitled to do so. Consumers place great trust in legal practitioners and must be able to identify, by reference to a shared jurisprudence of the common law, which areas of work can only be performed by a practitioner.

This Part contains a blanket prohibition on engaging in legal practice unless the person has relevant academic qualifications and legal training, including the requirements that the person be admitted to legal practice in Australia and hold a practising certificate. It is intended that the general standard across jurisdictions will give rise to a common jurisprudence on what it means to engage in legal practice.

There will also be a general prohibition on an unqualified person representing him or herself to be entitled to engage in legal practice. This broad approach is considered better than simply prohibiting specific titles, although there are some exemptions to this rule.

Admission of legal practitioners

The objective of Part 2 of Chapter 2 of the Bill is to allow for recognition of academic courses and practical legal training before admission, including those that have been approved for another jurisdiction. The Bill preserves the current regulatory structure involving the Supreme Court, the Legal Practitioners' Education and Admissions Council, and the Board of Examiners.

The model provisions and the Bill introduce the concept of ***suitability matters*** which are taken into account in the decision to admit to the profession and to hold a practising certificate. Clause 9 of the Bill provides that matters going to suitability include a person's reputation and character, whether he has been convicted of any offences, been subject to complaints or disciplinary action, whether he has been insolvent or is otherwise incapable or disqualified from various positions, etc.

Legal practice requirements

Part 3 of Chapter 2 of the Bill introduces the ground-breaking concept of the national practising certificate. It will mean that a legal practitioner who is required to hold a practising certificate will be required to hold a practising certificate from his or her principal place of practice. However, once this requirement is satisfied, the practitioner will be entitled to practise across jurisdictions provided they meet any requirements imposed by the other regulatory bodies.

A person's fitness and propriety to hold a practising certificate is measured on the suitability matters and other matters such as whether they obtained a practising certificate using incorrect information or contravened an order of the Disciplinary Tribunal, etc.

At this stage it is worth outlining a taxonomy of lawyers under the model regime:

A ***lawyer*** is a person who has been admitted to the legal profession (that is, the Supreme Court); the person may be a ***local lawyer*** and admitted to the Supreme Court of South Australia or an ***interstate lawyer*** admitted under a corresponding law; however, they are both ***Australian lawyers***.

A ***legal practitioner*** is an Australian lawyer who holds a current practising certificate; the lawyer may be a ***local legal practitioner*** or an ***interstate legal practitioner***; but they are both ***Australian legal practitioners***.

One must be a legal practitioner to be a ***legal practitioner associate*** of a law practice; otherwise, he will be a ***lay associate***. Employees of the law practice and lay associates cannot be a ***principal***–that is reserved for sole practitioners, partners, and directors of law practices.

Foreign lawyers will be able to register in one Australian jurisdiction and this will entitle them to practise foreign law anywhere in Australia. If registered in South Australia they will be ***locally-registered foreign lawyers*** practising foreign law; if not, they will be ***interstate-registered foreign lawyers***; either way, they will be ***Australian-registered foreign lawyers***. Foreign lawyers cannot practice Australian law but practise the law of their home jurisdictions.

The Bill makes it clear that the legal profession should continue to be a fused profession of barristers and solicitors. It also preserves the current system for the Supreme Court to appoint public notaries.

When combined with the reforms allowing for multi-disciplinary firms, which I will come to later, the national practising certificate is designed to promote competition in the legal services market and, ultimately, achieve better results for consumers. One way is by allowing firms to take advantage of skill efficiencies and build markets in other jurisdictions, possibly based on their local practice. It is likely that the national practising certificate will also benefit remote communities as legal practitioners will able to move freely

about the country and sell their services, again promoting competition.

Practitioners who hold interstate practising certificates will have to comply with a smaller administrative burden upon practising in South Australia, which will encourage practitioners to establish an office here. However, the Supreme Court will continue to oversee a strict system of issue and renewal of practising certificates and regulation of interstate practitioners. Where decisions about a practitioner's right to practise are made, the practitioner will be given the opportunity to respond to action being proposed against them–a "show cause" opportunity which affords natural justice. Again, it is expected that a common national jurisprudence will develop around what is a "show cause" event and the fitness and propriety required to be a legal practitioner.

Inter-jurisdictional issues

Part 6 of Chapter 2 facilitates the sharing of information between regulatory bodies in each jurisdiction regarding applications for admission to practise, removals from the roll of practitioners and decisions affecting practising certificates.

The Part also places positive obligations on practitioners to notify the Supreme Court of matters that affect their right to practise, whether in another Australian jurisdiction or a foreign country. Once notified, the provisions enable the Supreme Court and the Law Society to take action to limit a practitioner's ability to practise in accordance with the action taken in the original jurisdiction.

Incorporated legal practices and multi-disciplinary partnerships

The Bill adopts the textually-uniform core provisions allowing for ***incorporated legal practices*** (I.L.P.s) and ***multi-disciplinary partnerships*** (M.D.P.s). When combined with the national practising certificate reforms, the provisions allowing for I.L.P.s and M.D.P.s are designed to promote mobility and competition in the legal services market and, ultimately, better results for consumers. I turn first to I.L.P.s.

Incorporated legal practices (I.L.P.s)

Law firms in South Australia are presently constituted either as a partnership, a corporate practitioner, or a sole practitioner. For corporate practitioners, the sole object under the corporation's constitution must be the practice of the profession of the law. The corporation must hold a practising certificate, as must all the directors.

It is worthwhile setting out clause 70(1) of the Bill here:

70—Nature of incorporated legal practice

1 An incorporated legal practice is a corporation that engages in legal practice in this jurisdiction, whether or not it also provides services that are not legal services.

Under the Bill, all current corporate practitioners will automatically become I.L.P.s because it is assumed that they are engaging in legal practice. The only change will be that the corporation will not be required to hold a practising certificate – it is not required to do so under the model provisions. The corporation or its constitution need not be changed in any way, and it need not change its name to include the initials "I.L.P.". Interstate I.L.P.s must give the Supreme Court notice that they intend to engage in legal practice in this jurisdiction, but current local corporate practitioners will be deemed to have given that notice in the transition. What it means to engage in legal practice (which applies to the whole profession) has deliberately not been defined to allow the existing common law to be called upon in a dispute. Again, it is hoped that a common national jurisprudence will develop around what the phrase means.

The provision also heralds a significant reform to the potential scope of service provision by legal practitioners. It means that law practices will be able to offer legal and non-legal services. All States and Territories, either presently or previously, restricted the ability of legal practitioners to share profits with non-practitioners. The rationale was to help protect the integrity of the professional obligations that lawyers owe to the courts and their clients to be impartial and fair. This reform represents a significant departure from traditional modes of legal practice in South Australia. Removing restrictions on ownership and profit-sharing is a key means of enabling legal practices to raise capital for expansion to facilitate competition in domestic and international markets. In addition, it will allow legal practitioners to compete with other service providers, such as banks and retailers.

Multi-disciplinary partnerships (M.D.P.s)

A similar business opportunity is also afforded to partnerships. Law firms presently constituted as partnerships may continue to operate exactly as they do now. However, they could opt to become an M.D.P. by entering into partnership with a person who is not an Australian legal practitioner, because the ancient ban on sharing profits with a non-lawyer will be lifted.

Safeguards for the role of the profession

In its place is a modern regulatory environment with consumer benefit being one of the drivers, and consumer protection being another. The model must, and does, come with numerous safeguards to ensure that a lawyer's commitment to his or her ethical obligations is not diluted by the reforms (nor does it introduce a disincentive to do so).

Initially I had concerns about the potential for lawyers' ethical obligations to be compromised by the decision to allow profit-sharing with non-practitioners. Two basic duties of lawyers are to provide impartial advice to a client and to assist the court in reaching a just and correct decision whilst representing the client. These duties potentially conflict with shareholder profit motives and the provision of non-legal services by people that are not bound by the various duties but working for the same practice and the same client.

However, my concerns have been eased given the support for the reforms from the Law Society and many others I consulted during the development of the Bill. The present regulatory framework is restrictive and the safeguards I will outline shortly are adequate to deal with any anticipated problems in the legal services marketplace.

Every I.L.P. and M.D.P. must have at least one legal practitioner director or partner respectively. That person must hold an unrestricted practising certificate and he must ensure that appropriate management systems are implemented and maintained so that the legal services are provided in accordance with professional obligations. There will be regulatory compliance audits for I.L.P.s and the Law Society and I have the power to apply to the Supreme Court to ban a corporation from providing legal services or a person from being a director.

Directors and partners must take responsibility for their practitioners and their fellow non-practitioner directors or partners. Legal practitioner employees of the practice cannot use the corporation to shield them from any failure to meet their professional obligations.

Consumers will have access to standard information about costs and the law practice generally. If some of the services to be provided will not be provided by an Australian legal practitioner, those services must be identified and the consumer told of the qualifications or status of the person who will provide the services. Consumers will also have access to easy-to-read information about making a complaint and other rights they have such as questioning bills from practitioners. Many prudent firms do this already but, as with much of this Bill, the intention is to standardise and formalise these practices–in a sense codifying the existing law and practice of the profession.

The Bill does not set out the Professional Conduct Rules–they remain for the profession, and particularly the Law Society, to formulate against the background of the common law; but the Bill does make them binding on practitioners and failure to comply is capable of constituting unsatisfactory professional conduct or even professional misconduct. The Professional Conduct Rules are another important consumer protection tool and even experienced practitioners would do well to read them every so often. I cannot overstate the importance of ethical practices when engaging in legal practice–while they are mysterious to some they give the law its integrity and thus its legitimacy.

Requirements for foreign lawyers

The Bill will also allow for the limited recognition of foreign lawyers practising foreign law. The aim of this Part is to facilitate the globalisation of the legal services market. Foreign lawyers will be required to register in one Australian jurisdiction and this will entitle them to practise foreign law anywhere in Australia. This Part provides that the ethical and professional standards which apply to Australian legal practitioners also apply to foreign lawyers, as well as the trust account obligations. Again the Bill encourages transactional transparency because foreign lawyers must identify on their letterhead and other identifying documents that they practise foreign law only.

Community Legal Centres (C.L.C.s)

Part 7 of Chapter 2 of the Bill deals specifically with community legal centres (C.L.C.s) and includes the Aboriginal Legal Rights Movement because they provide legal services to the public on a not-for-profit basis. The Bill provides that practitioners employed by C.L.C.s are still subject to the Professional Conduct Rules, and that client legal privilege is preserved even if the practitioner discloses a matter to the non-practitioner officers of the centre for any proper purpose.

Community Legal Centres will be law practices and will be able to hold trust monies just like any other law practice. Elsewhere the Bill provides that any money granted to a C.L.C. is deemed not to be trust money or controlled money.

Trust money and trust accounts

I turn now to Chapter 3 of the Bill, which deals with conduct of business rules and prudential requirements. As noted above, it preserves the role of the Law Society in setting the Professional Conduct Rules and also gives the Society power to make specific rules for aspects of legal service delivery by I.L.P.s and M.D.P.s.

A legal practitioner will be required to open a trust account in each jurisdiction in which he or she has an office and receives trust money.

The requirements for the external examination of trust accounts and investigations are based on the current arrangements in place under the *Legal Practitioners Act 1981*. The model requires the adoption of about sixty offences relating to the trust money and trust account requirements. The approach taken by the model, and reflected in the Bill, can be characterised as prevention and compliance.

The Bill continues the present funding arrangements for the combined trust account and the statutory interest account. It also preserves the funding arrangements for the Legal Services Commission, C.L.C.s, the guarantee fund, and research functions such as the Law Foundation.

I am seeking advice on what, if any, changes may be required in the wake of the recent collapse of an established South Australian practice, Magarey Farlam. However, as this matter remains the subject of action and given the fact that the profession is eagerly anticipating the Bill, the Government did not want to delay its introduction pending finalisation of possible amendments.

Costs disclosure and review

Part 3 of Chapter 3 of the Bill deals with disclosures to clients and their ability to challenge a bill of costs, and are largely core provisions requiring textual uniformity under the model. Many firms already have good practices when it comes to communicating with their clients about costs. These provisions standardise and formalise best practice and preserve the rights of consumers to various avenues of redress.

Costs agreements that are conditional on the successful outcome of a matter will be allowed under the Bill, except for criminal, family law and migration matters. Uplift fees up to a maximum of 25% for litigious matters will be allowed if the risk of the claim failing, and of the client having to meet his or her own costs, is significant. However, costs that are contingent upon and calculated by reference to the amount of any award, settlement or the value of any property recovered in the proceedings will not be allowed.

Other prudential requirements

The Bill does not substantially alter the current arrangements for professional indemnity insurance. Local practitioners will continue to be insured partly under a master policy negotiated between the Law Society and insurers participating in the scheme.

The Bill does not disturb the operation of the legal practitioners' guarantee fund, and it preserves the current exclusion for claims based on the mismanagement of a managed investment scheme or mortgage financing activities conducted by a law practice.

A local legal practitioner will contribute to the local guarantee fund only, and will be covered only by that fund, regardless of where a default may occur. The only exception to this will be where the practitioner is authorised to draw trust money from an account in another jurisdiction. In that case, to allow each fund to ensure it is able to meet its liabilities, the practitioner can be required to contribute to the fidelity fund in that other jurisdiction (as determined by that fund), and will be covered by that other jurisdiction's fidelity fund. Under the model provisions, the consumer benefits delivered by the fund and the process of claim will be harmonised so that clients do not have different rights in different jurisdictions.

Complaints and discipline

The Bill largely preserves the current arrangements regarding complaints and the discipline of lawyers. The Legal Practitioners Conduct Board will continue to arrange to conciliate complaints and the Legal Practitioners Disciplinary Tribunal will continue in its present role but be given powers to order a fine of up to $50 000. The Supreme Court will continue to have ultimate oversight of the profession.

The model provisions on which this Bill is based follow our current law and set up a simple, graduated system of two levels of seriousness of conduct. ***Unsatisfactory professional conduct*** includes conduct that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent practitioner. ***Professional misconduct*** includes substantial or consistent unsatisfactory professional conduct as well as conduct that would justify a finding that the practitioner is not a fit and proper person to engage in legal practice.

The latter phrase preserves the current grounds for disciplinary action against practitioners. The Bill goes on to specify that suitability matters may be assessed along with other matters such as whether the practitioner has disobeyed an order of the Tribunal or contravened the requirements for handling trust money, etc. Once again it is hoped that a common jurisprudence will coalesce around these provisions.

The new regime will continue to allow the Board to deal with the more serious category of professional misconduct if the practitioner consents. The Board will be able to reprimand, impose conditions on the practitioner's certificate, or order a specified payment instead of laying a complaint before the Tribunal.

For the first time there will be a ***Register of Disciplinary Action*** which will be made available to the public on the internet. Anyone will be able to inspect the Register which must include particulars of the disciplinary action taken for professional misconduct. Other jurisdictions will have similar registers also available on the internet.

External intervention, investigation and examination

The national model and the Bill require the adoption of uniform provisions in relation to the appointment of supervisors, managers and receivers of the business and professional affairs of legal practices in order to protect the public and the practice's clients. Chapter 5 of the Bill sets out the circumstances in which ***external intervention*** is warranted, how external interveners may be appointed and the different roles and responsibilities of supervisors, managers and receivers.

It is the Law Society that is responsible for determining that a form of external intervention is warranted. The Society may determine to appoint a supervisor, a manager, or to apply to the Supreme Court for the appointment of a receiver.

A supervisor of trust money for a law practice is appointed where there are problems with the practice's trust accounts but it is not appropriate that the practice be wound up. The supervisor can open trust accounts, receive trust money and keep records relating to the trust account. A supervisor's appointment terminates when a receiver or manager is appointed, when all trust funds are distributed or when the Law Society determines that the appointment should cease.

A manager may be appointed where winding up is not justified but a person needs to be appointed to take over professional and operational responsibility for the practice. For instance, a manager may be appointed where the principal is sick or cannot otherwise run the practice. The manager may transact any urgent business, operate the trust account, accept instructions from clients, and wind up the affairs of the practice. The manager's role ceases when a receiver is appointed with the powers of the manager, when the practice has been wound up or when the Society has determined that the appointment should cease.

The Society can apply to the Supreme Court for a receiver to be appointed if it believes the appointment is necessary to protect clients' trust money and that it may be appropriate for the practice to be wound up and terminated.

External interveners must be Australian legal practitioners holding unrestricted practising certificates as they must deal with trust money in the same way as a law practice must deal with trust money. However, a person holding accounting qualifications with experience in law practices' trust accounts may be a supervisor or receiver.

The Bill also provides for both specific and general reporting requirements for external interveners. These mechanisms provide further protection for trust money during an intervention.

Elsewhere the Bill provides for ***investigations*** and ***external examinations***. This will allow the programme of audits of trust accounts conducted by the Law Society and its agents to continue. The Bill frees up the requirements to be an investigator or external examiner because the of the difficulty in securing approved auditors as required under the present *Legal Practitioners Act 1981*, which is a particular problem in the regions. In future, the audit period will be 1 April to 31 March to align with other jurisdictions.

In conclusion, the Bill recognises that the legal profession is an indispensable part of our legal system and should be regulated accordingly. However, it imposes few new requirements, especially for prudent practitioners who respect that their clients, and the law itself, are the ultimate beneficiaries of their hard work. The regulatory framework is complex because it provides checks,

balances and protections of many sorts so that no one individual or body has ultimate influence in all areas–not even the Supreme Court. Aristotle wrote that "it is more proper that law should govern than any one of the citizens" and the Bill recognises and secures exactly that.

The legal profession is not simply another economic activity. Some of its activities have a profound impact on the self-image of society, on its standards of justice and civilisation and on its commitment to the rule of law and the defence of rights. The abiding challenge facing the Australian legal profession as it enters a new millennium is one of preserving the idealism and professionalism of a potentially noble calling dedicated to the attainment of justice whilst paying more attention to the realities of delivering that same justice to ordinary people.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Chapter 1—Introduction

Part 1—Preliminary

This Part includes formal clauses relating to the short title and commencement of the Act. The date on which the Act is to come into operation will be fixed by proclamation.

Part 2—Interpretation

The provisions of Part 2 deal with preliminary matters, including definitions. There are some changes to terms used in the current Act, developed to facilitate national practice. A person admitted to the legal profession under this Act or a corresponding law of another State or Territory is an ***Australian lawyer***. A ***local lawyer*** is a person admitted to the legal profession under the South Australian Act. A person admitted to the legal profession under a corresponding law who is not also admitted under the South Australian Act is an ***interstate lawyer***.

An Australian lawyer who holds a current local practising certificate or a current interstate practising certificate is an ***Australian legal practitioner***. If an Australian lawyer holds a current local practising certificate, he or she is a ***local legal practitioner***. An Australian lawyer who holds a current interstate practising certificate but not a local practising certificate is an ***interstate legal practitioner***.

This Part also includes defined terms relating to associates and principals of law practices.

The term ***engaging in legal practice*** includes practising law. Clause 7 provides that the regulations may make further provision in relation to the meaning of engaging in legal practice.

Clause 12 provides that it is Parliament's intention that the legal profession of South Australia should continue to be a fused profession of barristers and solicitors.

Other terms defined in this Part include ***home jurisdiction***, ***suitability matter*** and ***information notice***.

Chapter 2—General requirements for engaging in legal practice

Part 1—Reservation of legal work and legal titles

Chapter 2 deals with general requirements for engaging in legal practice.

Clause 13 prohibits a person from engaging in legal practice unless he or she is an Australian legal practitioner. This Part also makes it an offence for a person to advertise that he or she is entitled to engage in legal practice in South Australia unless he or she is an Australian legal practitioner.

Clause 18 makes it an offence for an Australian legal practitioner to be a party to an agreement or arrangement to employ or engage a disqualified person or a person who has been convicted of a serious offence. However, the Legal Practitioners Disciplinary Tribunal may authorise an Australian legal practitioner to be a party to such an agreement or arrangement. The Tribunal's authorisation may be subject to conditions.

Disqualified person is defined in Chapter 1 Part 2 as—

- a person whose name has been removed from an Australian roll and who has not subsequently been admitted or re-admitted to the legal profession;
- a person whose Australian practising certificate has been suspended or cancelled and who, because of the cancellation, is not an Australian legal practitioner or in relation to whom that suspension has not finished;
- a person who has been refused a renewal of an Australian practising certificate, and to whom an Australian practising certificate has not been granted at a later time;
- a person who is the subject of an order prohibiting a law practice from employing or paying the person in connection with the relevant practice;
- a person who is the subject of an order prohibiting an Australian legal practitioner from being a partner of the person in a business that includes the practitioner's practice.

A ***serious offence*** is—

- an indictable offence against a law of the Commonwealth or any jurisdiction (whether or not the offence is or may be dealt with summarily); or
- an offence against a law of another jurisdiction that would be an indictable offence against a law of South Australia if committed in this State (whether or not the offence could be dealt with summarily if committed in this State); or
- an offence against a law of a foreign country that would be an indictable offence against a law of the Commonwealth or South Australia if committed in this State (whether or not the offence could be dealt with summarily if committed in this State).

Part 2—Admission of local lawyers

Division 1—Admission to the legal profession

This Part sets out the process and requirements for admitting people to the legal profession.

Under Division 1, the Supreme Court is to maintain a roll of persons admitted to the legal profession under the Act. This is the ***local roll***. On being admitted to the profession, a person becomes an officer of the Supreme Court.

Division 2—Eligibility and suitability for admission

Under the provisions of this Division, a natural person is entitled to be admitted to the legal profession if he or she satisfies the Supreme Court that he or she is of good reputation and character and that he or she has complied with the admission rules and rules made by Legal Practitioners Education and Admission Council. When determining an application, the Court is required to consider, in relation to the person, each of the suitability matters set out in Chapter 1 Part 2.

Part 3—Legal practice—Australian legal practitioners

Division 1—Legal practice in this jurisdiction by Australian legal practitioners

This Division provides that an Australian legal practitioner is entitled to engage in legal practice in South Australia (subject to other provisions of the Act).

Division 2—Local practising certificates generally

Practising certificates are to be granted by the Supreme Court. In considering whether or not a person is a fit and proper person to hold a practising certificate, the Court is to take into account any suitability matter relating to the person and any of a number of additional listed matters.

There is a requirement under this Division for a local legal practitioner to be insured against liabilities that may arise in the course of, or in relation to, legal practice if such a scheme is in force under Chapter 3 Part 4.

Division 3—Grant or renewal of local practising certificates

The provisions of this Division prescribe procedures for the grant or renewal of local practising certificates. An Australian lawyer may apply to the Supreme Court for the grant or renewal of a local practising certificate if he or she is eligible to do so under the Division. The Court is required to consider an application unless it is not made in accordance with the Act or the admission rules or is not accompanied by the prescribed fee. The Court is also authorised to amend or cancel a practising certificate if requested to do so by the holder.

Division 4—Conditions on local practising certificates

This Division deals with conditions on local practising certificates. Conditions can be imposed by the Court or are imposed by the Act. For example, it is a statutory condition of a local practising certificate that the holder of the certificate—

- must notify the Supreme Court that the holder has been convicted of an offence that would have to be disclosed under the admission rules in relation to an application for admission to the legal profession under the Act, or charged with a serious offence; and
- must do so within seven days of the event and by a written notice.

A local practising certificate may also be issued or renewed subject to conditions determined by the Legal Practitioners Education and Admission Council (LPEAC)—

- requiring the holder of the certificate to undertake or obtain further education, training and experience required or determined under the legal profession rules; and

· limiting the rights of practice of the holder of the certificate until that further education, training and experience is completed or obtained.

Division 5—Amendment, suspension or cancellation of local practising certificates

This Division sets out grounds for amending, suspending or cancelling a local practising certificate and authorises the Supreme Court to amend, suspend or cancel a certificate where the Court believes a ground exists. Those grounds are as follows:

· the holder of the certificate is no longer a fit and proper person to hold the certificate;

· the holder of the certificate does not have, or no longer has, professional indemnity insurance that complies with the Act in relation to the certificate;

· if a condition of the certificate is that the holder is or has been limited to legal practice specified in the certificate—the holder is engaging in legal practice that the holder is not entitled to engage in under this Act.

The Court is required to give the holder of the certificate notice of its proposed action and then consider any written representations made by the practitioner.

Division 6—Special powers in relation to local practising certificates—show cause events

This Division deals with show cause events. A legal practitioner who becomes bankrupt or is convicted of a serious offence or a tax offence is required to provide the Court with relevant details. The person must explain why, despite the show cause event, he or she is a fit and proper person to hold a practising certificate. The Court is authorised to refuse to grant or renew, or to amend, suspend or cancel, a local practising certificate if the applicant or holder fails to provide a written statement relating to a show cause event or, having provided a required written statement, fails to satisfy the Court that he or she is a fit and proper person to hold a local practising certificate.

Division 7—Further provisions relating to local practising certificates

The holder of a local practising certificate may, under this Division, surrender the certificate to the Supreme Court. The Court may cancel the certificate.

The Court is authorised under this Division to immediately suspend a practising certificate if the Court considers it necessary to do so in the public interest. The holder of the suspended certificate may make written representations to the Court about the suspension, and the Court must consider the representations.

Division 8—Interstate legal practitioners

This Division deals with interstate practitioners practising in South Australia.

An interstate legal practitioner is prohibited from engaging in legal practice, or representing or advertising that he or she is entitled to engage in legal practice, in South Australia unless he or she is covered by the required level of professional indemnity insurance. An interstate legal practitioner is not authorised to engage in legal practice in South Australia to a greater extent than a local legal practitioner could be authorised under a local practising certificate. The Supreme Court may impose additional conditions on an interstate legal practitioner's practice if those conditions could be imposed on a local practising certificate.

An interstate legal practitioner engaged in legal practice in this jurisdiction has all the duties and obligations of an officer of the Supreme Court, and is subject to the jurisdiction and powers of the Supreme Court in respect of those duties and obligations.

Division 9—Miscellaneous

This Division deals with miscellaneous matters. The Supreme Court is authorised under this Division to—

· assign functions or powers conferred on or vested in it under Part 3 to a specified body or person, or to a person occupying a specified office or position; and

· require an applicant in relation to, or the holder of, a local practising certificate to provide specified information or documents or to cooperate with the Court's inquiries.

The Court is required under the Division to keep a register of the names of local legal practitioners. This Division also authorises the Law Society to enter into certain arrangements with regulatory authorities of other jurisdictions and provides that government lawyers of other jurisdictions are not subject to any prohibition under the Act about engaging in legal practice in South Australia.

Part 4—Inter-jurisdictional provisions regarding admission and practising certificates

Division 1—Preliminary

Part 4 sets out inter-jurisdictional provisions regarding admission and practising certificates.

Division 2—Notifications to be given by local authorities to interstate authorities

This Division authorises the Supreme Court to notify the corresponding authority for another jurisdiction of the making or withdrawal of an application for admission to the legal profession or the refusal of the Court to admit an applicant. The Division also requires the Court (or some other South Australian regulatory authority) to notify relevant authorities of other jurisdictions of the removal of the name of a practitioner from the local roll or certain action taken in respect of a local practitioner's practising certificate.

Division 3—Notifications to be given by lawyers to local authorities

The provisions of this Division require a local lawyer or local legal practitioner to give the Supreme Court written notice if his or her name is removed from an interstate roll or if an order is made under a corresponding law recommending that his or her name be removed from a local roll. Written notification is also to be given by a local legal practitioner if his or her certificate is suspended or cancelled or conditions are imposed on the certificate.

Division 4—Taking of action by local authorities in response to notifications received

If a local lawyer's name is removed from an interstate roll, the Registrar of the Supreme Court must remove the lawyer's name from the local roll. If the lawyer is the holder of a local practising certificate, the certificate must be cancelled.

This Division also prescribes "show cause" procedures for removal of a lawyer's name from the local roll, or cancellation of a local practising certificate, following the removal of a person's name from a foreign roll for disciplinary reasons or the suspension or cancellation of, or refusal to renew, a person's right to engage in legal practice in a foreign country.

Part 5—Incorporated legal practices and multi-disciplinary partnerships

Division 1—Preliminary

Part 5 adopts the national model provisions relating to incorporated legal practices and multi-disciplinary partnerships. The objective of the model provisions is to establish uniform provisions in all jurisdictions, ensuring that incorporated legal practices and multi-disciplinary partnerships can practise across State and Territory borders with ease.

Division 2—Incorporated legal practices

An incorporated legal practice is a corporation that engages in legal practice in South Australia, whether or not it also provides services that are not legal services. An incorporated legal practice must have at least one director who is a legal practitioner. Before carrying on business, the corporation must notify the Supreme Court that it intends to provide legal services.

As corporations are separate legal entities at law, this Division includes provisions that ensure that legal practitioner employees of the practice cannot use the corporation to shield themselves from liability. Any breach by them of a professional obligation can amount to unsatisfactory professional conduct or professional misconduct. The provisions of the Act relating to insurance apply with any necessary changes to incorporated legal practices in relation to the provision of legal services. An obligation of an Australian legal practitioner who is an officer or employee of an incorporated legal practice must comply with the provisions of the Act relating to insurance.

An incorporated legal practice that provides legal and non-legal services must inform its clients which services are being provided by legal practitioners, and which are not. This is to ensure that clients are fully informed and not acting under a misapprehension about who is providing the services.

The Legal Practitioners Conduct Board, the Attorney-General or the Law Society may apply to the Supreme Court to ban a corporation from providing legal services. Directors can be banned from managing incorporated legal practices.

Division 3—Multi-disciplinary partnerships

Multi-disciplinary partnerships are partnerships that provide legal and non-legal services. Similar to an incorporated legal practice, a multi-disciplinary partnership must give the Law Society notice of its intention to provide legal services.

If a partnership has legal and non-legal partners, the legal partners are responsible under this Division for the management of the legal services provided. A legal practitioner employee in a multi disciplinary partnership must maintain professional standards that apply to other practitioners.

Division 4—Miscellaneous

This Division provides for the making of regulations about—

- the legal services provided by incorporated legal practices or legal practitioner partners or employees of multi-disciplinary partnerships; or
- other services provided by incorporated legal practices or legal practitioner partners or employees of multi-disciplinary partnerships in circumstances where a conflict of interest relating to the provision of legal services may arise.

A regulation prevails over any inconsistent provision of the legal profession rules.

Part 6—Legal practice—foreign lawyers

Division 1—Preliminary

This Part adapts the national model provisions relating to legal practice by foreign lawyers.

Division 2—Practice of foreign law

A person must not practise the law of a foreign country in South Australia unless the person is an Australian-registered foreign lawyer or an Australian legal practitioner.

Division 3—Local registration of foreign lawyers generally

This Division provides for the registration of foreign lawyers.

Division 4—Applications for grant or renewal of local registration

Under this Division, an overseas-registered foreign lawyer may apply to the Society for the grant or renewal of registration as a foreign lawyer under the Act. The provisions of this Division regulate the manner in which an application is to be made.

Division 5—Grant or renewal of registration

The Law Society is required to consider an application made for the grant or renewal of registration as a foreign lawyer unless the application is not made in accordance with the Act. The Society may grant or refuse to grant, or renew or refuse to renew, an application.

Division 6—Amendment, suspension or cancellation of local registration

This Division sets out grounds for the Society to amend, suspend or cancel a person's registration as a foreign lawyer, as follows:

- the registration was obtained because of incorrect or misleading information;
- the person fails to comply with a requirement of Part 6;
- the person fails to comply with a condition imposed on the person's registration;
- the person becomes the subject of disciplinary proceedings in Australia or a foreign country (including any preliminary investigations or action that might lead to disciplinary proceedings) in his or her capacity as—
  - an overseas-registered foreign lawyer; or
  - an Australian-registered foreign lawyer; or
  - an Australian lawyer;
- the person has been convicted of an offence in Australia or a foreign country;
- the person's registration is cancelled or currently suspended in any place as a result of any disciplinary action taken in Australia or a foreign country;
- the person does not meet the requirements of the Act relating to professional indemnity insurance;
- another ground the Society considers sufficient.

Division 7—Special powers in relation to local registration—show cause events

This Division deals with procedures in respect of applications where a show cause event happened in relation to an applicant for registration as a foreign lawyer. (See note on Part 3 Division 6, above.)

Division 8—Further provisions relating to local registration

If the Law Society considers it necessary in the public interest to immediately suspend a person's registration as a foreign lawyer, it may do so by giving written notice to the person. The notice must state the reasons for the suspension. The notice must also inform the person that he or she may make written representations to the Society about the suspension. The Society must consider any written representations.

A person registered as a foreign lawyer may surrender the local registration certificate to the Society, and the Society may cancel the registration.

If a person registered as a foreign lawyer becomes an Australian legal practitioner, the registration is taken to be cancelled. When a person's registration certificate under this Part as a foreign lawyer is amended, suspended or cancelled, the Society may require the person to return the certificate to the Society.

Division 9—Conditions on registration

This Division sets out conditions to which registration as a foreign lawyer is subject. These conditions include statutory conditions and conditions imposed by the Society.

Division 10—Interstate-registered foreign lawyers

An interstate-registered foreign lawyer is not authorised to practise foreign law in this jurisdiction to a greater extent than a locally registered foreign lawyer could be authorised under a local registration certificate.

The Society may, by written notice to an interstate-registered foreign lawyer practising foreign law in this jurisdiction, impose any condition on the interstate-registered foreign lawyer's practice that it may impose under this Act in relation to a locally registered foreign lawyer.

Division 11—Miscellaneous

The Law Society is required to keep a register of the names of locally registered foreign lawyers. The Society may publish the names of persons registered by it as foreign lawyers and any relevant particulars concerning those persons.

The Society is authorised to exempt Australian-registered foreign lawyers or classes of Australian-registered foreign lawyers from compliance with specified provisions of the Act or the regulations, or from compliance with specified rules that would otherwise apply to the foreign lawyers or classes of foreign lawyers.

Part 7—Community legal centres

This Part regulates the provision of legal services by community legal centres. A community legal centre does not contravene the Act merely because of the employment, or use of the services of, Australian legal practitioners to provide legal services. Nor does a community legal centre breach the Act because of a contractual relationship with a person to whom legal services are provided.

Regulations under the Act may modify or exclude the application of provisions of the Act to community legal centres or Australian legal practitioners employed by community legal centres.

This Part includes provisions dealing with the obligations and privileges of Australian legal practitioners who provide legal services on behalf of community legal centres as officers or employees. These practitioners are not excused from compliance with professional or other obligations of Australian legal practitioners and are subject to the legal profession rules.

Chapter 3—Conduct of legal practice

Part 1—Manner of legal practice

Division 1—Rules for Australian legal practitioners and locally registered foreign lawyers

This Part deals with the making of legal profession rules by the Law Society.

Division 2—Rules for incorporated legal practices and multi-disciplinary partnerships

Legal profession rules may relate to the provision of legal services by incorporated legal practices or multi-disciplinary partnerships.

Division 3—General provisions for legal profession rules

Legal profession rules are binding on Australian legal practitioners and locally registered foreign lawyers to whom they apply, and a failure to comply with a rule is capable of constituting unsatisfactory professional conduct or professional misconduct.

Part 2—Trust money and trust accounts

Division 1—Preliminary

This Part sets out requirements and procedures for legal practitioner trust accounts.

Division 2—Trust accounts and trust money

This Division sets out requirements for trust accounts and trust money and includes definitions of new terms such as ***controlled money*** and ***transit money***. Other provisions deal with protection of trust money, prohibition on intermixing, prohibition on deficiencies, reporting irregularities, keeping trust records and prohibition on receiving trust money under false names.

Division 3—Investigations and external examinations

Division 3 deals with investigations and external examinations of law practices. These provisions replace the provisions of the current Act that require audits. The Law Society may appoint an investigator to investigate the affairs, or a specified affair, of a law practice. The investigator may be authorised to conduct routine investigations on a regular or other basis, or he or she may be authorised to conduct investigations in relation to particular allegations or suspicions.

The Society may also designate persons as being eligible to be appointed as external examiners. Law practices must have their trust records externally examined at least once in each financial year by an external examiner appointed in accordance with the regulations. If the Society is not satisfied that this has occurred, it can appoint an external examiner to examine a law practice's trust records.

Division 4—Provisions relating to ADIs and statutory deposits

The provisions of this Division relate to authorised deposit-taking institutions (ADIs).

The Law Society may approve ADIs at which trust accounts to hold trust money may be maintained.

Under provisions taken from the current Act, law practices are required to deposit money in the combined trust account, and the Society has an ongoing obligation to maintain the statutory interest account. The Society is required to pay into the statutory interest account all interest earned from deposits in the combined trust account.

Division 5—Miscellaneous

This Division includes provisions relating to various matters including protection from liability, restrictions on receipt of trust money by incorporated legal practices and multi-disciplinary partnerships, disclosures to clients about money received by a law practice that is not trust money and the making of regulations for or with respect to trust money and trust accounts.

Part 3—Costs disclosure and adjudication

Division 1—Preliminary

This Part deals with the requirements in relation to costs disclosure and adjudication of costs by the Supreme Court.

Division 2—Application of Part

Under this Division, the Part will, as a general rule, apply to a matter if the client first instructs the law practice in relation to the matter in South Australia.

Division 3—Costs disclosure

When a client first instructs a law practice, the practice must disclose to the client—

- the basis on which legal costs will be calculated; and
- the client's right to—
  - negotiate a costs agreement with the law practice; and
  - receive a bill from the law practice; and
  - request an itemised bill after receipt of a lump sum bill; and
  - be notified of any substantial change to the matters disclosed under this section; and
- an estimate of the total legal costs, if reasonably practicable or, if that is not reasonably practicable, a range of estimates of the total legal costs and an explanation of the major variables that will affect the calculation of those costs; and
- details of the intervals (if any) at which the client will be billed; and
- the rate of interest (if any) that the law practice charges on overdue legal costs, whether that rate is a specific rate of interest or is a benchmark rate of interest; and
- if the matter is a litigious matter, an estimate of—
  - the range of costs that may be recovered if the client is successful in the litigation; and
  - the range of costs the client may be ordered to pay if the client is unsuccessful; and
- the client's right to progress reports; and
- details of the person whom the client may contact to discuss the legal costs; and
- the avenues that are open to the client in the event of a dispute in relation to legal costs; and
- any time limits that apply to the taking of any action; and
- that the law of South Australia applies to legal costs in relation to the matter; and
- information about the client's right—
  - to accept under a corresponding law a written offer to enter into an agreement with the law practice that the corresponding provisions of the corresponding law apply to the matter; or
  - to notify under a corresponding law (and within the time allowed by the corresponding law) the law practice in writing that the client requires the corresponding provisions of the corresponding law to apply to the matter.

There are certain exceptions to the requirement to disclose. These include, for example, where the total legal costs are not likely to exceed $1 500 (or such higher amount as might be prescribed); where the client has agreed in writing to waive the right to disclosure; and where the client is a law practice or an Australian legal practitioner.

Division 4—Legal costs generally

The provisions of this Division deal with the basis on which legal costs are recoverable, security for legal costs and interest on unpaid legal costs.

Division 5—Costs agreements

A law practice can enter into a costs agreement with a client under this Division. A costs agreement may be made—

- between a client and a law practice retained by the client; or
- between a client and a law practice retained on behalf of the client by another law practice; or
- between a law practice and another law practice that retained that law practice on behalf of a client; or
- between a law practice and an associated third party payer.

A costs agreement must be written or evidenced in writing and may provide that the payment of some or all of the legal costs is conditional on the successful outcome of the matter to which the costs relate (though there are certain types of matter to which a conditional costs agreement may not relate). A conditional costs agreement may provide for the payment of an uplift fee. Law practices are prohibited from entering into costs agreements where the amount payable is calculated by reference to the amount of any award or settlement or the value of any property that may be recovered in proceedings to which the agreement relates.

A costs agreement may be enforced in the same way as any other contract. (This is subject to Division 7, which deals with the adjudication of disputes about costs.)

Division 6—Billing

This Division prohibits a law practice from commencing legal proceedings to recover legal costs from a person until at least 30 days after the practice has given a bill to the person in accordance with the provisions of the Division. A bill may be in the form of a lump sum bill or an itemised bill. A law practice must comply with any request for an itemised bill by a person who has received a lump sum bill.

Division 7—Adjudication of costs

The Supreme Court is authorised under this Division to adjudicate and settle a bill for costs on the application of a client or a third party payer. A law practice that retains another law practice may also apply to the Court for an adjudication of a bill for legal costs.

The Court's power to adjudicate and settle a bill of costs may be exercised by the Registrar of the Court. The Registrar's decision on an adjudication is subject to appeal. Following an adjudication, the Court may order the refund of any amount overpaid or payment of legal costs in accordance with the adjudicated bill.

The Board may institute proceedings for the adjudication of legal costs on behalf of a person who is liable to pay, or has paid, the legal costs. The Board must institute such proceedings if ordered to do so by the Tribunal.

Division 8—Miscellaneous

The regulations may modify the application of Part 3 to incorporated legal practices or multi-disciplinary practices, or both.

Part 4—Professional indemnity insurance

Under this Part, which is taken from the current Act, the Law Society may establish a scheme providing professional indemnity insurance for the benefit of local legal practitioners.

Part 5—The legal practitioners' guarantee fund

Division 1—Preliminary

This Part deals with the legal practitioners' guarantee fund.

Division 2—Guarantee fund

The Law Society is required under this Division to continue to maintain the fund, which consists of—

- the money paid into it from the statutory interest account; and
- all money recovered by the Society under Part 5; and
- a prescribed proportion of the fees paid in respect of the issue or renewal of local practising certificates; and
- costs recovered by the Attorney-General, the Board or the Society in disciplinary proceedings against Australian legal practitioners or former Australian legal practitioners; and
- any fee paid to the Board; and

· any money that the Society thinks fit to include in the guarantee fund; and

· the income and accretions arising from the investment of the money constituting the guarantee fund.

The purposes for which the guarantee fund may be applied are listed in this Division.

Division 3—Defaults to which this Part applies

This Division sets out the procedures for determining when the Part applies to a default. The Part applies to a default arising from, or constituted by, an act or omission of one or more associates of a law practice, where South Australia is the relevant jurisdiction for the only associate or one or more of associates involved.

It is immaterial where the default occurs, and it is immaterial that the act or omission giving rise to or constituting a default does not constitute a crime or other offence under the law of South Australia or any other jurisdiction or of the Commonwealth.

Division 4—Claims about defaults

This Division deals with claims against the guarantee fund about defaults. If a person suffers pecuniary loss because of a default to which Part 5 applies, he or she may make a claim about the default against the guarantee fund to the Law Society. The Division includes provisions dealing with the time limit for making claims against the fund, the capping of payments after the Society has published a notice stating that a cap applies in relation to a particular default, investigation of claims by the Society and the making of payments from the fund to a claimant in advance of the determination of a claim.

Division 5—Determination of claims

Under this Division, the Law Society may determine a claim by wholly or partly allowing or disallowing it. The Society may disallow a claim to the extent that the claim does not relate to a default for which the guarantee fund is liable, and may wholly or partially disallow a claim, or reduce a claim, to the extent that—

· the claimant knowingly assisted in or contributed towards, or was a party or accessory to, the act or omission giving rise to the claim; or

· the negligence of the claimant contributed to the loss; or

· the conduct of the transaction with the law practice in relation to which the claim is made was illegal, and the claimant knew or ought reasonably to have known of that illegality; or

· proper and usual records were not brought into existence during the conduct of the transaction, or were destroyed, and the claimant knew or ought reasonably to have known that records of that kind would not be kept or would be destroyed; or

· the claimant has unreasonably refused to disclose information or documents to or co-operate with—

· the Society; or

· any other authority (including, for example, an investigative or prosecuting authority),

in the investigation of the claim.

Other provisions in this Division deal with—

· the maximum amount payable in respect of a default, which must not exceed the pecuniary loss resulting from the default;

· payment of a claimant's costs;

· the addition of interest on the amount of a pecuniary loss;

· the right of a claimant to appeal to the Supreme Court against a decision of the Society or a failure by the Society to determine a claim.

Division 6—Payments from guarantee fund for defaults

It is provided under this Division that the guarantee fund is to be applied by the Society for the purpose of compensating claimants in respect of claims allowed under the Part in respect of defaults to which the Part applies.

If the Society is of the opinion that the guarantee fund is likely to be insufficient to meet the fund's ascertained and contingent liabilities, the Society may do any or all of the following:

· postpone all payments relating to all or any class of claims out of the fund;

· impose a levy on local legal practitioners (see below);

· make partial payments of the amounts of one or more allowed claims out of the fund with payment of the balance being a charge on the fund;

· make partial payments of the amounts of two or more allowed claims out of the fund on a pro rata basis, with payment of the balance ceasing to be a liability of the fund.

Where the Society is of the opinion that the guarantee fund is likely to be insufficient to meet its liabilities, the Society may (by resolution of the Council) impose a levy on each local legal practitioner, payable to the Society on account of the guarantee fund.

Division 7—Claims by law practices or associates

This Division deals with a claim by a law practice or associate in respect of a default arising from or constituted by an act or omission of an associate of the practice.

Division 8—Defaults involving interstate elements

This Division includes provisions giving the Society certain powers in relation to interstate defaults.

Division 9—Inter-jurisdictional provisions

The Law Society is authorised under this Division to enter into arrangements ("protocols") with corresponding authorities in other States or Territories for or with respect to matters to which Part 5 relates. This Division facilitates the investigation by the Society or a corresponding authority of another State or Territory of defaults that appear to the Society to have—

· occurred solely in another jurisdiction; or

· occurred in more than one jurisdiction; or

· occurred in circumstances in which it cannot be determined precisely in which jurisdiction the default occurred.

Division 10—Miscellaneous

The provisions of this Division deal with—

· regulation in respect of interstate practitioners who become authorised to withdraw money from a local trust account; and

· the application of Part 5 to incorporated legal practices and multi-disciplinary partnerships and sole practitioners.

Chapter 4—Complaints and discipline

Part 1—Introduction and application

Division 1—Preliminary

Chapter 4 adopts many of the national model provisions relating to complaints and discipline. Many provisions of the *Legal Practitioners Act 1981* relating to complaint and discipline are also carried over into Chapter 4. The adoption of the model provisions will achieve greater uniformity in standards applied by regulators and courts across Australia to determine when a practitioner's right to practise should be removed or restricted. They will also ensure that the rights afforded to complainants are broadly comparable across jurisdictions. In particular, the bill adopts the definitions of unsatisfactory professional conduct and professional misconduct from the national model provisions, ensuring that this will be the same across Australia.

The Chapter applies to Australian lawyers and former Australian lawyers in the same way that it applies to Australian legal practitioners and former Australian legal practitioners. It applies to former Australian legal practitioners in relation to conduct occurring while they were Australian legal practitioners in the same way that it applies to Australian legal practitioners.

Division 2—Key concepts

Professional misconduct is defined in this Division as conduct that involves a substantial or consistent failure to reach or maintain a reasonable standard of competence or diligence occurring in the practice of law.

Unsatisfactory professional conduct is the lesser offence, and is defined as conduct occurring in connection with the practice of law that falls short of the standard of competence and diligence that a member of the profession is entitled to expect from a reasonably competent legal practitioner.

Certain types of conduct that are capable of being unsatisfactory professional conduct or professional misconduct are set out, and these include serious offences, tax offences and offences involving dishonesty.

Division 3—Application of Chapter

Chapter 4 applies to an Australian legal practitioner in respect of conduct to which the Chapter applies. It applies—

· whether or not the practitioner is a local lawyer; and

· whether or not the practitioner holds a local practising certificate; and

· whether or not the practitioner holds an interstate practising certificate; and

· whether or not the practitioner resides or has an office in this jurisdiction; and

· whether or not the person making a complaint about the conduct resides, works or has an office in this jurisdiction.

Part 2—Complaints and discipline

Division 1—Investigations by Legal Practitioners Conduct Board

This Division deals with investigations by the Legal Practitioners Conduct Board and provides that the Board may, on its own initiative, make an investigation into the conduct of an Australian legal practitioner if the Board has reasonable cause to suspect that the practitioner has been guilty of unsatisfactory professional conduct or professional misconduct.

The Board is required to investigate the conduct of a practitioner if directed to do so by the Attorney-General or the Law Society, or if the Board receives a complaint about the conduct of the practitioner.

If the Board is satisfied that an investigation has revealed evidence of professional misconduct by an Australian legal practitioner, the Board is required to make a report on the matter to the Attorney-General and the Law Society. The Board must also report suspected professional misconduct that would constitute an offence to all relevant law enforcement and prosecution authorities.

The Board is authorised to exercise certain powers in relation to a practitioner, instead of laying a complaint, if the Board is satisfied that there is evidence of unsatisfactory professional conduct or professional misconduct by the practitioner that can be adequately dealt with by the exercise of the power. The Board may only take this course of action with the consent of the practitioner. If taking this course of action, the Board may—

· reprimand the practitioner; or

· make an order imposing specified conditions on the practitioner's local practising certificate or recommending that specified conditions be imposed on the practitioner's interstate practising certificate—

· relating to the manner or circumstances in which the practitioner engages in legal practice; or

· requiring that the practitioner, within a specified time, to complete further education or training, or receive counselling, of a type specified by the Board; or

· make an order requiring that the practitioner make a specified payment (whether to a client of the practitioner or to any other person) or do or refrain from doing a specified act in connection with engaging in legal practice.

Complaints of overcharging by a law practice must be investigated by the Board unless considered to be frivolous or vexatious.

The Board may arrange for a conciliation to be conducted in relation to a complaint

Division 2—Proceedings before Legal Practitioners Disciplinary Tribunal

This Division deals with proceedings in the Legal Practitioners Disciplinary Tribunal. A complaint alleging professional misconduct or unsatisfactory professional misconduct by a practitioner may be laid by the Attorney-General, the Board, the Society or a person claiming to be aggrieved by reason of the alleged professional misconduct or unsatisfactory professional conduct.

If the Tribunal is satisfied, following a hearing in relation to a complaint, that a practitioner is guilty of professional misconduct or unsatisfactory professional conduct, the Tribunal may make such orders as it thinks fit, including the following:

· an order that the practitioner's local practising certificate be suspended for a specified period (not exceeding 6 months);

· an order that a local practising certificate not be granted to the practitioner before the end of a specified period;

· an order that—

· specified conditions be imposed on the practitioner's practising certificate; and

· the conditions be imposed for a specified period; and

· specifies the time (if any) after which the practitioner may apply to the Tribunal for the conditions to be amended or removed;

· an order reprimanding the practitioner;

· an order with respect to the examination of the Australian legal practitioner's files and records by a person approved by the Tribunal (at the expense of the practitioner) at the intervals, and for the period, specified in the order;

· an order recommending that disciplinary proceedings be commenced against the practitioner in the Supreme Court;

· an order recommending that the name of the practitioner be removed from an interstate roll;

· an order recommending that the practitioner's interstate practising certificate be suspended for a specified period or cancelled;

· an order recommending that an interstate practising certificate not be granted to the practitioner before the end of a specified period;

· an order recommending—

· that specified conditions be imposed on the practitioner's interstate practising certificate; and

· that the conditions be imposed for a specified period; and

· a specified time (if any) after which the practitioner may apply to the Tribunal for the conditions to be amended or removed;

· an order that the practitioner pay a fine of a specified amount, not exceeding $50 000;

· an order that the practitioner undertake and complete a specified course of further legal education;

· an order that the practitioner undertake a specified period of practice under specified supervision;

· an order that the practitioner do or refrain from doing something in connection with the practice of law;

· an order that the practitioner cease to accept instructions as a public notary in relation to notarial services;

· an order that the practitioner's practice be managed for a specified period in a specified way or subject to specified conditions;

· an order that the practitioner's practice be subject to periodic inspection by a specified person for a specified period;

· an order that the practitioner seek advice in relation to the management of the practitioner's practice from a specified person;

· an order that the practitioner not apply for a local practising certificate before the end of a specified period.

Division 3—Disciplinary proceedings before the Supreme Court

If the Tribunal recommends that disciplinary proceedings be commenced against an Australian legal practitioner in the Supreme Court, the Board, the Attorney General or the Society may institute disciplinary proceedings in the Supreme Court against the practitioner. This Division includes provisions relating to the Court's jurisdiction and its power to order interim suspension of an Australian legal practitioner or to impose interim conditions on his or her practising certificate.

Division 4—Provisions relating to interstate legal practice

It is provided under this Division that if conduct by an Australian legal practitioner has been the subject of disciplinary proceedings in another State that have been finally determined, no proceedings are to be commenced or continued under this Chapter in relation to that conduct.

Division 5—Publicising disciplinary action

This Division provides for the keeping by the Law Society of a Register of Disciplinary Action. The Register is to record—

· disciplinary action taken under this Act against Australian legal practitioners; and

· disciplinary action taken under a corresponding law against Australian legal practitioners who are or were enrolled or engaging in legal practice in this jurisdiction when the conduct that is the subject of the disciplinary action occurred.

Disciplinary action means—

· the making of an order by a court or tribunal for or following a finding of professional misconduct by an Australian legal practitioner; or

· the exercise by the Board or a corresponding authority of a power where the Board or corresponding authority is satisfied that there is evidence of professional misconduct by an Australian legal practitioner; or

· any of the following actions taken following a finding by a court or tribunal of professional misconduct by an Australian legal practitioner:

· removal of the name of the practitioner from an Australian roll;

· the suspension or cancellation of the Australian practising certificate of the practitioner;

· the refusal to grant or renew an Australian practising certificate to the practitioner;
· the appointment of—
· a supervisor of trust money of the practitioner's practice; or
· a receiver for the practitioner's practice; or
· a manager for the practitioner's practice.

Division 6—Inter-jurisdictional provisions

The Board is authorised under this Division to enter into arrangements with corresponding authorities for or with respect to investigating and dealing with conduct that appears to have occurred in another jurisdiction or more than one jurisdiction. The Board may request a corresponding authority of another State or Territory to arrange for the investigation of a complaint being dealt with by the Board and to provide a report on the result of the investigation.

This Division also includes provisions relating to investigation of any aspect of a complaint being dealt with under a corresponding law and the sharing of information by the Board with corresponding authorities.

Division 7—Miscellaneous

This Division provides a protection from liability for various bodies and also deals with claims for privilege in investigations or proceedings under the Chapter and the waiver of privilege or duty of confidentiality.

Chapter 5—External intervention

Part 1—Preliminary

Chapter 5 provides for intervention in the business and professional affairs of law practices in certain circumstances in order to protect the interests of the general public and clients of the legal practice. An ***external intervener*** is a supervisor for the trust account of a law practice, a manager for a law practice or a receiver for a law practice.

Part 2—Initiation of external intervention

External intervention can take place in a range of circumstances set out in this Division, including where the practitioner has died, ceased to be a legal practitioner, or has become insolvent under administration.

Part 3—Supervisors of trust money

The Law Society may appoint a supervisor of trust money for a law practice where there are issues relating to the practice's trust account and it is not appropriate that the practice be wound up and terminated. The supervisor is responsible for the trust money and accounts of the practice. The supervisor has power to open trust accounts, receive trust money and keep records relating to the trust account. A supervisor's appointment terminates when a receiver or manger is appointed, when all trust funds are distributed or where the Law Society determines that the appointment should cease.

Part 4—Managers

The Law Society may appoint a manager for a law practice if the Society is of the opinion—

· that external intervention is required because of issues relating to the practice's trust records; or
· that the appointment is necessary to protect the interests of clients in relation to trust money or trust property; or
· that there is a need for an independent person to be appointed to take over professional and operational responsibility for the practice.

The provisions of this Part deal with the appointment of a manager, the contents of a notice of appointment, the effect of service of a notice of appointment, the role of a manager and the termination of an appointment.

Part 5—Receivers

The Law Society may determine to apply to the Supreme Court for the appointment of a receiver for a law practice if of the opinion—

· that the appointment is necessary to protect the interests of clients in relation to trust money or trust property; or
· that it may be appropriate that the provision of legal services by the practice be wound up and terminated.

The provisions of this Part deal with the appointment of a person as the receiver for a law practice by the Supreme Court, the contents of a notice of appointment, the effect of service of a notice of appointment, the role of a receiver, the termination of a receiver's appointment and various additional matters.

Part 6—General

This Division includes general provisions relating to external interveners, including a provision that provides a right of appeal to the Supreme Court against the appointment of an external intervener in relation to a law practice. Other provisions of this Division relate to matters such as confidentiality, protection from liability and the offence of obstructing an external intervener.

Chapter 6—Investigatory powers

Part 1—Preliminary

This Chapter sets out the powers that can be exercised in trust account investigations, trust account examinations, complaint investigations and ILP compliance audits (that is, an audit in relation to an incorporated legal practice).

Part 2—Requirements relating to documents, information and other assistance

Part 2 sets out requirements that may be imposed for trust account investigations and trust account examinations. A person may be required to provide an investigator with—

· access to the documents relating to the affairs of a law practice the investigator reasonably requires; or
· information relating to the affairs of a law practice the investigator reasonably requires.

In relation to a complaint investigation, an Australian lawyer may be required to do any one or more of the following:

· to produce, at or before a specified time and at a specified place, any specified document (or a copy of the document);
· to provide written information on or before a specified date;
· to otherwise assist in, or co-operate with, the investigation of the complaint in a specified manner.

Part 3—Entry and search of premises

The provisions of this Part authorise the entry and search of premises by investigators in relation to trust account investigations and complaint investigations. An investigator may, for the purposes of carrying out an investigation, enter and remain on premises to exercise his or her powers of investigation. An investigator who enters premises in accordance with the Part may—

· search the premises and examine anything on the premises;
· search for any information, document or other material relating to the matter to which the investigation relates;
· operate equipment or facilities on the premises for a purpose relevant to the investigation;
· take possession of any relevant material and retain it for as long as may be necessary to examine it to determine its evidentiary value;
· make copies of any relevant material or any part of any relevant material;
· seize and take away any relevant material or any part of any relevant material;
· use (free of charge) photocopying equipment on the premises for the purpose of copying any relevant material;
· with respect to any computer or other equipment that the investigator suspects on reasonable grounds may contain any relevant material—
  · inspect and gain access to a computer or equipment;
  · download or otherwise obtain any documents or information;
  · make copies of any documents or information held in it;
  · seize and take away any computer or equipment or any part of it;
· if any relevant material found on the premises cannot be conveniently removed—secure it against interference;
· request any person who is on the premises to do any of the following:
  · to state his or her full name, date of birth and address;
  · to answer (orally or in writing) questions asked by the investigator relevant to the investigation;
  · to produce relevant material;
  · to operate equipment or facilities on the premises for a purpose relevant to the investigation;
  · to provide access (free of charge) to photocopying equipment on the premises the investigator reasonably requires to enable the copying of any relevant material;
  · to give other assistance the investigator reasonably requires to carry out the investigation;
· do anything else reasonably necessary to obtain information or evidence for the purposes of the investigation.

The power to enter and remain on premises is subject to various provisions set out in the Part.

Part 4—Additional powers in relation to incorporated legal practices

This Part authorises the exercise of certain additional powers by investigators in respect of trust account investigations, complaint investigations and ILP compliance audits conducted in relation to incorporated legal practices.

Part 5—Miscellaneous

It is an offence under this Part for a person, without reasonable excuse, to obstruct an investigator exercising a power under the Act. The maximum penalty is a fine of $50 000 or imprisonment for 1 year.

Other provisions of this Part deal with various matters, including the protection from liability for investigators and the permitted disclosure of confidential information.

Chapter 7—Regulatory bodies and funding

Part 1—The Law Society of South Australia

This Division provides that the Law Society of South Australia is to continue in existence and includes provisions relating to the administration of the Society, the Council of the Society, the Litigation Assistance Fund (which the Society is to continue to maintain) and matters to be reported by the Society.

Part 2—The Legal Practitioners Education and Admission Council and the Board of Examiners

Division 1—The Legal Practitioners Education and Admission Council

The Legal Practitioners Education and Admission Council is continued in existence under this Division. The Council has the following functions:

- to make rules prescribing—
  - the qualifications for admission to the legal profession; and
  - the qualifications for the issue and renewal of local practising certificates, including requirements for post-admission education, training or experience;
- to participate in the development of uniform national standards relating to the qualifications necessary for persons engaging in legal practice;
- to keep the effectiveness of legal education and training courses and post-admission experience under review so far as is relevant to qualifications for engaging in legal practice;
- to perform any other functions assigned to the Council by the Act.

Division 2—The Board of Examiners

This Division provides for the continuing existence of the Board of Examiners, which has functions conferred on it by the Legal Practitioners Education and Admission Council or under the Act.

Part 3—The Legal Practitioners Conduct Board

The Legal Practitioners Conduct Board continues in existence. This Part includes provisions dealing with the composition of the Board, the conditions on which Board members hold office, the Director and staff of the Board and the functions of the Board, which are as follows:

- to investigate suspected professional misconduct or unsatisfactory professional conduct by Australian legal practitioners;
- following an investigation, to take action authorised under Chapter 4 or to lay a complaint before the Tribunal;
- to receive and deal with complaints of overcharging in accordance with Chapter 4;
- to arrange for the conciliation of complaints;
- to commence disciplinary proceedings against Australian legal practitioners in the Supreme Court on the recommendation of the Tribunal.

The Board is authorised to delegate any of its powers or functions under the Act to any person, but cannot delegate the making of a determination as to—

- whether evidence exists of professional misconduct or unsatisfactory professional conduct by an Australian legal practitioner; or
- whether professional misconduct or unsatisfactory professional conduct by an Australian legal practitioner should be dealt with by the exercise of the Boards powers with the consent of the practitioner; or
- whether to recommend that an Australian legal practitioner reduce or refund an amount charged by the practitioner; or
- whether to lay a complaint before the Tribunal.

The Board may delegate the making of a determination that no evidence exists of professional misconduct or unsatisfactory professional conduct by an Australian legal practitioner.

Part 4—The Legal Practitioners Disciplinary Tribunal

This Division provides for the continuation of the Legal Practitioners Disciplinary Tribunal and includes provisions relating to the conditions of membership of the Tribunal, the constitution and proceedings of the Tribunal and the making of Tribunal rules.

Part 5—Lay observers

The Attorney-General may, under this Part, appoint suitable persons to be lay observers for the purposes of this Chapter and Chapter 4. A lay observer is entitled to be present at any proceedings of the Board or the Tribunal and may report to the Attorney-General on any aspect of the proceedings of the Board or the Tribunal.

Part 6—Annual reports

The Board and the Tribunal are each required to prepare and present to the Attorney-General and the Chief Justice a report on their proceedings for the last financial year.

Chapter 8—General

Part 1—Public notaries

The provisions of this Part, which are carried over from the *Legal Practitioners Act 1981*, regulate the admission of public notaries. If the Supreme Court is satisfied that the name of a public notary should be struck from the roll of public notaries, the Court may, on its own initiative, or on the application of the Attorney-General or the Law Society, strike the name of the public notary from the roll of public notaries.

Part 2—Miscellaneous

This Part includes miscellaneous provisions relating to the liability of principals of law practices, the disclosure of information by regulatory authorities, confidentiality of personal information, service of documents, approved forms, inspection of documents, the making of necessary or expedient regulations and various other matters.

Schedule 1—Repeal and transitional provisions

Part 1—Repeal of Act

1—Repeal of *Legal Practitioners Act 1981*

This clause repeals the *Legal Practitioners Act 1981*.

Part 2—Transitional provisions

The clauses of this Part provide for transitional arrangements in connection with the repeal of the *Legal Partitioners Act 1981* and the enactment of the new Act.

Mrs REDMOND secured the adjournment of the debate.

VICTIMS OF CRIME (COMMISSIONER FOR VICTIMS' RIGHTS) AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 779.)

Mr KENYON (Newland): I am very happy to be able to speak on this because I am quite proud of the government's achievements in the area of victims' rights. Since coming to office in 2002, I think it is fair to say that the government has been tilting the balance in favour of victims and not criminals. It is disappointing to say that this is something the former government did not do. This government has taken action when necessary and will continue to take action in the best interest of victims. This government sees victims as the focus of the justice system. The government has improved rights of victims to complain and gain information about crimes affecting them and to seek compensation. Victims also now have the right to make written submissions to the Parole Board.

After the death of the cyclist Ian Humphrey, the Rann Labor government established the Kapunda Road Royal Commission. After the reports of the royal commission were presented to the Governor, this government acted quickly to introduce legislation that allows the courts to sentence the worst driver offenders to life behind bars. These laws reflect the seriousness with which the Rann government views hit-

and-run offences when people are killed or seriously injured. When Paul Nemer shot Geoffrey Williams, this government listened to the overwhelming response from the public when Mr Nemer was given a suspended sentence and took action to ensure that justice was served. I might add that I was working for the Attorney-General at the time, and it was great to be involved in those events as they were taking place.

The Hon. M.J. Atkinson: Of course, the member for Heysen has ruled out ever directing the DPP if she became attorney-general.

Mr KENYON: The Attorney-General says that the member for Heysen has ruled out ever directing the DPP in the event that she is attorney-general, which is something I do not think the member for Heysen should be doing. I think she should always reserve the right she has. Ministers should not be giving away powers that they have. Laws recently passed by parliament will keep this state's most dangerous criminals—

Members interjecting:

The DEPUTY SPEAKER: Member for Newland, please ignore interjections.

Mr KENYON: —locked up until they die and sets tough new minimum non-parole periods for major offences where the victim has been killed or permanently incapacitated. This government has pledged to keep notorious criminals behind bars.

An honourable member interjecting:

Mr KENYON: No, that is not true. In 2004, the Rann government listened to the public when it abolished the use of 'drunks defence' as a legal excuse for crime in South Australia. This change to the law ensured that people were held responsible for crimes committed during self-induced intoxication—Noa Nadruka being the cause of the public outrage around that law. After taking office, this government changed the law relating to serious criminal trespass, giving the public the clear right to defend themselves, their families and their homes. These rights were weakened by the Liberal government in 1997, but this government went to the 2002 election pledging to restore householders' rights to self-defence and ensure that the law protected the victims of home invasions instead of the offenders.

Members interjecting:

The DEPUTY SPEAKER: Order! If members wish to have conversations, they can remove themselves.

Mr KENYON: This bill is important for victims of crime as it establishes a Commissioner for Victims' Rights and enables the Commissioner to assist victims with their dealings with the Director of Public Prosecutions, police and other agencies. This assistance will be valuable to victims who may feel overwhelmed by the justice system. The Commissioner for Victims' Rights will be independent and will advise the Attorney-General on marshalling of available government resources for victims.

The Hon. M.J. Atkinson: Marshalling.

Mr KENYON: That is what I said. In addition, the Commissioner will monitor and review the effect of the law on the victims and their families. This bill makes victims a priority in our justice system. Under the Rann government, offenders are being giving longer sentences by the courts, spending longer in prison, crime is falling and police numbers are growing to record levels. The Rann government believes in justice for victims, justice for the families of victims and justice for the public. The government has listened and it has delivered. I commend this bill to the house.

The Hon. S.W. KEY (Ashford): As a local member, I know full well about the assistance that has been given to various constituents who have come to my electorate office and needed support from this service. I am very proud that our government has created an independent Commissioner for Victims' Rights—another Australian first. I congratulate the Attorney-General because I know this is an area for which he has strongly advocated for many years, particularly when we were in opposition. It is important for victims to have a strong independent voice and to have someone act on their behalf and listen to their concerns. The Commissioner will be able to continue the fight for the rights of victims. The government has worked hard, together with other agencies such as the Office for Victims of Crime—one, sadly, that is very well known to my electorate office—the Victim Support Service and Yarrow Place. I place on record my appreciation of the many workers over the years who have assisted constituents in the Ashford electorate and, previously, members of various trade unions whom I had the honour of serving. On a personal level I have a longstanding connection with these services, and I am pleased we are now giving emphasis to the service by having a permanent Commissioner—which is an Australian first.

This Commissioner will be part of a range of initiatives that have been taken by this government. When I look back through the media releases over the years a consistent plan has been put forward by Labor, both when in opposition and since it came to government in 2002. From time to time some members of the public and media have maintained that judges and magistrates need to pay greater attention to victims' rights. I think the creation of a Commissioner's office and the powers of that office will assist the courts and the Office of the Director of Public Prostitution—Prosecutions—and SAPOL to be better focused on victims' rights.

Mrs Redmond interjecting:

The Hon. S.W. KEY: As the honourable member would know, I am a very strong advocate for reform in the sex industry. That is be something for which I have been moving consistently. If the Commissioner for Victims' Rights can assist in that area, it would be consistent with my views, but it is not necessarily on the agenda at present. The government's pledge to give the Commissioner for Victims' Rights the legislative authority to consult with these agencies is important. I note that the Commissioner will have several roles, in addition to advising the Attorney-General on 'marshalling' available government resources.

This bill authorises the Commissioner to assist victims of crime in their dealings with the Director of Public Prosecutions and other agencies. The Commissioner will be expected to monitor and review the effect of court practices and procedures on victims and the effect of law on victims and victims' families. I am pleased these functions have been added to the roles already contemplated by the objects of the Victims of Crime Act and assigned by the Attorney-General, and carry out the functions assigned to the Commissioner under the act. It is good that the bill will impose obligations to consult with the Commissioner for Victims' Rights. Of some significance is the fact that the Director of Public Prosecutions must, if requested to do so by the Commissioner, consult the Commissioner about the interests of victims. I think this sort of consultation will go a long way towards helping victims' rights, especially when it comes to difficult matters such as so-called plea bargains. The power to recommend an apology to victims by a public agency or official also helps to shift the balance towards victims. It is

good, too, that the position of Commissioner is to be independent of the general direction or control by the crown or any officer or minister of the crown, similar to the way in which the DPP or Equal Opportunity Commissioner operate. This is a strength. The Commissioner will be able to make independent recommendations. It also gives the public confidence that victims' rights will be fearlessly represented.

I note that the government has promised to amend the law on victim impact statements. Again, this is something that has been consistently argued by the Labor caucus. I am told by the Attorney-General that the bill is currently being reviewed by legal staff in his department in order to ensure it satisfies the government's promise and longstanding concern in this area and permission will be sought to introduce these changes soon. Again, I compliment the Attorney-General on his consistent campaign in this area. I know that a number of members, certainly on this side of the house, will be pleased to see that legislation come to parliament. When first elected the Rann Labor Government announced that it would be tough on crime and improve the lot of victims of crime. I think that is the other part of the tough on crime adage that needs to be emphasised. After its first term and now in its second term there is little doubt that our government has this focus to be tough on crime. It has been important for us all to see the sweeping changes to DNA laws. There are now many more police than we have had before in South Australia, tougher penalties, longer sentences and more prisoners than ever before. I am not sure that is something that is an emphasis of mine, but certainly that is the outcome of being tough on crime and making sure people account for their sins.

I am interested in ensuring we have genuine caring support services for victims. Victimisation through crime can be a horrendous, life-changing experience. I know many members in this chamber could think of examples of people in their electorate where people have been devastated as a result of a member of their family or their being a victim of crime. The Rann Labor Government is committed to improving services for victims. I commend the bill to the house and take this opportunity to congratulate the Attorney-General on this very fine reform.

Mrs GERAGHTY (Torrens): I congratulate the Attorney-General on his tireless efforts in developing this bill. From the very start, the Rann government promised to elevate the interests of victims of crime in the justice system. A number of my constituents applaud this bill because they have been victims of some horrific crimes. I know that they are extremely pleased.

Before this government, the interests of victims in our justice system had long been forgotten. The most vulnerable witnesses—those victims of sexual offences, domestic violence, intrafamilial violence and children, who are so easily overwhelmed by the trial process—were left to fend for themselves. I note that the law is set to change through our government's proposed rape, sexual assault, domestic violence and vulnerable witness law reforms. I welcome such laws and commend the Premier, the Attorney-General and also the Minister for the Status of Women for their courage and determination to put together a package of reforms.

I hope that this will see more sex offenders behind bars and more victims feeling able to tell their stories to the courts. I am particularly pleased that vulnerable witnesses will be able to record their evidence away from the offender, because it is extremely intimidating, and certainly some offenders and others are tempted to use those tactics of intimidation. Members need only read yesterday's *Advertiser* to learn of the pain and torment that a trial can place on vulnerable witnesses and how sad it is when a victim chooses to take, in this case, his life rather than continue the fight for justice. On compassionate grounds, I have to say that I support that victim in his decision to discontinue his matter and obviously wish him well.

It is important to add that the family of the victim and, in a way, the friends of the victim and the community in which he lives, also suffer from the crime. In crimes where the victim dies, it is the family who is left to pick up the pieces and, if they have the strength, to fight for justice. The government is joining this fight with victims to tilt the balance. An example of how the government has taken up the fight for victims was the calling of the Kapunda Road Royal Commission. The government responded to the recommendations of the commission with a range of policy and operational changes.

As we have heard, the position of a Commissioner for Victims' Rights will ensure that victims will remain involved in the justice system when the Rann government is long gone and that, of course, will not be for—

The Hon. S.W. Key: Quite some time.

Mrs GERAGHTY: —quite some time, and I am sure that the public are much comforted by that. The victims and their interests will be a central consideration in policy making in the courts, in government administration and, of course, in the community. I am pleased that, under this bill, the Commissioner for Victims' Rights will be able to make submissions to the Court of Criminal Appeal on sentencing guidelines. Guideline sentencing is an important measure. It was introduced by the Rann government early in its term to help the judiciary impose sentences with some consistency for a similar offending.

One of the common gripes in the community, and something that is often raised in my electorate and, no doubt, in the electorate offices of other members, is that offenders who commit the same crime, or crimes of a similar seriousness, receive wildly differing sentences. I understand that the judiciary must consider a raft of factors in sentencing—for example, the past criminal history of the offender, their state of mental health and the circumstances of the offence itself. In saying that, I by no means make any criticism of the judiciary; however, I fear that public confidence in the courts will be diminished if the sentences continue to differ as widely as they have from time to time.

I believe that the Premier once said that the rights of the victims of crime are often trampled underfoot in the rush to punish the offender. I congratulate the Attorney-General and commend the bill to the house.

The Hon. M.J. ATKINSON (Attorney-General): I thank all members who participated in the debate and note that government members in particular seemed to have a great interest in its subject matter.

Mrs Geraghty interjecting:

The Hon. M.J. ATKINSON: As the member for Torrens says, government members take a great interest in victims of crime. The opposition spokesman raised questions about the formalities of the appointment of the interim Commissioner and seemed to doubt that the government had gone through the proper process. The interim Commissioner was appointed under section 68 of the Constitution Act and so was appointed by Executive Council. The member for Heysen could have

read the appointment in the *Government Gazette* of 18 or 19 October last year.

Mrs Redmond interjecting:

The Hon. M.J. ATKINSON: The member for Heysen says that she reads the *Government Gazette* but missed that particular appointment. Also in response to a question from the member for Heysen, the Commissioner will be able to monitor the effect of delays in the criminal justice system and, for that purpose, the Commissioner is already a member of the criminal justice task force. Although it is true, as the member for Heysen notes, that the Commissioner for Victims' of Crime cannot force agencies or officials to apologise to victims of crime, under new section 16A(4), the Commissioner can make an annual report to parliament which, in effect, names and shames those agencies or officials to whom the Commissioner recommends making an apology.

The member for Heysen also asked about the status and remuneration of this position. When the incumbent was the victims of crime coordinator, he was an MAS3. When he was the interim Commissioner, he was an EXA and, when he becomes the Commissioner, he will be an EXB, which carries the salary of $130 000 to $135 000 a year; so, the opposition will be able, no doubt, to put out a press release saying there is another fatcat earning more than $100 000 a year. I hope that covers all of the member for Heysen's questions. Again, I thank her for her detailed examination of the clauses. Alas, her Liberal Party colleagues did not share her enthusiasm for the bill.

Mrs Redmond: They entrusted it to me.

The Hon. M.J. ATKINSON: As the member for Heysen says, they entrusted the party's position to her, and I thank all those who participated in the debate and I look forward to this being legislation that does good.

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

SUMMARY PROCEDURE (PAEDOPHILE RESTRAINING ORDERS) AMENDMENT BILL

Second reading.

The Hon. M.J. ATKINSON (Attorney-General): I move:

That this bill be now read a second time.

Legislation providing for paedophile restraining orders was enacted in 1995. It was a first for Australia and it was later commended by the New South Wales Wood Royal Commission. It is an extension of the familiar restraining order model but it is directed against those who loiter near children or places where children congregate, and who have a history of child sex offending, or where there is reason to think they may offend in this way. Last year, the Hon. Dennis Hood of Family First introduced a bill to amend the scheme in another place. The bill tackled the age-old crime of paedophilia as it manifests itself in the modern era over the internet. It contains amendments to the scheme in section 99AA of the Summary Procedure Act 1921 to:

- change the grounds on which a paedophile restraining order may be made, principally to link the making of an order to registration under the Child Sex Offender Registration Act 2006, which is about to come into force;
- extend the power of a court to prohibit a defendant from using the internet; and
- provide the police with powers of entry and seizure so as to enforce any internet ban.

The government considered the matter and generally agreed with what Family First was trying to achieve, but we introduced six amendments to improve the bill in another place, all of which were agreed to by honourable members.

The government thinks that the result is a sensible change to the law but, make no mistake, some members of the public will review it as an attack on civil liberty. Let's not forget that late last century, when the then attorney-general, the Hon. K.T. Griffin, wanted to apply the classification law (the censorship law) to the internet. The Australian Democrats stoutly resisted it and they said that the internet should be absolutely free. If the Democrats had got their way, exchanging child pornography on the internet would be perfectly lawful. The Democrats and the Greens might argue that the price of this bill is too high. The point at issue here is that the government takes the position that access to the internet is not a fundamental right: it is a privilege that should be denied to some by due process of law for the sake of our children. The government has at every turn taken steps to protect the public and it has not been afraid to get tough on law and order. The result has been tougher penalties, longer sentences and more prisoners. This bill is another measure to complement other ways of protecting the public. A constriction of the liberty of the few to use the internet is worthwhile if it protects one child from a predator or would-be predator.

In deliberation on the previous bill, the member for Heysen said that the Rann government does not give due credit to Independents who bring private members' bills to parliament and that we take over those private members' bills and turn them into—

Mrs Redmond: Rebadge them.

The Hon. M.J. ATKINSON: Rebadge them, as the member for Heysen interjects; I will accept that interjection. The member for Heysen's jibe is true of the previous government. It is true of the Hon. K.T. Griffin, the attorney-general of blessed memory. The member for Heysen will see that if she looks at the legislative record of the previous government.

I cite just one example, and that was my private member's bill giving victims of crime the right to read their victim impact statement in court, which the then Liberal government stoutly resisted until the end, when it lost the numbers in the Legislative Council and then turned it into a government bill. Under this government, the member for Fisher moved a private member's bill on hoon driving. The government put the bill through as a private member's bill but gave the member for Fisher the assistance of the policy and legislation section of the Attorney-General's Department. With this bill from Family First, the government gave the Hon. Dennis Hood the benefit of advice from the Attorney-General's Department to improve the bill as it was introduced by the Hon. Dennis Hood, but we allowed it to proceed through the other place as a private member's bill. We did not rebadge it. It comes here as a private member's bill and is given government time, as the hoon driving bill was given. The icing on the cake is the Hon. Ann Bressington's bill on drug implements. My department has been working on that bill, also, and it will proceed through the other place as a private member's bill—the work of the Hon. Ann Bressington—copyright—and we will support it in government time when it comes down here.

So, I indicate to members that, with the agreement of the Hon. Dennis Hood, with whom I enjoyed a hearty breakfast this morning, this bill will progress through the house as a government bill. The bill is an example of how the govern-

ment will work with non-government members and accept good ideas, no matter their source. I seek leave to continue my remarks.

Leave granted; debate adjourned.

ADJOURNMENT DEBATE

The Hon. M.J. ATKINSON (Attorney-General): I move:

That the house do now adjourn.

HEALTH CARE BILL

Mr VENNING (Schubert): This afternoon during the grievance debate I made reference to the hospital boards, and I want to conclude by saying that I think it is a very sad day indeed when we are seeing all our community hospitals coming under threat like this, with the government wanting to take the governance away from the local communities and put it into these quasi boards called HACs (health advisory councils), which we know can be just wiped out with a stroke of a government pen at a later date. It is purely a half-way house to get rid of the governance altogether from these hospitals.

I am very concerned about it, because we have seen what the same minister has done with the NRM boards, and now we have a huge problem on our hands. I do not want to see this happen to our hospitals, because there is nothing more special and holy to me than the hospital boards. I myself sat on one for over 10 years, and they are very precious indeed. I cannot understand why, regarding this matter, there is not more of an uprising from the country communities than there is.

Mrs Redmond: They haven't figured it out yet.

Mr VENNING: I do not think they have figured it out yet, as the member for Heysen indicates.

The Hon. M.J. Atkinson: You say they are suffering from collective false consciousness.

Mr VENNING: If the minister thinks I am not right I think he deludes himself, because there is no doubt that, as soon as you take the country ownership away from these hospital boards, that will be the end of it.

The Hon. M.J. Atkinson: What does Gunnie say?

Mr VENNING: He thoroughly agrees with me, absolutely.

The Hon. M.J. Atkinson: Does he? Are you sure?

Mr VENNING: Absolutely, yes, he does. We are talking about hospitals. We are not talking about regional boards, minister: we are talking about hospital boards. I agree with him about those regional boards: they should never have been set up. I am protecting the board that runs the hospital that is usually situated in the same town. I will fight and do everything I can—second only to the fight for the barley board—on this matter. I will take back all the bad things I have said about the other house if it can stop this move, because I feel very strongly about this legislation.

As I said, the same minister did it with the NRM bill and now he is bringing this in, where he says that we will have all the assets of the hospitals tied up in an official assets board. Rubbish! Those assets belong to the community that actually paid for them and put them there, and the titles should not leave that community. If they are sold at a later date, the value of the assets should stay in that community, because that is who put them there. This is a very cynical way of milking assets from communities just to put it into general revenue. So, I will do all I can to avoid that.

I do not want to hold up the house any longer but I want to quickly raise another point. I was going to speak on water first, because this is the most important issue this week. I heard the government say today it did not know that this problem was coming. I find it totally indefensible to say that it did not realise we were going to have this water shortage. We knew back in 2001—that is six years ago—when we were in government that we were looking at a looming problem. The minister for water resources in our previous government at that time was the Hon. Mark Brindal. Members should read what he had to say to this house about the water—

An honourable member interjecting:

Mr VENNING: What happened to him is irrelevant. What happened to you is more relevant. I think what minister Brindal had to say in a document entitled 'Waterproofing Adelaide'—the original document, which many people have copied since—highlights quite clearly what we needed to do, and we commenced many projects. It highlighted the problem we were heading for, the amount of water we waste, and the cheap price of water (it is far too cheap). It talks about the treatment of sewage and about water harvesting, which is now topical. All I can say is that that was six years ago, and we have done nothing. When did the government last build a new reservoir? When did the government last dredge a reservoir? When the reservoirs were nearly empty, the government could have at least emptied them one at a time and dredged them to remove all of the silt. That would have increased the capacity in the reservoirs by 10 to 15 per cent, or maybe even 20 per cent, but nothing has been done. A reservoir has been cracked for all these years and nothing has been done to fix it. Now, all of a sudden, we have a crisis. Hello, hello! Where has the government been?

Responsible governments are like farmers: they have to prepare for the tough times—and the government has not done that. This is a problem that was always going to happen. There is no guarantee at all that it will rain next year, so where are we going to go? I can remember when I travelled to Israel in 1994 to see how they treat their water supply. I came back and made several speeches in this house about what we should be doing.

Our irrigation industry is certainly leading the world with its water-saving technology, but we have never applied those same principles to water-saving measures in relation to our city water supply. Probably over half the toilets in this town are still on the old single flush, which is a disgrace. I have spent the last 4½ years as a member of the Public Works Committee and, on every public project, I have asked, 'Is the sewerage in this building dual plumbed?' Several members in this place will back me up.

Mrs Redmond: Even the Convention Centre has single flush toilets.

Mr VENNING: Even the Convention Centre has single flush toilets. You are not dinkum, really, are you? Why doesn't the government come out and say, 'We will subsidise the installation of dual flush toilets?' How many times do people go to the toilet a day? Just work it out. You have heard me say that men can go out the back.

The Hon. M.J. Atkinson interjecting:

Mr VENNING: I often go outside if the opportunity is available because I am very aware that, every time you push the button, particularly with the older style toilets, you push down five or six litres of water, which is a ridiculous situation.

Mrs Redmond interjecting:

Mr VENNING: Yes, 11 per cent of our water use goes down the toilet.

Mrs Redmond: Drinkable water.

Mr VENNING: It is drinkable water we are putting down there. It is ridiculous. We should be using recycled water in our toilets, and we should have been doing that 10 years ago. We should be using the water from our sink and showers. That water should be gathered and then recirculated through our toilets. It is common sense. But we have not done it, have we? All of a sudden, we have a crisis on our hands, and the government has done absolutely nothing about it.

Mrs Geraghty interjecting:

Mr VENNING: I am quite happy to give you a file containing my speeches, as previous minister Hemmings used to give me. Over a period of 10 years, I have made 10 speeches where I have mentioned this matter, and what has been done?

Mrs Geraghty interjecting:

Mr VENNING: I am happy to give you a copy of the précis of the evidence from the Public Works Committee. Members will see that, when we have been looking at a project, almost on almost every occasion I have asked, 'Is this building double plumbed?' In other words, why would you, in a public building, want to mix the toilet water with the grey water? Why would you want to do that? Well, we have been doing it. Over the last four or five years, there has been quite a distinct move towards using that system. For the sake of a few dollars extra in plumbing (it is only PVC pipe, after all), you can take the grey water and the black water external to the building, and then you can join them together if you wish; you can go back at a later date and dig it out and separate them. I have done that in my own home at West Beach. You just cut a piece of pipe with a hacksaw, and you have the grey water. You put a 44-gallon drum under it, and there is water for your garden. What has been done about that? Nothing. I cannot understand—

Mrs Geraghty: Why didn't you do it when you were in government if it is such a good idea?

Mr VENNING: Because we are always wise after the event. We started to look at it because we saw this was going to happen, because the seasons were continually getting drier and the river was becoming more saline. I know, because I was involved with the BIL scheme. Have members heard about the BIL scheme? That has been in the news over the last two days, and I am very sad indeed. I congratulate the previous government, particularly premier Olsen, because it gave Australia its first privately operated, government-liaised water scheme. The problem is that this scheme has to have water. This involves millions of dollars, which the farmers have paid for. They have to have the throughput to make it pay and, because they are now on 16 per cent allocation, the scheme is going to flounder. The scheme will not be viable unless somehow they can put water through the system. The banks have to be paid—and that is the problem. I cannot believe the crisis we are in, and every day we see it having another effect. I am very, very concerned to see what is happening now. The BIL scheme, which has been very, very good for the Barossa region, was put there to guarantee the water supply, because we knew—and we do not talk about this—that salinity is increasing everywhere, not only in the river but also in our underground water.

The final thing I want to say relates to what Adelaide's options were back then. At that time, minister Brindal highlighted many things that could be done, particularly underground aquifers in Adelaide. There is a very active aquifer under Adelaide and, apparently, there are also very large caverns that would be able to take massive amounts of retreated, recycled water. I cannot believe we needed a crisis like this to realise that something should happen. Here we are in 2007, and we have now woken up. How long before we will see anything in place? Has the government actually decided to make a decision? Why doesn't the government ring some private companies tomorrow. I spoke to a couple only last week. A private company from London would come in and build this desalination plant and have it operating within 12 to 15 months.

Mrs Redmond interjecting:

Mr VENNING: They won't do that. That company would come in and build it, because it has access to the equipment. The trouble now is that, because we are the last cab on the rank, we cannot get the vital parts, particularly the diaphragms, because everyone is before us in the queue; we are last in the queue. Western Australia will have two plants operating before we get one plant. It is an absolute disgrace.

Time expired.

RUSSIA WEEK

Mr BIGNELL (Mawson): I rise to add to my earlier comments about representing the South Australian government in Queensland last week at Russia Week, where we had about 150 Russian business people in attendance, as well as the Russian agriculture minister and two state governors. I led a delegation of South Australian business people who mixed with other business people from around Australia. We discussed opportunities for trade and also some joint partnerships.

Earlier, I was speaking to the member for Schubert about the importance that the Russian economy can play for both of our seats. Of course, the member for Schubert represents the Barossa Valley winemakers in this place, and I represent the very good McLaren Vale winemakers, who have just picked up the Jimmy Watson Trophy for the best red wine in Australia for the third year in a row. That honour went to Scarpantoni Winery at McLaren Flat. We also won *The Advertiser*-Hyatt award for the best wine in South Australia this year. That honour went to Gemtree, following Fox Creek's great win last year with its 2004 Reserve Shiraz. Both are great drops. I have a dozen Gemtree bottles in the boot, and the Fox Creek is drinking very well also.

I would like to thank the President of the Russian Union of Industrialists and Entrepreneurs, Mr Alexander Shokhin, and the President of the Russian Academy of Business and Entrepreneurship, Irina Gorbulina, whom I was fortunate enough to meet last week at Russia Week in Queensland. They have done a great job getting Russia Week off the ground in Australia. I have written to the Premier asking if the South Australian government can examine the benefits of South Australia hosting Russia Week in Adelaide next year. I think it would be a marvellous opportunity to show off our wonderful produce. I think that it would be very good to maybe coordinate their visit with show week in Adelaide, when we can take them to Wayville and have a very big function to show off our beef, dairy cattle, sheep, wool products, poultry and other areas in which the Russians are very keen to invest.

We have some fantastic companies and resources in South Australia, and I think we really need to showcase that to people from a country that has, as I mentioned before, a

$4 trillion economy. It has the world's largest gas reserves and the world's second largest oil reserves. The growth in Russia is beyond comparison with any other country. I think it is an area on which we really need to concentrate in selling our produce and also to examine joint ventures. Last week also marked the first visit to Australia of a Russian president. Never before has a Soviet leader or a Russian president been to Australia. Vladimir Putin, the Russian President, was here for APEC. I must thank David Travers from the South Australian Office of the Agent-General in London, who, through Peter Gago, the chief winemaker at Penfolds, organised for Alexander Downer to present on behalf of the South Australian and Australian governments a magnum of 1990 Grange Hermitage, judged as the best wine in the world. It was a marvellous gesture on behalf of Penfolds to donate the wine and also for the foreign minister to find time, in between tapping people on the shoulder last week, to hand over that magnum of Penfolds Grange.

In Queensland I had discussions with the Russian agriculture minister. As I said earlier, he was very impressed with the work that the South Australian government has done on the wine project. Not only are we trying to sell our wines, we are successfully achieving that, because we are selling lots of our wines. The growth in our wine exports is around 40 per cent a year, and will continue to grow as we make more and more inroads into that market. He was very impressed with the fact that we had also decided to give a little bit back and help the Russians re-establish themselves as wine growers and winemakers. That will not happen overnight, but we are building some very good relationships. As I said, we will have a delegation of Russian winemakers in McLaren Vale next year to join in our vintage to see how we do it, and, hopefully, we can pass on some advice and tips and, in the long run, that will help our export market.

While Vladimir Putin was being presented with a magnum of 1990 Grange Hermitage last week, I had the honour of presenting the Russian agriculture minister with one of the SouthAustralia.com team cycling jerseys. It is a purple jersey with kangaroos on the front. You could not wipe the smile from the face of the Russian agriculture minister; he seemed completely chuffed. I do not think that anyone had ever given him a cycling jersey before. We have all seen the photos of the buff President of Russia, Vladimir Putin, and his agriculture minister is obviously working out also. I would not be surprised if he is a keen cyclist also.

This year, 2007, we mark 200 years of the first contact between Russia and Australia, the 150th anniversary of consular relations, and 65 years since the establishment of diplomatic relations. I think we will continue to see growth between Australia and Russia. It is very important that, while we build our trade relations with countries such as China and India, we do not take our eye off the ball with Russia, because I see Russia as a fantastic opportunity to do business and a country from which to get income and export dollars into South Australia. It is not just a case of selling them our exports: it is also a matter of doing good business with them and helping them to grow their own industries.

There is also a great deal of interest in the growing Russian tourism market for people to travel to Australia. It is a fascinating place, and they are very keen. I managed to show off some pictures and books of the Flinders Ranges, Barossa Valley, McLaren Vale and Kangaroo Island, and there was a great deal of interest in marketing tourism to the Russians. So, perhaps we will see further growth in the attraction of tourists from Russia, and that, again, would be a very good thing for our economy.

Motion carried.

At 4.51 p.m. the house adjourned until Thursday 13 September at 10.30 a.m.