HOUSE OF ASSEMBLY

Wednesday 17 October 2007

The SPEAKER (Hon. J.J. Snelling) took the chair at 11:00 and read prayers.

PUBLIC WORKS COMMITTEE: CLAYTON WATER SUPPLY

Ms CICCARELLO (Norwood) (11:01): I move:

That the 270th report of the committee, entitled Clayton Water Supply, be noted.

The township of Clayton relies on water extracted from Lake Alexandrina. Water is supplied to customers from the council operated scheme, three privately operated schemes and numerous individual owner operated systems. The council operated scheme supplies most of Clayton's residents. It uses an aquifer storage and recovery system to improve water appearance and protect against algal outbreaks. But that system is failing, with the extracted water quality having significant salinity gains and sand carryover, resulting in water of marginal quality.

The drought conditions being experienced and the impact on the River Murray system with ongoing low inflows will result in falling water levels within Lake Alexandrina. These have the potential to exceed the lower limit of the extraction infrastructure and are forecast to significantly increase water salinity to levels exceeding Australian Drinking Water Guidelines. The falling levels are forecast to continue as system inflows to the Lower Murray are well below the lake evaporation rate. This eliminates the ability to control the water pool level. It is proposed that filtered water from the Summit Storage Water Treatment Plant be supplied via a new 12.5 kilometre pipeline and ancillary works with an estimated cost of $5 million. The works will provide a new booster pump station at the Bremer tank to boost pressure during peak demand period to Milang and Clayton. The tank inlet control valve will be altered to ensure control of system pressures upstream of the Bremer tank during periods of high demand.

The new pipeline will be connected to existing reticulation infrastructure within each township, and three pressure reducing valve assemblies will be provided to control customer supply pressures. This project does not address some other issues of concern to the Clayton community such as low water pressure, and hydrants and stop valves considered unsatisfactory. It is limited to ensuring the water supply. The committee is told that other matters will be negotiated and dealt with within the next 18 months.

A detailed consultation with the community will include outstanding matters such as issues associated with the private water schemes and the future of the existing water tower after it is decommissioned. The committee was pleased to learn that this project will result in a much lower volume of water extraction from the River Murray than the present scheme, and this will still be the case if anticipated growth in services and consumption is achieved.

The objective of this project is to ensure the security of water supply to the township of Clayton, while also complying with the Australian Drinking Water Guidelines. The key driver is the increase in salinity of Lake Alexandrina in conjunction with falling lake water levels and declining water quality. The project will improve water quality by delivering filtered water and will provide infrastructure to permit future development and growth of the community whilst ensuring security and continuity of the supply. The new pipeline will also mitigate against the public safety and water supply contamination risks associated with algal blooms, associated toxin and cryptosporidium.

SA Water examined several options for the project using multicriteria analyses, including whole-of-life costs and a range of technical, social and environmental factors. The results of an economic analysis indicate a net present value cost for the project of around $4.4 million and a benefit cost ratio of 0.05. The preferred option has the lowest capital and operating cost, and hence best net present value and benefit cost ratio. The analysis makes allowance for increased water sales, which may result once customers receive filtered water. Generally a growth allowance of 1 per cent per year has been assumed. Construction is anticipated to have reached practical completion in December 2007. To achieve this time frame, SA Water is working with the construction industry to progress the detailed design and to achieve significant improvements in the construction program.

All materials required are considered to be readily available off-the-shelf items. There are some risks, including the declining pool level in the River Murray, or salinity level increases within Lake Alexandrina. SA Water is investigating the lake extraction infrastructure to ensure it remains operational until the new pipeline is operational. SA Water's formal assessment process has been

used to identify other significant risks and develop mitigation strategies. Based upon the evidence presented and pursuant to section 12C of the Parliamentary Committees Act 1991, the Public Works Committee reports to parliament that it recommends the proposed public work.

Mr PEDERICK (Hammond) (11:06): I congratulate the Public Works Committee on looking into the water supply at Clayton. It has been an issue—

An honourable member interjecting:

Mr PEDERICK: Absolutely; and extremely good members on this side of the house and one or two on the other side of the house are quite good as well. The community of Clayton had at least six different water schemes. It has been in strife with ageing infrastructure. It is good to see the government come on side to hook them up to a scheme to the River Murray. There are certainly issues with salinity, and this has not been helped by the lack of effective maintenance on the barrages on the Lower Lakes. Certainly pool levels are dropping, but there are predictions now, with all the ingress from the sea, that the lake levels will not recede as far as first thought, which means that there will be a lot of unusable saltwater in the lakes. I believe that, in the longer term, the government will be looking at emergency desalination options for any off-takes off the River Murray.

I hope it has that on notice. My farm relies on the Keith pipeline and any just-in-time pipelines such as towards Wistow, etc., and even towns such as Murray Bridge, will need emergency desalination because of the lack of infrastructure work in the past. I believe that the water will get saltier because of the lack of maintenance. However, I commend the installation of this new facility to get better water infrastructure and a better water supply for the citizens of Clayton. It is a very nice spot in my electorate. It is a lovely place to visit and to talk to my constituents.

The Hon. R.B. Such: Do they vote for you?

Mr PEDERICK: Absolutely.

The Hon. R.B. Such: All three of them!

Mr PEDERICK: No, there are a few more than three. I commend SA Water for making a commitment to the committee that it would put a fire hydrant near the CFS shed for fire control work at Clayton, and I applaud it for that. I look forward to further improvements in the future to enhance the beautiful and serene spot of Clayton.

Mr PENGILLY (Finniss) (11:09): I also support the report on the Clayton water supply. I am very pleased that the inquiry has taken place. Clayton was part of my electorate for many years during the term of my predecessor the Hon. Dean Brown and, before him, the Hon. Ted Chapman. Clayton is near and dear to those of us with electorates surrounding that area. The 12.5 kilometre

pipeline will be a great asset, and I would like to commend the Alexandrina council for making a water supply available for many years to the township of Clayton. The Alexandrina council has gone out of its way to support that community and, indeed, support those communities up along the western side of the lakes and the river. I applaud the council for what it has done.

As my colleague the member for Hammond has indicated, the barrages are leaking, which is a major concern. It has been an absolute total failure by this government not to remedy the leaking of those barrages. The government has been notified of it on several occasions. The Minister for Water Security has been told about it; she scoffed at it and very little has been done about it. It seems to me that people around the traps who do have practical knowledge of these matters are being ignored by the government, the Premier and the minister on these issues. I do hope that, as the member for Hammond said, this situation does not deteriorate much further.

Picking up on the honourable member's point, I think that, in the future, desalination will be absolutely essential down around those lake communities. It is the only way they will get around it. We continue to pound it, but the poor old Murray just cannot supply all the water that is required of it. Equally on that note, the government has failed dismally to provide a desalination plant to pick up on the requirements of Adelaide. As much as we need desalination for the future down around those lake communities we urgently need it in Adelaide. I think it is about time that some action was taken. We need less chat and more action on the ground. The Clayton community is most pleased to have this supply, and I look forward to the day when it is switched on and operational. I commend the report.

Motion carried.

PUBLIC WORKS COMMITTEE: DUNSTAN PLAYHOUSE

Ms CICCARELLO (Norwood) (11:12): I move:

That the 271st report of the committee, entitled Adelaide Festival Centre (Dunstan Playhouse Refurbishment), be noted.

The Adelaide Festival Centre Trust is responsible for encouraging and facilitating artistic, cultural and performing arts activities throughout South Australia, as well as maintaining and improving the building and facilities of the Festival Centre complex. I can advise the house that $8 million was allocated in the 2006-07 budget towards the refurbishment of the Dunstan Playhouse and other parts of the drama centre. The overall project comprises the following two parts:

- a refurbishment project, which includes front of house works, back of house works and infrastructure/building code works; and
- a production project, which is the sound and light upgrades and new stage drapes.

Also, $6.5 million has been assigned to the refurbishment project and $1.5 million to the production project. This project will replace ageing plant and equipment to increase patron comfort, reduce operational and maintenance costs, minimise occupational health, safety and welfare risks and provide more efficient ESD outcomes. The Dunstan Playhouse will get refurbished seats, carpets and auditorium lighting, and access issues will be addressed for disabled and ambulant patrons. Also, work in the Dunstan Playhouse foyers will mean there will be refurbished carpet, signage and way finding. It will also address access issues for disabled and ambulant patrons, as well as fire safety issues and occupational health, safety and welfare risks. The Tutto Ku Bistro will be provided with upgraded airconditioning, kitchen building works and temporary roof protection works to address critical safety issues and also provide an interim solution for patron comfort. This project will also incorporate removal of some asbestos known to exist when the building was constructed in the 1970s.

The concept plan for this project also aims to provide a long-term vision for the ongoing refurbishment of the Dunstan Playhouse in relation to materials and finishes. The original design architect was consulted to ensure that respect for the original vision for the centre was maintained when refurbishing the playhouse. That architect provided advice which was consistent with and reinforced the objectives of the Festival Centre Conservation Management Plan.

The Dunstan Playhouse needs refurbishment of the ageing finishes, which are now visually dated and degraded. Many are now risks that must be addressed to mitigate or eliminate the possibility of injury to patrons or staff and also to address the exposure of the Adelaide Festival Centre to compliance-related claims. The proposed works provide the opportunity to support a vibrant, active facility with a refurbishment that respects the original vision of this iconic venue. The project aims are to:

- repair, restore and recreate the venue to improve its functionality and the visual appearance of the Dunstan Playhouse;
- contribute to redefining the Festival Centre as the home base for premier performing arts companies;
- improve the safety, accessibility and amenity of the Festival Centre for patrons and staff;
- enhance the adaptability and technical capabilities of the playhouse; and
- improve the use of the Festival Centre as a gathering place and gateway to the Riverbank Precinct.

In so doing the project would:

- increase community pride in the facility;
- increase patron comfort and satisfaction; and
- eliminate compliance risks.

The net present value analysis favours the project in comparison to the 'do nothing' case. This is largely due to the significant increase in operating costs and reduction in venue hire revenues that would occur if existing assets were allowed to deteriorate further. The centre has nominated a window in its production program between December 2007 and February 2008 for the major auditorium works to be carried out so that the auditorium will be functioning in time for the 2008 Adelaide Festival and also the preceding Australian Performing Arts Market. This program will

require that all work be commenced before the Christmas/New Year period, and allowance has been made for this. The main risk which the committee saw in the program is the lead time for delivery of the seats and carpets, but we have been assured that on the best advice available adequate time has been allowed for this.

The committee was concerned about the works' potential to interfere with the use of the Dunstan Playhouse during the 2008 Festival of Arts. However, it accepts that the project will avoid this possibility by:

- ensuring that the facilities are not required between December and the timing of the Festival so that replacement of carpets and seats will not affect the operational needs of the playhouse;
- staging the works so that the infrastructure components and disability seating changes will occur after the Festival; and
- allowing sufficient contingency time in the project schedule to ensure that any asbestos removal can be dealt with without threatening timely completion of the work.

The committee was concerned to ensure that the quality and expected life of the new work and materials have not been adversely effected by budget limitations and that high priority works will not be neglected. The committee accepts that the work will be of high quality and that other priority work is expected to occur in the future. Consequently, the work in this stage has not been compromised for budgetary reasons. The committee also accepts that there is a limit to the amount of work which can occur and funding which can be expected in any given year without requiring the centre to close down completely. It recognises that it is the centre's strong preference to remain functional while improvements and upgrades occur. Based upon the evidence presented to it, pursuant to section 12 of the Parliamentary Committees Act 1991 the Public Works Committee reports to parliament that it recommends the proposed public work.

Mr PISONI (Unley) (11:19): I, too, commend the committee, and the cabinet for bringing this submission to the committee. I was pleased to note the increased access for wheelchairs in the building. At present the Dunstan Playhouse has very limited space and very little choice for those people in wheelchairs who wish to attend shows that are performed at the playhouse. I am very pleased to see that that has been a major consideration in the revamping of the playhouse.

Of course, it is very important that our entire Festival Centre—and the playhouse, in particular—is kept up to date and retained as the premier arts facility here in South Australia. There are so many opportunities that we can offer our young people entering the arts in South Australia and we want to ensure that, not only do they enter the arts here but that they also remain. It is very difficult being a city of only 1.2 million people: when people get better in this field and become more famous, they move to Sydney, Melbourne, New York—Broadway—and Hollywood. But they need a starting point, and it is important that South Australia is seen as that springboard. We have had some very successful national and international artists who started their days at the Festival Centre—and at the Playhouse, in particular—and that brings me to recount my experience at the Playhouse. A lot of people, when they think about the arts, think about the performers, but there is so much that happens behind the scenes. In about 1983, I was fortunate to be offered a couple of weeks of work building sets at the Playhouse for the play *Guys and Dolls.*

Mr Hanna: Were you in the show as well?

Mr PISONI: I was not in the show, although I did attend. Back in those days, when I attended the opening party, I was an avid gym goer; I attended the gym regularly—and I think I even entered a body building competition or two back in those days. My best mate at the time and my training partner (who was also a body builder and who went on to become Mr Teenage and Mr Junior South Australia), accompanied me to this evening of *Guys and Dolls*. You can imagine the scene it must have created when these two body builders came as a couple—

Mr Griffiths interjecting:

Mr PISONI: —no steroids; thank you, member for Goyder—and attended the opening of *Guys and Dolls*. The point I am making is that the Festival Centre is a proud asset for South Australia, and I thank former premier Hall for his vision in getting it moving back in the late 1960s, and also previous governments that have continued their commitment to the arts. I think it is important that this centre is kept up to date and that as many people as possible have the opportunity to visit the Festival Centre, and the playhouse, in particular. The playhouse puts on

some great shows—not necessarily commercial—and it gives lots of young people both on the stage and behind the scenes opportunities to use their skills and express themselves.

I was particularly pleased to see that the seating will be refurbished rather than installing brand new seating. In this day and age, when one looks at how disposable furniture has become, because of cheap manufacturing in Asia, and so forth, it is good to see that this Australian made seating, which was made 30-odd years ago, can be reused and revamped, and all that work will be done in Adelaide. That was a very good thing to see. Patrons and visitors to the playhouse were able to give an opinion on what seating they preferred, and I thought that was another good way of involving the public in the preservation and restoration of this important asset.

There are two things that I think we saw with this $8 million expenditure. We saw an expansion of choice for those with a disability, who can go to see shows and sit in more comfort now than was previously the case. We are also seeing an updating of safety, but we are still preserving the icon of the 1970s architecture, although some would argue that it may not be worth preserving. I am reminded of the 1970s every time I use the members' lounge as the chairs look as though they have been made from railway sleepers. They are very much an icon from the 1970s. The committee was pleased to support this refurbishment and I was pleased to be part of that process.

Mr PENGILLY (Finniss) (11:26): I speak in support of the upgrade and refurbishment of the Dunstan Playhouse. I will suggest in my concluding remarks that we change the name of it. My interest down there was great in that it was a good opportunity to have a look around. There was no question that it needed a facelift. There was no question, as the member for Unley indicated, that the disabled provisions were a categorical disaster and I was pleased, along with other members of the committee, that this problem was picked up on. The members for Unley and Norwood spoke about the seating. The general ambience of the playhouse will be improved no end with the general upgrade that will take place in that area. It is used regularly, and over the past few months we have had large numbers of schoolchildren and groups using that facility for educational purposes and doing their cultural activities.

I do not visit it all that often and, as I am no great admirer of Mr Dunstan, I suggest that it be renamed the 'Ted Chapman playhouse'. Picking up on what the member for Unley said, the late Hon. Ted Chapman was an artistic person in his own right. The member for Unley was talking about body building: we could have world championship wrestling and shearing competitions and all sorts of things in there—that would be fantastic. Ted was renowned for admiring all things beautiful, and did so on regular occasions. He had artistic talent for beautiful things like I have never seen before. Ted Chapman really enjoyed belly dancing. I attended his sixtieth birthday at which there were belly dancers on the tables in front of the then premier (Hon. Dean Brown), Ted Chapman and a few others. Renaming the Dunstan Playhouse the 'Ted Chapman playhouse' would be a great way to go. I look forward to the government picking up my idea and following through on it. I support the member for Norwood's motion to note the report and I look forward to the completion of the playhouse.

Ms BREUER (Giles) (11:29): I also commend the report. The arts are an important part of our society, particularly for young people growing up. It was part of my youth certainly and has been part of my life, apart from what is happening now, but I intend to go back to that area when I have finished in this place. The member opposite talked about belly dancing. I have belly danced at the Middleback Theatre in Whyalla in a pantomime production and people still come up to me and remember that momentous occasion. I can show members the photos. I have done some amazing things on that stage that I hope people forget when it comes to voting time, but the theatre has been an important part of my life. I take this opportunity to congratulate Country Arts SA for the work it does in our regional cities and towns. It plays a major role in those areas in bringing the arts to country people. Ken Lloyd, the CEO, is certainly very active in this role and we are privileged to see a lot in country areas because Country Arts SA is able to bring it to us

It looks after the three main country theatres: the Keith Michell Theatre in Port Pirie; the Sir Robert Helpmann Theatre (which many of us attended during the sitting of parliament, and we were most impressed with the facilities); and, of course, one dear to my heart, the Middleback Theatre in Whyalla.

It is interesting that the upgrade has occurred to the Dunstan theatre. That is very good, but I put in a word that consideration be given to our country theatres. Some upgrading has been done, but they are now approaching 20 or 30 years old, and we need to continue their maintenance and upgrading, because some of them are looking very tired. The Middleback Theatre in Whyalla is good, but we do need to do some work there. In recent years, we have put in a movie theatre as

part of the old TAFE complex adjacent to the Middleback Theatre. That has been extremely successful, and I congratulate everyone on it. I must admit that initially I thought that it may not have been the best move, but it certainly has proved me wrong, and it has been very successful. We are now able to access movies when they first come out and not have to wait for months, as we have had to do in the past in country regions. Country Arts has done incredible work in bringing in opera and dance. We see a lot of ballet companies, major theatre productions and individual artists come to our cities, and it has been wonderful for young people to see them and become involved. Very often when these productions come to our country areas, they pull in students and young people from our communities to work with professional artists, which is great for their development.

Today I also want particularly to mention something that happened recently in Whyalla—the opening of the Don Winton Foyer in the Middleback Theatre. Unfortunately, I was not able to attend, and I was very sad about that because Don Winton is very dear to my heart. He has been part of Whyalla arts for well over 50 years, and he established the Whyalla Players over 50 years ago last year. He has been an integral part of the arts in Whyalla and has played a major role in letting us have a major theatre company in the Whyalla Players and in bringing many acts and performances to our community. He helped set up and was in charge of the Middleback Theatre when it was originally built in Whyalla. Through his canniness, he was able to save lots of money and have things put into the theatre we might not have had without the work he put in.

He also played a vital role in the refurbishment of the theatre when it was unfortunately burnt down a few years after it opened. In Whyalla, Don Winton's name is synonymous with the arts, so I was very proud that Country Arts chose to name the foyer in the Middleback Theatre after him. I believe it was a wonderful day; I have spoken to Don since, and he was thrilled to bits. Incidentally, Don is 88 years old and lives in a nursing home in Whyalla, but he is still very active and gets to as many productions as he can. It was very fitting that this foyer be named after Don, and I thank Country Arts for giving him that honour and enabling his name to live on.

Once again, I commend the report. I am very happy to see this, but I still put in a good word for theatres in country regions. They are essential for our country young people particularly, as well as we older ones who appreciate the arts and who would not have that opportunity without these major country theatres. When there are productions at the Middleback, people come from all over Eyre Peninsula to see them, and I know that similar things happen at Port Pirie, as I am sure they do in Mount Gambier as well. It gives us an opportunity to see major productions that would be very expensive for us to come to Adelaide to see. I commend the report and hope that similar things can happen in our country regions.

Ms CICCARELLO (Norwood) (11:34): I thank members for their contribution and support of the refurbishment of the Dunstan Playhouse. In doing so, I commend the CEO and artistic director, Douglas Gautier. Since he has taken on the task at the Festival Centre, he has certainly reinvigorated the whole place with a very vibrant program—

The Hon. S.W. Key interjecting:

Ms CICCARELLO: —thank you, member for Ashford—that brings along many people to the Festival Centre, to the Dunstan Playhouse and to the Space, who have not previously been there. Any time one goes down there one can see a whole lot of activities. We have just had the OzAsia Festival, which was a wonderful initiative. On the opening night it was great to see thousands of people enjoying an event that was organised in the space of a few months.

I have to say that both governments (our current government and also the previous government, under arts minister Diana Laidlaw) over the past few years have spent a lot of money on the Festival Centre. The Public Works Committee has approved quite a considerable number of changes there. The area between the Playhouse and the car park has been opened up so that natural light is now going into the Festival Centre. There is now a bridge which goes from the casino across to the plaza so that people can access from North Terrace not only the Festival Centre but also the river bank, including the Convention Centre, the Hyatt and all the other facilities along the river.

I am sure that the member for Finniss had tongue firmly in cheek when he was talking about the renaming of the playhouse. I was very proud to be there on the day that the Premier renamed it the Dunstan Playhouse. At the moment, there is a bust of Don in the foyer which I had had commissioned when I was the mayor of Norwood. It has been on loan to the Dunstan Playhouse and I did indicate to the CEO that, once the refurbishment has been completed, I would

be very happy to donate the bust to the Festival Centre in honour of Don Dunstan. With those remarks, I commend the report.

Motion carried.

PUBLIC WORKS COMMITTEE: FLOOD DAMAGE RECTIFICATION IN VARIOUS NATIONAL PARKS

Ms CICCARELLO (Norwood) (11:37): I move:

That the 272nd report of the Public Works Committee, entitled Flood Damage Rectification in Various National Parks, be noted.

On 7 and 8 November 2005 (and how could we forget) the Mount Lofty area of the Adelaide Hills and the Plains experienced a significant rainfall event—which we would like to see again—and areas under the ownership and management of the Department for Environment and Heritage suffered extensive damage. The areas damaged included the Cleland Conservation Park, Waterfall Gully, Mount Lofty Botanic Gardens, Adelaide Botanic Gardens, Belair National Park, Morialta Conservation Park, Black Hill Conservation Park, Deep Creek Conservation Park, Horsnell Gully and sections of the Heysen Trail. As a result of the volume and speed of the water during the flood event, significant erosion and movement of sediment occurred as a result of channel stripping and incisions along portions of the creeks.

The department responded immediately by undertaking an initial inspection of the damage and carried out emergency repair works or closures to ensure public safety. Since then, survey work has been undertaken of all the affected areas in order to produce detailed engineering designs for tender and construction of the repairs. The project consists of the replacement or repair of assets situated in the parks across the Adelaide Hills and Plains that were destroyed or damaged. The aim was to undertake repairs and rectification to match the original as closely as possible with due regard to environmental and heritage considerations. The engineering design of all elements is to current Australian Standards and codes of practice. No new works are being undertaken as part of the project.

Damage ranged from undermining of retaining walls and bridge supports, fords washed away, retaining walls collapsed, bridges washed downstream, creek beds and walls washed out to road edging and a loss of footpaths. The works included rectification in all the affected parks and gardens with the exception of Deep Creek. All design solutions for replacements or repairs were undertaken with careful consideration of the nature of the existing surrounding assets. Whilst detailed engineering solutions were necessary, finishes considered the surrounding environment, with the majority of surfaces, including retaining walls, bridge supports and fords being of a rock or stone finish. This is in keeping with the existing assets, many of which were built a number of years ago. The parks affected are extremely popular with the public and they experience high use by many different groups, including bushwalkers, casual walkers, school groups and families. The experiences of these users have been dramatically affected and the replacement or repair of the assets will now allow for the full use of the parks, and it will also reinstate emergency and ranger access to some remote areas.

The works were grouped together to achieve a consistent design approach and to achieve the best value for money solution; in particular, this applies to the bridges to be replaced and all the retaining walls to be rebuilt. However, this has meant that some smaller repairs have been delayed while the full works have been resolved. The full cost of the repairs is $4.754 million which will be reimbursed by SAICORP over a number of years. The operating costs associated with maintaining the assets rectified could be met from existing departmental resources. The anticipated commencement of construction is September 2007 with completion in mid-March 2008. One major risk in regard to this type of works is whether commencing construction in September (which hopefully has happened) will mitigate that risk. Pursuant to section 12C of the Parliamentary Committees Act 1991, the Public Works Committee reports to Parliament that it recommends the proposed public work.

Mr PENGILLY (Finniss) (11:41): I rise to support the member for Norwood and this report on flood damage in various national parks. It is important that this matter is proceeded with and completed sooner rather than later. My concern is really about the length of time it has taken to get to this point. It seems to me to be absolutely ludicrous that we are a couple of years down the track and we are only just discussing now how it can be repaired and making the finances available to do so. Quite correctly, this came about from an unusual rainfall event and we just cannot predict those and you cannot design, in most cases, the facilities to go around that sort of rain, so it was just unfortunate that it happened. However, what has happened has happened. The Public Works

Committee has seen in its wisdom the right to move on this and fix the thing up. I would like to think that the national parks would move expeditiously to remediate and put back into good condition those areas that were damaged.

In fact, I am greatly appreciative of the efforts of the national parks over the past few weeks over its controlled burn-offs. I think they have done a marvellous job. They went in on one occasion on the weekend to burn 10 hectares but instead burnt 1,000 hectares; they burned far more than they originally planned for. However, the benefits cannot go unnoticed because, in effect, they have had a large controlled burn off in some of these national parks that are affected in this report, and other places, and they have made the area far more secure. I suppose that is an upshot of natural disasters taking over from a controlled burn off. In view of the fact that we do not have much time to spend on it this morning, I commend the report to the parliament. I am very happy to speak in favour of the member for Norwood's motion on this report of the Public Works Committee and thus I conclude my remarks.

Ms CICCARELLO (Norwood) (11:42): I thank the member for Finniss for his support and, in regard to his comments about having taken so long, we were assured that the reason for this was that the department needed to aggregate all the works in order for the tendering process to be much more efficient, and I think that has been carried out to the best of the department's ability. The work will now be done expeditiously. With that, I commend the report to the house.

Motion carried.

NATURAL RESOURCES COMMITTEE: NORTHERN AND YORKE NATURAL RESOURCES MANAGEMENT BOARD

Mr RAU (Enfield) (11:44): I move:

That the 12th report of the committee, on the Northern and Yorke Natural Resources Management Board Levy Proposal 2007-08, be noted.

Much of what needs to be said about the NRM levies has already been stated in noting the Kangaroo Island Natural Resources Management Board Levy Proposal for 2007-08. Very briefly, it is the consultation required under the Natural Resources Management Act 2004 that the committee finds totally unsatisfactory, and we have recommended that the consultation period be extended from 21 days to 35 days and that it includes consultation with the public and the Natural Resources Committee. These can be found as recommendations 1 to 3 in the report.

I would like to raise the more specific issues that came up during the consideration of the levy proposed by the Northern and Yorke NRM Board. It is apparent from the submissions received by the committee that there has been a lack of meaningful public consultation employed by the board. Even after the mandatory consultation with local government, the board appears to have had little regard to concerns raised. It is the opinion of the committee that the lack of consideration given by the board to such obvious public disapproval is unacceptable. I emphasise that, from the point of view of the committee, there appeared to be no serious effort to understand community concerns and no serious effort to persuade the communities involved that the proposals that were being formulated by the board had any merit or should in some way receive broader community support. As I have said, from my point of view and I think that of the rest of the members of the committee, that is completely unacceptable.

Reading the submissions we received from local governments in the region, it is clear that they—the local governments—showed a genuine regard for their constituents, and we commend them for their efforts in bringing matters to the attention of their board, albeit to no avail. The committee was not satisfied with the means by which the board determined or attempted to justify the division 2 levy. Our initial recommendation to the Minister for Environment and Conservation was that the division 2 levy be removed from the Northern and Yorke NRM plan. The minister has since agreed, and the division 2 levy has been removed from the plan. On a positive note, the committee acknowledges that all boards are just emerging from transitional arrangements, and the committee felt that Mr Lewis, the presiding member, gave a fair account of the direction of the board.

With respect to the proposed levy, the committee considered that the average levy of $37 was not unacceptable. This is despite the fact that it represents a threefold increase in the levy raised in the previous year. However, the board needs to consider doubling its efforts in securing state and commonwealth funds. The notion of simply increasing levies to compensate for the loss of these funds amounts to cost shifting and in future will not be met favourably by the committee.

I would like to thank all those who gave their time to assist the committee during its consideration of the levy proposed in the Northern and Yorke Natural Resources Management plan, including Mervyn Lewis, the Presiding Member of the Northern and Yorke Natural Resources Management Board; and James Levinson, Jamie Botten and Associates and Sean Edwards from the Clare Region Winegrape Growers Association Incorporated. I also thank the Flinders Ranges Council, the District Council of Barunga West, the District Council of Mount Remarkable and Jamie Botten and Associates, again, on behalf of the Clare Region Winegrape Growers Association for their submissions.

Finally, I express a very sincere thank you to my colleagues the members of the committee: of course, first and foremost, the invaluable wisdom provided to the committee by the Hon. Graham Gunn, the Hon. Sandra Kanck, the Hon. Stephanie Key, the Hon. Caroline Schaefer, the Hon. Lea Stevens and the Hon. Russell Wortley. I thank them for their excellent cooperation and assistance during the preparation and work on this inquiry. I would also obviously like to thank the staff of the committee who, as always, have provided excellent support. I commend the report to the house.

Mr GRIFFITHS (Goyder) (11:49): I am actually quite pleased by the tone of the report by the chairman of this committee, because it supports the frustrations that I have felt in the last eight months since I became aware of the projected increases to the NRM levy for the Northern and Yorke area of up to 335 per cent. This is a matter on which I have spoken in the past. The fact that the levy increase is pulling from that region and its property owners an increase from $760,000 in the previous financial year to $2.6 million in this financial year is one that people have spoken to me about dozens of times. I have had contact from not only the councils that are within my electorate but also from councils across that region who are very concerned—given the drought—about the ability of their property owners to pay the increase.

We have heard talk about the fact that it is an average cost of $37 per property owner, and I understand that. However, if we look at the real dollars and cents, we see, for example, the situation concerning the Barunga West council, which is a relatively small council based around Port Broughton and Bute (and Bute is in my electorate). In the 2004-05 period it was paying $22,000 in equivalent costs towards animal and plant control board and natural resources management issues; it has now gone to $150,000 in the 2007-08 year—a 600 per cent increase. You can understand the frustration people feel.

The member for Enfield spoke to some of us and suggested that it was appropriate for us all to put submissions in about this levy increase. I know that I wrote letters, and I also encouraged councils within my area to write letters, so when I read the report I was a little surprised to see that there were only around four or five submissions (and some of those letters were not recognised in that; they must have been considered in a different forum). We thought that this was a great opportunity to get one aspect of government control to ensure that, when expressing an opinion to the minister, one would be listened to.

Indeed, the frustration I had in writing to minister Gago on this matter was that she seemed to take the line that it was an acceptable increase. However, in estimates questioning we raised this point specifically and spoke about the fact that any increase above CPI had to be approved by the minister. I immediately said to her, 'Minister, this is 100 times the CPI increase.' So, something needs to happen. I was interested to read the *Hansard* report of the consultation that occurred between the parliamentary Natural Resources Management Committee and the representatives of the Northern and Yorke NRM board. Certainly, the chairman focused on that in this report, where he says (in almost his introductory comments):

> I think the fact is that with these two issues, consultation and levy increase, given the level of it, it would be useful for you to hit those front and centre and see where we go from there.

The chairman has emphasised that in his comments just now, recognising that for him it was a consultation issue and it was a levy increase. I think it was about two weeks ago that I received through the mail, at home, a very impressive publication from the Northern and Yorke NRM board—I think it was called *Gumnut* (the member for Stuart may also have seen it)—which I acknowledge was produced on recycled paper. This certainly expounded not only all the programs this group intends to carry out this year but also its future visions, and while that is, no doubt, attempting to justify the levy increase, it still fell short of my expectations.

When the NRM proposal was first mooted about four years ago there was a lot of support from within local government because we thought it was an opportunity for a lot more dollars to flow through to very necessary on-the-ground works. Councils were attracted to it; as it allowed

them to transfer some of the costs they previously had to pay to animal and plant control boards which were based on the rural and residential rates they received, and they hoped it would be a concerted and coordinated approach across larger regions to ensure that major works and very important smaller ones were actually undertaken as well. However, that does not appear to be the case.

Given the current drought, there are a lot of people out there who are finding it really difficult to pay their bills. They are proud people who want to meet their financial obligations, and they are attempting to pay everything, but in some cases this is seen as the final nail in the coffin. Because it is separately identified on the rate notice, council has responsibility for collecting it, and there will be some people for whom it will be impossible to pay. They will resist that and will probably pay as much of their council rates as they can, but they will not be able to pay this NRM levy. I believe the government needs to consider that in future years; there has to be more equal balance in this. People want works to occur and they want a contribution from the taxpayer overall, because the taxpayer overall actually benefits from the things taking place. There is no doubt that the local landholders also benefit because they are the custodians of the land, the ones who want to make sure it is in good condition for future generations to take on, but we need to improve this.

I am pleased with the sentiment expressed by the chair, the member for Enfield, in this report. Let us hope that the lessons he has learnt, and the things that the NRM committee has told the Northern and Yorke NRM board it needs to improve upon in future years, are listened to; that the consultation improves immediately and that we get a system of levy collection that allows people to feel they are getting value for money. At the moment, these people do not think that is the case.

Motion carried.

NATURAL RESOURCES COMMITTEE: SOUTH-EAST NATURAL RESOURCES MANAGEMENT BOARD

Mr RAU (Enfield) (11:55): I move

That the 13th report of the committee, on the South-East Natural Resources Management Board Levy Proposal 2007-08, be noted.

Each of the NRM board reports that I have tabled essentially contain similar or the same recommendations, the exception being the report on the Kangaroo Island NRM Board which contains one additional recommendation. In a nutshell, the committee found that the current statutory provisions under the Natural Resources Management Act are totally unsatisfactory inasmuch as they deal with the question of consultation. We have recommended that new consultation provisions include consultation with the public and the NRM committee and that that consultation period be extended from 21 days to 35 days. This report, as do the other reports on NRM levies, makes recommendations to address what the committee sees as a number of shortcomings, under the current provisions of the act. However, there are specific issues that arose during the consideration of the levy proposed by the South-East NRM Board, and I would like to highlight these briefly.

Once again, the committee found that the board had carried out its consultation as required by statute. Only one of the eight constituent councils, the Tatiara council, in its submission to the committee, expressed any concerns on the levy proposals. It noted the reduced funding from government for the coming year, which it believed raised the prospect of reallocation of NRM funds. It also expressed concern at the extent of the levy rate increase. The board did, however, demonstrate some measure of public consideration through the commissioning of a comprehensive impact assessment, and we were advised that the board's actions are consistent with the conclusions of that report. The South-East NRM Board has proposed both a division 1 (land-based) and a division 2 (water-based) levy for 2007-08.

Although the basis of the division 1 levy remains unchanged—that is, a fixed rate across the region—it will result in an increase of 15 per cent, from $30 in 2006-07 to $34.50 per rateable assessment in 2007-08. The division 2 levy for water taking allocations will rise from $2.08 per megalitre of water to $2.39 per megalitre of water. This levy is assessed on a sliding scale based on demand, hence variable across the region, and it will rise by about 20 per cent in the coming year. The committee advised the minister that it did not oppose the levies proposed by the South-East NRM Board.

I wish to thank all those who gave their time to the committee during its consideration of the proposal. In particular, I would like to thank David Geddes, Presiding Member, and Hugo Hopton,

General Manager, both of the South-East Natural Resource Management Board, for appearing before the committee, and the Tatiara District Council for its written submission. Finally, as always, I extend my thanks to my colleagues who are the other members of the committee: the Hon. Graham Gunn, the Hon. Sandra Kanck, the Hon. Stephanie Key, the Hon. Caroline Schaefer, the Hon. Lea Stevens and the Hon. Russell Wortley MLC, for the tripartisan manner in which they have approached the business of the committee. I have to say that, as chair, it has been a pleasure to work with all of my colleagues on that committee and I greatly appreciate the approach that they have consistently adopted to the committee's work. I commend the report to the house.

Debate adjourned on motion of Mr Pederick.

NATURAL RESOURCES COMMITTEE: EYRE PENINSULA NATURAL RESOURCES MANAGEMENT BOARD

Mr RAU (Enfield) (11:59): I move:

That the 14th report of the committee, entitled Eyre Peninsula Natural Resources Management Board levy proposal 2007-08, be noted.

I am sure everyone will be pleased to hear that this is the final report the committee will be tabling this year in respect to NRM levies. It contains the same recommendations as the other reports we have already tabled on NRM levies—that is, with the exception, of course, of the KI report about which I have already made some remarks. However, some specific issues arose during the consideration of the levy proposed by the Eyre Peninsula board, which I would like to highlight. The Eyre Peninsula NRM region covers a substantial portion of South Australia. It is the most sparsely populated region in which a levy is raised, and it has around 1,800 kilometres of surrounding coast and associated marine environments. With a population of around 65,000, this relatively small revenue base, and its very large demand for NRM services is the main reason for the large individual levies that were proposed and the main source of contention for the board.

Debate adjourned.

SITTINGS AND BUSINESS

The Hon. G.M. GUNN (Stuart) (12:00): I move:

That standing orders be so far suspended as to enable debate and discussion on private members' business, committees and subordinate legislation to be extended by a further 45 minutes.

In explanation of the motion, I believe there are a number of important motions standing on the *Notice Pape*r that need to be brought to the attention—

Mrs Geraghty interjecting:

The Hon. G.M. GUNN: Well, I'm just a simple soul; I don't understand these things.

The DEPUTY SPEAKER: Order!

The Hon. G.M. GUNN: There are important issues that are going to affect particularly people in rural and outback South Australia, which need to be brought to the attention of the house and which ought to be done today, not put off. Therefore, I have moved that the standing orders be suspended to enable this debate to take place for a further 45 minutes. The government is not pressed for time, because we are going home very early. It is a very minor request; it will allow these matters, which otherwise might not be debated, to be fully discussed and the foolishness of some of these proposals can be brought to the attention of the house.

Mrs GERAGHTY (Torrens) (12:02): I have to say, Madam Deputy Speaker, that the member has not raised this issue—certainly not with me or with anyone I am aware of on this side of the house—and we do have legislation before us that we need to deal with, so I oppose the member's motion.

The DEPUTY SPEAKER: I require an absolute majority of the house to accept the motion. I have counted the house and, as an absolute majority of the whole number of members of the house is not present, ring the bells.

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

The SPEAKER: I accept the motion. Does the member for Stuart wish to speak to it?

The Hon. G.M. GUNN (Stuart) (12:06): Yes, Mr Speaker. It is a quite simple motion. The house is not pressed for time and there are important issues in private members' business that ought to be publicly aired and debated in this chamber. This is a mechanism to allow that to take

place. We have only two bills this afternoon, I understand, in the committee stage; the house has been going home early; and a short extension of private members' time today would allow important issues to be publicly aired, as they should be. I would urge members to allow the house to do what it should do: debate issues of importance to the people of the state. The three items standing in my name are particularly important to drought-affected, stressed people, including volunteers, who will otherwise have their pockets plundered. Any attempt to prevent these debates taking place will be seen as a victory for the anti-rodeo, anti-rural sector, which is a small minority of extremists who have no regard for people in isolated parts of the state. Therefore, the house should have the ability to debate the matters in question.

Mrs GERAGHTY (Torrens) (12:07): As I indicated before, private members' time has expired. The member opposite could have come and discussed it with us to see if we could work through it. We have two bills on the *Notice Paper*, which should be dealt with today. If he had given us the courtesy of speaking to someone on this side—perhaps myself—maybe we could have accommodated him but he has just brought this matter on and, clearly, we have two bills, so I am afraid that we do not support the motion.

The house divided on the motion:

AYES (14)

Chapman, V.E.	Evans, I.F.	Goldsworthy, M.R.
Griffiths, S.P.	Gunn, G.M. (teller)	Hamilton-Smith, M.L.J.
Hanna, K.	Kerin, R.G.	McFetridge, D.
Pederick, A.S.	Penfold, E.M.	Redmond, I.M.
Venning, I.H.	Williams, M.R.	

NOES (28)

Atkinson, M.J.	Bedford, F.E.	Breuer, L.R.
Caica, P.	Ciccarello, V.	Foley, K.O.
Fox, C.C.	Geraghty, R.K. (teller)	Hill, J.D.
Kenyon, T.R.	Key, S.W.	Koutsantonis, T.
Lomax-Smith, J.D.	Maywald, K.A.	McEwen, R.J.
O'Brien, M.F.	Piccolo, T.	Portolesi, G.
Rankine, J.M.	Rann, M.D.	Rau, J.R.
Simmons, L.A.	Stevens, L.	Such, R.B.
Thompson, M.G.	Weatherill, J.W.	White, P.L.
Wright, M.J.		

PAIRS (4)

Pisoni, D.G.	Conlon, P.F.
Pengilly, M.	Bignell, L.W.

Majority of 14 for the noes.

Motion thus negatived.

STATUTES AMENDMENT (YOUNG OFFENDERS) BILL

The Hon. M.J. ATKINSON (Croydon—Attorney-General, Minister for Justice, Minister for Multicultural Affairs) (12:14): Obtained leave and introduced a bill for an act to make provision for serious repeat offending by young people. Read a first time.

The Hon. M.J. ATKINSON (Croydon—Attorney-General, Minister for Justice, Minister for Multicultural Affairs) (12:15): I move:

That this bill be now read a second time.

The bill makes some amendments to our juvenile justice laws after the report of Monsignor Cappo 'To Break the Cycle'. The government has decided to take action in response to every one of the 46 recommendations in the report. Not all of them require legislation; indeed, most do not. The bill has its origins in recommendations two, seven and eight of the report, but much of the bill is not related directly to the report. I seek leave to have the remainder of the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Recommendation eight of the Cappo report concerns adults who commit crimes in the presence of young people. The report finds that 'the notion of imposing harsher sentences on adults who commit crimes in the presence of minors is sound', although individual circumstances need to be considered.

Based on recommendation eight, clause 4 amends the aggravated-offence provision of the Criminal Law Consolidation Act. It is already an aggravating factor that an offence is committed in company. The amendment makes clear that this includes the company of a child. The effect of the aggravated-offences laws is that, where an aggravating factor exists, for an offence that is susceptible of aggravation, a higher penalty can be imposed. Thus, for example, robbery committed in circumstances that do not include an aggravating factor carries a maximum penalty of 15 years. If an aggravating factor applies, the maximum penalty is life. That, then, is the potential penalty if a person commits the offence of robbery in company with a child.

Clause 5 likewise makes it a factor relevant in sentencing that the offence was committed in circumstances where it could be seen or heard by a child, other than a child victim. The latter exclusion is because it is a separate, aggravating factor, that the offence is committed against a child under 12 or a child living with the offender.

The Bill also addresses Cappo's recommendation two, which has 'urgent action' status. That recommendation proposed that the objects of the Young Offenders Act be amended to strengthen the requirement to take account of public safety when sentencing serious repeat offenders. The strengthening of these provisions, Cappo said, should occur in the context of a stronger focus on rehabilitation.

The objects of the Act already refer to public safety. Section 3(2)(c) embodies the statutory policy that 'the community, and individual members of it, must be adequately protected against violent or wrongful acts'. That is a general policy that must be applied in exercising any of the powers conferred by the Act, including the choice of sanctions for offences.

There is no need to restate this policy, but it is useful to make specific reference to the case of the young offender who, because he poses a risk to public safety or for other reasons, is being tried as an adult. That can occur under section 17 of the Act and will also be possible under proposed new section 17A. Thus, clause 6 amends section 3 to provide expressly for the case where a court is to sentence a youth who is being dealt with as an adult. The clause directs the court to consider general deterrence, public safety and rehabilitation. This is an attempt to balance two key factors noted by the Cappo's recommendation: protection of the public and rehabilitation of the youth.

Recommendation seven considers the circumstances in which a youth should be tried in the adult courts. It is already the law that youths can be tried as adults in some cases, as provided in section 17 of the Young Offenders Act. This can occur where the youth is charged with homicide or attempted homicide. It can occur at the youth's own request where the offence is indictable. It can also occur on the application of the prosecution, for grave offences or where the offence is part of a pattern of repeat offending. The Cappo Report recommends the use of these provisions where there is serious concern that the actions of a young person are putting the public at risk but does not recommend a change to section 17.

The Government has considered this recommendation. Clearly, we need to be cautious about any amendments that could result in young people being treated more harshly by the justice system. There are good reasons to prefer diversionary measures if the youth is likely to respond to them. The fact is, however, as the Cappo Report notes, that a large share of youth offending is attributable to a small group of serious repeat offenders. For whatever reason, and the Government accepts Cappo's finding that a background of abuse or neglect may play a part, some of these young people fail to respond to the cautionary and diversionary measures that characterise the youth-justice system. They go on offending, time after time, heedless of warnings and of consequences. These youths present a serious risk to public safety. There are cases in which this risk is so serious that the youth ought to be tried directly in the adult courts without the involvement of the Youth Court.

This Bill would therefore, by clause 8, permit the Director of Public Prosecutions, in the case of a major indictable offence alleged against a youth who presents a risk to the public, to lay charges directly in the Magistrates Court. A preliminary examination will be held in the ordinary way and the youth may, if the Magistrates Court sees fit, be committed for trial just like an adult defendant. The Bill sets out the factors that the Director of Public Prosecutions and the magistrate must consider in deciding whether to take this action. Those factors deal with whether the offence

is serious, whether it is part of a pattern of repeat offending and whether the youth has a history of non-compliance with legal requirements.

The Bill has, then, both protective and punitive aspects. By clauses 4 and 5, the Bill seeks to protect children from being drawn into or witnessing offences. It is wrong to involve children in crime. It harms children if the adults around them, to whom they look for guidance, send the message that crime is acceptable. It sets them on a path that will only cause harm to them and to the public. Therefore, under this Bill, anyone who involves a child in the commission of an offence and any adult who commits an offence in the presence of a child can expect that to be reflected in a higher penalty.

By clause 6, the Bill seeks to address the special case of the serious repeat young offender who is being tried as an adult. It directs the court as to the factors to be weighed in sentencing in that case. As always, it is a matter for the sentencing court to work out how those factors should be weighed in the particular case.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of Criminal Law Consolidation Act 1935

4—Amendment of section 5AA—Aggravated offences

Section 5AA of the principal Act sets out the circumstances surrounding the commission of an offence that make an offence an aggravated offence. One such circumstance is that the offender committed the offence in company with one or more other persons. It is proposed to clarify this provision by adding the phrase "including persons who are children".

It is also proposed to include in this section an additional aggravating circumstance. In the case of an offence constituted under Part 7B (Accessories) of the principal Act where the principal offence is an aggravated offence, the fact that the principal offender was, to the knowledge of the offender under that Part, a child will be an aggravating circumstance.

Part 3—Amendment of Criminal Law (Sentencing) Act 1988

5—Amendment of section 10—Matters to be considered by sentencing court

It is proposed to include an additional matter in the list of matters to which a court when sentencing should have regard. When sentencing an adult offender for an offence committed in circumstances where the offending conduct was seen or heard by a child (other than the victim, if any, of the offence), the court should have regard to those circumstances.

Part 4—Amendment of Young Offenders Act 1993

6—Amendment of section 3—Objects and statutory policies

Current subsection (2a)(b) provides that when imposing sanctions for illegal conduct on a youth who is being treated as an adult, regard should be had to the deterrent effect the proposed sanction may have on any other youths. It is proposed to reconfigure paragraph (b) to add the direction that regard should also be had to the balance to be achieved between the protection of the community and the need to rehabilitate the youth.

7—Insertion of Part 4 Division A1

It is proposed to insert a new Division A1 (Interpretation) at the beginning of Part 4. This Division would provide that, for the purposes of Part 4, the matters listed in new section 15A must be taken into consideration by the Director of Public Prosecutions (DPP) or the Magistrates Court (as the case requires) in deciding whether a youth poses an appreciable risk to the safety of the community. Those matters are as follows:

- the gravity of the offence with which the youth is to be charged;

- if the offence to be charged is part of a pattern of repeated offending by the youth—that fact and the circumstances surrounding the alleged offence;
- the degree to which the youth has previously complied with any undertaking entered into by, or requirement or obligation imposed on, the youth under the principal Act or any bail agreement;
- if the youth has previously been detained, the behaviour of the youth, and any rehabilitation of the youth, while so detained;
- if the youth has previously been released on licence—the degree to which the youth complied with any condition specified in the licence;
- any other matter that the DPP or Magistrates Court (as the case may be) thinks fit in the circumstances.

8—Amendment of section 16—Where charge is to be laid

It is proposed to add to current section 16 an additional subsection to allow the DPP to lay a charge of a major indictable offence against a youth before the Magistrates Court rather than the Youth Court if the DPP is of the opinion that the youth should be dealt with as an adult because of the appreciable risk the youth poses to the safety of the community.

9—Amendment of section 17—Proceedings on charge laid before Youth Court

The amendments proposed to this section are consequential.

10—Insertion of section 17A

17A—Proceedings on charge laid before Magistrates Court

If a charge of an offence against a youth has been laid before the Magistrates Court (see the proposed amendments to section 16), Part 5 of the Summary Procedure Act 1921 will apply to those proceedings.

At the conclusion of the preliminary examination, the Magistrates Court may—

(a) if of the opinion that the youth poses an appreciable risk to the safety of the community—commit the youth for trial or sentence (as the case requires) to the Supreme Court or the District Court;

(b) in any other case—commit the youth for trial or sentence (as the case requires) to the Youth Court.

11—Amendment of heading to Part 4 Division 2

This amendment is consequential.

Debate adjourned on motion of Mrs Redmond.

LEGAL PROFESSION BILL

Adjourned debate on second reading.

(Continued from 16 October 2007. Page 1052.)

Mr HANNA (Mitchell) (12:17): I am speaking briefly to the Legal Profession Bill which the government has brought into the House of Assembly. The member for Heysen has extensively covered the clauses in the bill, and I will not even attempt to repeat her effort. I declare an interest as a legal practitioner, although, like the member for Heysen, I may not return to practice and, indeed, I have not actively practised since the last election at least. The bill has the support of the Law Society, and I will not go behind that. I do offer the observation, though, that we have had the benefit of a particular culture in the Adelaide legal profession which has been of benefit to practitioners and to the community at large. There has been something of a small town atmosphere, which has been to the benefit of the community, an atmosphere where lawyers can trust each other, on the whole, and where many of the lawyers know each other in the particular area in which they practise. The legal profession in Melbourne and Sydney is very different, particularly in relation to the way members practise at the bar. The reflection I wanted to make about this legislation then is that it seems to me that it is driven primarily by the concerns and experiences of larger firms, and interstate firms in particular.

I can see how it makes sense for one set of rules to apply when increasingly we are seeing solicitors and barristers transfer and practise in various states concurrently. There is, indeed, good cause for the legislation to be put before us, but there are elements of this legislation which will no doubt be examined more closely in a moment and which, I think, discourage the sort of small-scale legal practice that has been the mainstay of the Adelaide legal profession. The other comment I want to make about the Adelaide legal profession while I have the opportunity is to place on the record the absolutely sterling efforts of Adelaide lawyers when it came to dealing with asylum seekers who were interned at Woomera and then Baxter over the last 10 years. I was heavily involved in that work between 2002 and 2006. I think that as many as 100 lawyers out of our relatively small profession in Adelaide got involved to work for free for the rights of interned people at some stage or another. Some people did literally dozens of Federal Court cases for no money at all.

That is a side of the legal profession which is not celebrated enough. The amount of pro bono or pro deo (in other words, free) work that is done by the legal profession just is not celebrated enough. To have the Premier and others regularly berate lawyers sticks in the throat somewhat when you know what honourable and generous members of the community almost all the members of the legal profession are. Having said that, I certainly support the bill. I also appreciate the cooperation of the Attorney-General and his staff in relation to a particular amendment I discussed with them.

The Hon. M.J. ATKINSON (Croydon—Attorney-General, Minister for Justice, Minister for Multicultural Affairs) (12:22): The member for Heysen asked questions about the detail of the bill and stated that the intention is to introduce a new regime from 1 January next year. Actually, the intention is for the act to commence on 1 July next year to coincide with the next period of professional indemnity insurance cover, and also because the Law Society has asked for six months to instruct the profession about the changes. On clause 3 the honourable member expressed concern that the definition of 'engage in legal practice'—an expression used throughout the bill—is vague. A decision was taken nationally that, rather than try to lift comprehensively the activities that make up the practice of law, it would be better to leave this to the common law. Already a good deal of case law is examining what it means to practise law or engage in legal practice. Using this nationally-broad definition will build on existing common law, eventually leading to a national jurisprudence on this point.

The honourable member also noted that the definition of 'supervised legal practice' includes the case of a person who is supervised despite being a partner in a law practice. She was puzzled about when this might occur. An example might be where a person who was already a partner in a law practice is disciplined for wrongdoing. The tribunal might impose a requirement for a period of supervised practice. The honourable member asked why the definition of 'associate' is wide: this is because there are some requirements that must apply to everyone associated with a law practice, even non-lawyers. For example, it is necessary to regulate the handling of trust money by any staff member not only by the legal practitioners.

The member queried the use of the term 'home jurisdiction'. This concept is necessary in the absence of national regulators. In effect, each practitioner has a regulatory home to whose regulators he is answerable. Each jurisdiction relies on the regulatory authorities in all other jurisdictions to regulate their own practitioners so that there is no need for further regulation each time a boundary is crossed.

As for community legal centres, the national model makes no provision but says that local provisions may be used. The bill takes the opportunity to clarify the position of lawyers employed in community legal centres. It makes clear, for example, that the centre, although not a legal practitioner, can operate a trust account and, in so doing, is subject to the same trust account regulation as other law practices. The bill also protects lawyers in these structures against undue influence in the discharge of their professional duties. It makes clear that legal professional privilege is preserved in these structures. The peak body—the South Australian Council of Community Legal Services—is satisfied with the bill.

On clause 7, the member wondered why clauses about mortgage financing are so expressed. These clauses are similar to the provisions of section 95BA of the present act and seek to make clear that mortgage financing is not part of the practice of law and that that provision should not imply that it ever was. On clause 9—suitability matters—the member noted that the provision refers to a person's current reputation and character; that is, that the assessment is forward looking only.

Although that might be the case for placitum (a), the rest of the clause goes on to take into account the person's previous behaviour. Subclause (2) reinforces that view by providing that a matter is a suitability matter, even if it happened before the bill comes into operation. The member also noted that placitum (m) raises the case of a person who is not capable of carrying out the inherent requirements of practice. She wondered who would decide. The decision is one for the court, except to the extent that it is assigned this function. If there is evidence before the court that a person may be unsuitable for this reason the court must consider and weigh that evidence. An example might be a medical report showing that a person is suffering from an addiction that would prevent him or her properly attending to the practice.

The member asked about clauses providing for imprisonment. There are three offences that may result in imprisonment, not one. They can be found in clauses 357, 450 and 451, all of which deal with obstructing investigations. On the right of audience in clause 16, the member asked whether a next friend or litigation guardian would still be recognised by the courts. The current act contains a similar provision for right of audience and it has never been suggested that that affects the rights of litigation guardians or next friends. However, those persons do not enjoy a general right to act as representatives before the courts. They are only entitled to act in the particular matters in which they are appointed, and it would not be appropriate to refer to them in this provision. The member then queried whether clause 17(b) is in conflict with the provisions dealing with incorporated legal practices and multidisciplinary partnerships. The answer is no, because the prohibition on sharing profits in that clause is, again, subject to the permissions under the bill to do so.

The member said that clause 18 is core non-uniform. The clause is drawn from the present section 23AA of the Legal Practitioners Act, and what we have done is to tighten the circumstances under which the Legal Practitioners Disciplinary Tribunal can grant an authorisation for a disqualified person to work in a law practice. The tribunal must be satisfied that the person is not likely to create a risk to the public, and that his or her employment would not be otherwise contrary to the public interest. On clause 35(3), the member thought that the exclusion provision had to do with division 6 of chapter 3, part 3, about billing. That is a misreading. It has to do with division 6 of the part in which it appears about show cause events. This is because, if the show cause provisions apply, there is no need for this clause to apply.

The member noted that, in clause 59, it is said that government lawyers of other jurisdictions are not liable to contribute to the guarantee fund. She wondered why this might be. This is because a government of another jurisdiction is not a law practice, and any default by its employees will not be covered by our fund. On clause 82(1), and later on the similar clause, 112, the member felt that the provisions were circular or redundant because of the double reference to unsatisfactory conduct and professional misconduct. This is a misreading. What these provisions do is impute to the legal practitioner, director or legal practitioner partner the wrongdoing of an employee. It is his or her right to practise that is at risk if any one of the legal staff breaches a professional duty. This strengthens the obligations on that director or partner to ensure that the legal services are delivered properly.

On clause 94, and elsewhere, the member said that the references to the regulator and the society were redundant, as 'regulator' includes the society. That is not correct. The term 'regulator', as defined for the purpose of ILPs and MDPs, means the conduct board or its interstate equivalents. On clause 175, the member asked whether there is a general power for the society to exempt Australian legal practitioners from the provisions of the act and, if not, why not? There is no such general provision. This is because the bill intends to apply generally to Australian legal practitioners, and it would not be appropriate to allow the society to let practitioners out of their ordinary legal obligations. The reason for the possibility of exemptions for foreign lawyers is that they are not practising Australian law, and it might thus be that some provisions of the act or the regulations may prove to be, in practice, inapplicable to them.

On clause 196, the member asked how it might be that a practitioner could practise without having an office in any jurisdiction. The most likely case is where the practitioner practises solely by means of the internet and does not have any premises open to the public. On clauses 271 and 272 the member suggested that the uplift fee is really the same thing as the contingency fee or is even more dangerous. This is not so. The uplift fee is simply an increase in the rate of charging if the case succeeds. If a client gives properly informed consent to such an arrangement, then it is lawful, but the bill would limit the extent of the uplift.

It is true that the new limit may result in some clients being charged more than is possible under the so-called double or nothing rule that we have now. The figure of 25 per cent is a

compromise figure agreed among all jurisdictions for the sake of national uniformity. The fee is, however, only an uplift and not a contingency fee. The contingency fee is a fee calculated as a proportion of the award or settlement in the case, or the value of the property recovered; that is, the practitioner does not just get a costs bonus but actually gets a share of the client's award. The more the damages the more the lawyer is paid. That is the mischief prohibited by clause 272.

On clause 331 the member was unsure whether or not the levies provision was a core provision: it is not. The levies provision has its origins in an early draft of the model, but there is no obligation on the government to include it in this bill. It is included because the government thinks it is a good idea. If amendments of the kind foreshadowed by the member to make the fund a first resort fund are adopted by the parliament, then it may well become necessary to levy practitioners one day to meet the fund's obligations to defrauded clients.

Mrs Redmond interjecting:

The Hon. M.J. ATKINSON: The member interjects because she wishes the taxpayers of South Australia to pick up the bill.

Mrs Redmond: Why should an innocent practitioner, who has not stolen money from a trust account, have to pay someone—

The Hon. M.J. ATKINSON: There we have it. Here is a further impost proposed on the taxpayers of South Australia by the member for Heysen.

Mrs Redmond interjecting:

The Hon. M.J. ATKINSON: The member for Heysen gives the benefit of clergy to her vocation and shifts the burden to the taxpayers. I would have thought the taxpayers were innocent.

Mrs Redmond: Why should any practitioner—

The Hon. M.J. ATKINSON: But it is not the first time the member for Heysen has thrust her hand and the Liberal Party's hand into the wallets of South Australian taxpayers to pay for losses which they did not incur. On clause 357 the member noted that the board is required to investigate a complaint. She recalled a complaint against herself that she considered vexatious and regretted that the board cannot dismiss a vexatious or frivolous complaint as it can do with complaints of overcharging. In fact, by clause 357(3), the board can decide not to commence or continue an investigation if it is apparent to the board that the complaint is frivolous or vexatious or the subject matter has already been dealt with.

Mrs Redmond interjecting:

The Hon. M.J. ATKINSON: And the member concedes that she has now found that provision. God forbid that we should have such provisions here in parliament and that some of the member's frivolous and vexatious complaints about me over the years, which have been found to have not a jot or tittle of substance, could not have been dismissed at the time. The government will be moving a handful of technical and other amendments during committee. The government will move an amendment to the bill to include a right of audience for employees of incorporated legal practices and multi-disciplinary partnerships.

The government agrees with the amendments proposed by the member for Mitchell and will support them. The Law Society will have new functions in regulating incorporated legal practices and multidisciplinary partnerships. The government will move an amendment to fund the costs of carrying out these new functions. The government will move amendments to provide that the society may, in its absolute discretion, make a hardship payment from the guarantee fund, even though the claimant is not entitled to recover because he is likely to be paid from another source. The government will move amendments designed to ensure that a court cannot make a costs order directly against the Legal Practitioners Guarantee Fund. Lastly, the government will move an amendment to remove a redundant clause allowing evidence against a practitioner to be used despite the practitioner not being a party to the proceedings; the matter is dealt with in another place in the bill.

At this point, I usually thank members for their contribution to the debate. However, since the member for Heysen made it clear that hour upon hour of her contribution was not on the merit of the bill but to punish the government for requiring her to debate the bill on the normal timetable—that is, that her contribution was for an ulterior purpose—I do not thank her for it.

Bill read a second time.

In committee.

Clauses 1 to 12 passed.

Clause 13.

Mrs REDMOND: Before asking my question, I want to reiterate that, first, every comment I made on this bill was directly relevant; indeed, I could have taken much longer. It was forced upon me by the fact that I had to undertake a detailed consideration in the house, rather than being allowed by the Attorney a reasonable time in which to consider a bill comprising 515 clauses and a schedule. So, in response to the Attorney's earlier comments, I say that it was his unreasonableness that forced me to undertake that directly relevant contribution the way I did, rather than having the time to consider and ask further questions.

My question relates to clause 13, and the Attorney touched on this slightly in his closing remarks in his second reading speech. It deals with the prohibition against engaging in legal practice when not entitled to do so. It provides:

> A person must not engage in legal practice in this jurisdiction unless a person is an Australian legal practitioner.

There are definitions that impact on reading that, and 'Australian legal practitioner' is obviously a defined term and 'jurisdiction' is a defined term. However, the one that I am still puzzled about is 'engaging in legal practice'. As I pointed out previously, the meaning of 'engaging in legal practice' is defined under clause 7, which provides:

> Subject to any regulation made under subsection (2), in this act, engaging in legal practice includes practising law.

I accept that the Attorney has already explained that, rather than list every possible thing that could be considered as engaging in legal practice, he envisages that the common law will develop and there will be a jurisprudence about this issue eventually. However, in the meantime, what is to stop someone from setting up their shopfront and saying, 'Legal advice given' on a particular topic, whether they become specialists in WorkCover or falling over or whatever it is? Provided they do not actually go to a courtroom and seek a right of audience, what is the effect of this clause in terms of preventing someone from holding themselves out as being knowledgeable in the law on a particular area and, therefore, able to give advice on a topic which may or may not be normally considered to be something undertaken by solicitors or barristers?

The Hon. M.J. ATKINSON: The law does not change much on this point. The current law prevents people who are not authorised from dispensing legal services, and complaints will be dealt with as they are now. Indeed, if a person purports to be dispensing legal services with no suitable qualifications, then it may even be false and misleading conduct under our consumer laws.

Mrs REDMOND: Again, it is the use of expressions like 'legal services' that I think leaves the position somewhat open. It seems to me, for instance, that someone might have a vast knowledge of issues to do with commonwealth legislation and pensions and aged care and all that sort of thing and they might become very much a specialist in an area of knowledge which, although it might, in some circumstances, come within the purview of legal practitioner's practice, is largely an area that is not taken up by legal practitioners. There are not, as I am aware of it at the moment, legal practitioners who, for instance, specialise in aged law, as we might classify it. If I had no qualifications and I set myself up as a specialist in providing advice to elderly people about a whole of range of things (which may or may not involve state and federal legislation), is there anything in this legislation which would prevent me from doing it? Is the only way to stop it, when it occurs, by actually putting something into the regulations to say, 'No; we are not going to allow this person to do that'?

The Hon. M.J. ATKINSON: By the time the bill becomes an act and is proclaimed and brought into effect by proclamation we will have regulations. If there are areas which should be deemed not to be legal services for the purpose of the act, we can make that clear in the regulations.

Clause passed.

Clauses 14 and 15 passed.

Clause 16.

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

Page 34, lines 5 to 7—Delete paragraph (g) of subclause (1) and substitute:

(g) an Australian legal practitioner who is engaging in legal practice as a principal or an associate of a law practice;

This is a technical amendment to the provision granting a right of audience before courts and tribunals established under the law of South Australia. The right of audience will be widened to include principals and associates of all law practices. This will cover those practitioners working in traditional law firms as well as covering those practitioners working in the new business structures contemplated by the bill—that is, in incorporated legal practices and multi-disciplinary partnerships.

Mrs REDMOND: I do not anticipate that we would have any problems with the proposed amendment. As the Attorney has said, it is quite technical. I want to clarify something, though. My understanding is that a student—for instance, a GDLP student—is not mentioned in here but is specifically then authorised to obtain a right of audience by appearing before the person and seeking leave, if they are going into the Magistrates Court or some other jurisdiction.

The Hon. M.J. ATKINSON: The courts have long decided these matters and they have a policy that is well known.

Amendment carried; clause as amended passed.

Clauses 17 to 22 passed.

Clause 23.

Mrs REDMOND: I have a brief question to clarify my understanding. Clause 23 deals with suitability for admission and there were two questions I had which I will ask both at the same time because I do not think that they will be terribly complex. The first is that the Supreme Court must, in determining an application, consider the suitability matters in relation to a person and any other matters it considers relevant. I wonder what other matters potentially are considered relevant that have not been listed as the suitability matters.

My second question is about the note underneath which relates to the education and admission council rules being able to provide for a person to apply for an early indication as to his or her suitability for admission to the legal profession. I want to confirm that my understanding of the intention of that is correct. That is, if you had, for instance, a person who had a juvenile record which would obviously have to be disclosed but who had turned a corner and become a good guy, who had decided they wanted to study law and become a lawyer, then before embarking on that long process they could apply to the admissions council and seek confirmation that, if they went through all that bother, got their law degree and did their GDLP, they would not be denied admission and they could actually do that at the outset to stop them from having to waste six or seven years or how ever long it takes.

The Hon. M.J. ATKINSON: At clause 9 there is a long list of suitability matters, but we admit that there may be other matters relevant for the court, hence the subclause that allows the court to take matters into consideration. As to the LPEAC point, it is just continuing LPEAC's current practice.

Clause passed.

Clauses 24 to 74 passed.

Clause 75.

Mrs REDMOND: I have a very quick question on this clause. The Attorney and other members would be aware of my constant references throughout this discussion to my concern about the introduction of incorporated legal practices, because although at one end—the end that I am reasonably happy with—we have the idea of mum and dad forming an incorporated company and running the legal practice and, at the other end, potentially we have Woolworths law firms. I just want to confirm that there is no impediment—indeed, after this legislation comes into force—to Woolworths and Coles, and any other big organisation running law firms, provided they meet the requirements of having someone with an Australian practising certificate.

The Hon. M.J. ATKINSON: Provided a company complies with the requirements of the bill, the answer is yes.

Clause passed.

Progress reported; committee to sit again.

[Sitting suspended from 12:59 to 14:00]

SOLID WASTE LEVY

Mr PEDERICK (Hammond): Presented a petition signed by 180 residents of South Australia requesting the house to urge the government to ensure that all funding raised from the solid waste levy is used in programs designed to meet the SA Strategic Plan target for reduction of waste to landfill.

ANSWERS TO QUESTIONS

The SPEAKER: I direct that the written answer to a question, as detailed in the schedule I now table, be distributed and printed in *Hansard*.

TRADE AND ECONOMIC DEVELOPMENT DEPARTMENT

In reply to **Mr GRIFFITHS (Goyder)** (29 June 2007). (Estimates Committee A).

The Hon. K.O. FOLEY (Port Adelaide—Deputy Premier, Treasurer, Minister for Industry and Trade, Minister for Federal/State Relations): The Department of Trade and Economic Development (DTED) has advised the following:

The increase in supplies and services of $829,000 between the 2006-07 Budget and the 2007-08 Budget (misquoted as $823,000 in the question) is due to the approval of the Australia-India Trade Conference (of $449,000) and a reclassification of expenditure from Grants and Consultants to Supplies and Services.

The decrease in Grants and Subsidies of $451,000 between the 2006-07 Budget and the 2006-07 Estimated result (misquoted as $411,000 in the question) is due to the following:

- once-off saving in the South Australia Business Ambassadors Network (SABAN) program due to the timing of the new funding arrangements;
- savings in the Market Access Program (MAP) due to timing variations on acquittals; and
- a reclassification of expenditure to Supplies and Services and Employee benefits and costs as a result of the appointment of the Tradestart advisors as employees of DTED.

The increase in Employee benefits and costs of $558,000 between the 2006-07 Estimated Result and the 2007-08 Budget is due to the following:

- Additional employee costs associated with the Australia-India Trade Conference;
- The full year impact of new Tradestart employees as per the new agreement with the Commonwealth; and
- Transfer of a position in the DTED to assist in managing the increasing activity of international trade related activities.

DTED's budgeted establishment of Full Time Equivalents (FTEs) at 30 June 2007 was 197.00.

The average FTEs for the year to 30 June 2007 was 164.81, amounting to a shortfall of approximately 32 FTEs from the budgeted establishment due to vacancies.

During 2006-07, DTED engaged the services of contractors amounting to an equivalent of 39 FTEs to manage and maintain departmental services associated with the level of vacancies and to provide occasional supplementary “temp staff” services. This represents 19 per cent of total FTEs. In addition to this, the Department engages contractors to provide services in its overseas offices.

The 2006-07 budget for contractors and temp staff in program 4 (International Market Development) is $1.674 million, with the majority of this budget ($1.395 million) allocated to the overseas offices.

DROUGHT

The Hon. M.D. RANN (Ramsay—Premier, Minister for Economic Development, Minister for Social Inclusion, Minister for the Arts, Minister for Sustainability and Climate Change) (14:02): I seek leave to make a ministerial statement.

Leave granted.

The Hon. M.D. RANN: I wish to update the house on this government's commitment to helping the state's farmers as they cope with the worst drought in our nation's recorded history.

Today I have appointed former premier Dean Brown as my Special Adviser on Drought. In this role, Dean Brown will have direct access to me (as he has always had) and also to my high level Drought Taskforce. He will personally brief cabinet, and will report to the Minister for Agriculture, Food and Fisheries and the Minister for Water Security on drought-related matters. As the Special Adviser on Drought, Dean Brown will work to identify and coordinate statewide responses hand-in-hand with our regional drought coordinators and through statewide drought forums.

The appointment of a special adviser with direct access to decision-makers has proven very effective in dealing with major crises such as the Eyre Peninsula bushfires and the Virginia floods. The work of Vince Monterola was critical to the recovery of Lower Eyre Peninsula communities ravaged by bushfires. People told me that they wanted a single point of access where they could get things done quickly and effectively, and the bushfire recovery is now held up as a national benchmark in crisis response. Dean Brown will work in the same way—

Mr Hamilton-Smith interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN: Vince Monterola did an outstanding job and I am sure that Dean Brown will do an outstanding job as well. Dean Brown will work in the same way with banks, industry organisations and community service providers on the business, social and natural resource management impacts of drought to help us identify and efficiently target our drought response measures. He will liaise with employers about off-farm employment opportunities as farmers look to other sources of income. He will advise the Minister for Agriculture, Food and Fisheries on agriculture-related issues, and he will continue to act as community liaison manager for the Lower Murray and Lakes region.

Dean Brown is a respected community leader who is held in high esteem by both sides of this house—and rightly so. Aside from his former role in this place, his other qualifications make him eminently suited to this new role. He holds a master's degree in rural science, served for many years as a senior research scientist with the South Australian Department for Agriculture, and is currently serving on the University of Adelaide's Agriculture and Food Advisory Board. This new role will build on the work he has already been doing since late last year when he agreed to work with drought-affected communities along the River Murray. In that role he has taken on the key leadership, liaising between the state government and River Murray communities as they come to grips with record low inflows.

Dean Brown has also served as an independent chair of the community consultative committee looking into the Terramin zinc mine proposal near Strathalbyn, working closely with the community, ensuring that appropriate conditions were applied for a safe and efficient mine. I have great confidence in Dean Brown's ability to work with rural communities and help all of us deal with the very difficult and challenging times that the drought is creating. Of course, his appointment comes on top of an additional $10.9 million in drought aid that I outlined to the house yesterday. That includes funds for three new drought coordinators in the regions of the Eyre Peninsula, the River Murray and the northern areas of the state, who will work closely with the Premier's special adviser Dean Brown. The process to appoint them is well underway and I expect to make further announcements very soon as the coordinators are appointed.

This latest assistance package boosts this state government's drought aid to nearly $71 million. The $10.9 million will include funding for:

- a Young Farmers Package, comprising a rural leadership program to target up to 20 leaders in drought-affected regions;
- an extension of the Planning for Recovery initiative that provides grants of $4,000 for the development of integrated business plans, plus up to $10,000 to make on-farm changes;
- an extension of the successful Farming Systems Project operating out of the Minnipa Research Centre;
- developing through TAFE SA expanded off-farm employment and training; and, importantly,
- accelerating the processing of Exceptional Circumstances applications for federal government consideration.

This government, together with its relevant departments, is diligently working with farmers, their communities, the Australian government and local members of parliament to ensure the survival

and well being of our regional communities. It is not about scoring political points; it is about doing the right thing by an agricultural industry that contributes billions of dollars into this economy. I would hope for bipartisan support for the work that this government is doing to help our rural communities during this very difficult time.

This government's commitment to drought-affected communities began in 2002. For five years we have been engaging with farming communities and visiting rural areas to see first hand the hardship being experienced. By the same token, some of these visits have been inspirational. It is impossible not to admire the tenacity and the sheer determination by many farmers and people in these rural and remote areas to beat the drought, stay on the land and keep their communities alive and vital. It is that spirit to succeed which provides this government with the impetus to work cooperatively with these communities to ensure they do. So, I commend Dean Brown's appointment to this house.

Yesterday in parliament, the shadow minister for agriculture said, and this is very important in terms of what we say in this chamber and in this parliament:

> I never had one farmer suggest to me that they want a coordinator. I suggest the Premier solicited that response.

I have with me a copy of a letter from the member for Flinders to the Minister for Agriculture, dated 19 September 2007, asking the minister to urgently consider appointing 'a coordinator similar to the position created to manage the bushfires'. The very interesting thing about that is that the letter we received from Liz Penfold is cc'd to Mitch Williams, the shadow minister.

The Hon. K.O. Foley: Caught out!

Members interjecting:

The SPEAKER: Order!

AUDITOR-GENERAL'S REPORT

The Hon. K.O. FOLEY (Port Adelaide—Deputy Premier, Treasurer, Minister for Industry and Trade, Minister for Federal/State Relations) (14:09): I seek leave to make a ministerial statement.

Members interjecting:

The Hon. K.O. FOLEY: You will say and do anything, you lot.

The SPEAKER: Order!

Leave granted.

The Hon. K.O. FOLEY: Yesterday the Auditor-General handed down his annual report for the year ending 30 June 2007. As it has every year, the report analyses and often critiques the way the government of the day and its agencies manage their finances.

An honourable member interjecting:

The Hon. K.O. FOLEY: No, I am happy to take questions. The report also thoroughly examines the state budget, its settings going forward, and its results for the previous financial year. The report makes some key observations. Regarding the budget settings, the report states:

> Maintaining forecast net operating balance surpluses represents overall good financial planning, providing some flexibility and buffer against unfavourable influences and events that may affect budget outcomes.

It also states:

> The state's balance sheet is expected to strengthen over the four years of the 2007-08 budget as measured by net worth. Net financial worth, however, declines due to the growth of financial liabilities. Both these trends are consistent with borrowing to build infrastructure.

That is the important point. Yesterday and this morning we heard the Leader of the Opposition state the following:

> The Auditor-General flagged and he's saying...you better watch out for that AAA rating if that happens.

I have read the documents, I have read the reports, and I cannot find that quote anywhere. But I could find the following quote—

Members interjecting:

The SPEAKER: Order!

The Hon. K.O. FOLEY: Well, you cannot misrepresent and think that you can get away with it.

Mr Williams interjecting:

The SPEAKER: Order!

The Hon. K.O. FOLEY: I did find the following quote:

South Australia has had a AAA credit rating since September 2004. The rating was affirmed in August 2007.

That is right, Mr Speaker, after analysing the budget papers, examining revenue and expenditure settings, and going over the government's capital investment program for the next four years, both Standard & Poor's and Moody's have reaffirmed South Australia's AAA credit rating.

Mr Hamilton-Smith: With qualifications.

The Hon. K.O. FOLEY: With qualifications. He yet again misrepresents the facts, sir: there is no qualification.

Mr Hamilton-Smith interjecting:

The SPEAKER: Order!

The Hon. K.O. FOLEY: Good; go right ahead, because then for once we might see whether you are telling the truth.

Mr Hamilton-Smith interjecting:

The Hon. K.O. FOLEY: Well, you have not to date. The Rann government is reinvesting in our schools—

Mr HAMILTON-SMITH: On a point of order: that is unparliamentary. I think it is offensive, and I call on the Treasurer to withdraw it.

The SPEAKER: What is unparliamentary?

Mr HAMILTON-SMITH: He is virtually accusing me of lying, and saying it is untruthful. Mr Speaker, if you want to maintain standards, here is an opportunity.

The SPEAKER: Order! I heard howls of accusations from members on my left that the deputy was making misleading statements, which I let go. I have not heard the Deputy Premier say anything that is unparliamentary.

The Hon. K.O. FOLEY: I have got thick skin, Marty.

Mr Hamilton-Smith interjecting:

The SPEAKER: Order!

The Hon. K.O. FOLEY: Yes; go right ahead. The Rann government—

Mr Hamilton-Smith interjecting:

The SPEAKER: Order! The Leader of the Opposition will come to order. The Deputy Premier has the call.

Mr Hamilton-Smith interjecting:

The Hon. K.O. FOLEY: I tell the truth on radio. The Rann government is reinvesting in our schools, our hospitals, our prisons and our roads. The Auditor-General points out that one of the government's primary fiscal targets is:

To achieve net lending outcomes that ensure the ratio of net financial liabilities to revenue continues to decline towards that of other AAA-rated states.

It is true that there is a slight increase in our ratio of liabilities to revenue brought about by increased borrowings to fund our investment infrastructure. With a strong balance sheet, this is an appropriate and prudent thing to do, and it is plain wrong to say that it threatens our AAA credit rating—it does not. Standard & Poor's reinforced this when it said in its ratings direct analysis of South Australia in August this year:

South Australia's capital program to fiscal 2011 is not expected to appreciably weaken its balance sheet.

An honourable member interjecting:

The Hon. K.O. FOLEY: That is interesting because Moody's rating outlook in their latest credit opinion issued this week—this week—with all the information available to it, says:

> The stable outlook reflects Moody's assessment that the state is well positioned to manage a more complicated fiscal environment over the medium term—including a slowing in property-related revenues and rising expenditures—given prudent financial management and a positive debt profile.

Ms Chapman: Provided Foley is not in charge.

The Hon. K.O. FOLEY: They have been pretty happy with our work to date.

Mr Hamilton-Smith interjecting:

The SPEAKER: Order!

The Hon. K.O. FOLEY: You still haven't got over losing the election in 2002, have you? You go around talking about yourself as the 'alternate Premier'.

The Hon. M.D. Rann interjecting:

The Hon. K.O. FOLEY: He goes around calling himself the 'alternate Premier', not 'Leader of the Opposition'.

Mr Hamilton-Smith interjecting:

The SPEAKER: Order! The house will come to order. The Leader of the Opposition is warned.

The Hon. K.O. FOLEY: Sir, the Leader of the Opposition said:

> Basically we're spending more than we're receiving, and that's a problem.

This is yet again plain wrong. If the leader had read the Auditor-General's Report more closely, he would have come across this statement:

> The 2007-08 Budget Papers show that the Government financial operations for 2006-07 are on target for a budgeted net operating balance surplus...

Further, 'One of the Government's primary fiscal targets'—

Members interjecting:

The SPEAKER: Order!

The Hon. K.O. FOLEY: Mr Speaker, if they put wrong statements to the public, I have to correct the record. The Auditor-General continues:

> One of the Government's primary fiscal targets is the achievement of net operating balances every year. This means that revenues are covering expenses, including interest and depreciation.

Mr Williams: Yes; revenues include borrowings.

The Hon. K.O. FOLEY: Sorry?

Mr Williams: Revenues include borrowings.

The Hon. K.O. FOLEY: They do not.

Mr Williams interjecting:

The SPEAKER: Order!

The Hon. K.O. FOLEY: A shadow minister, sir, has just said 'Revenues include borrowings.'

The SPEAKER: Order!

Members interjecting:

The Hon. K.O. FOLEY: Are you serious?

Mr Venning: I presume you're spending it!

The SPEAKER: Order! The Deputy Premier will take his seat. The house will come to order. Members on my left will not interject. If they want to respond to anything that the Deputy Premier is saying, there are means available for them to do that. They must not do it by continuing to disrupt the Deputy Premier's statement. He has been given leave to make the statement; he has the leave of the house to make the statement; he must be allowed to do that without being

interrupted. I also ask the Deputy Premier not to respond to interjections, because it just encourages them.

The Hon. K.O. FOLEY: Thank you, sir, but I just add that I find it extreme, and I am happy to give the member for MacKillop a lesson in Treasury matters, if he is making statements as he just did—'revenues include borrowings'.

Mr Hamilton-Smith interjecting:

The Hon. K.O. FOLEY: Six surplus budgets, I am pretty happy with that. The Leader of the Opposition has got it wrong. The budget is in surplus, and I can confidently predict it will be across the forward estimates. Later this year, the government will be handing down (as normal) its midyear budget review; and I can say to the house that it will show that the budget position remains strong and will do so across the forward estimates, notwithstanding the misleading and ill-informed comments of the Leader of the Opposition.

Members interjecting:

Mr Hamilton-Smith: It is all right for them but it is not all right for us, is that it, Mr Speaker?

The SPEAKER: Order! The Leader of the Opposition is very close to being named. He has made such statements on a number of occasions, but I will no longer let them go. The Leader of the Opposition should perhaps talk to the member for Stuart about what is available to the Speaker in dealing with members who continue to ignore the Speaker's rulings.

LEGISLATIVE REVIEW COMMITTEE

Mrs GERAGHTY (Torrens) (14:20): I bring up the eighth report of the committee.

Report received.

PUBLIC WORKS COMMITTEE

Ms CICCARELLO (Norwood) (14:21): I bring up the 273rd report of the committee on the Northern Expressway.

Report received and ordered to be published.

Ms CICCARELLO: I bring up the 274th report of the committee on the Craigmore High School redevelopment.

Report received and ordered to be published.

Ms CICCARELLO: I bring up the 275th report of the committee on the extension of the Virginia reclaimed water pipeline to Angle Vale.

Report received and ordered to be published.

Ms CICCARELLO: I bring up the 276th report of the committee on the Morgan-Whyalla Pipeline Pumping Station—Replacement of High-voltage Switchboards.

Report received and ordered to be published.

Ms CICCARELLO: I bring up the 277th report of the committee on the Playford North Regeneration Project—Andrews Farm Stage 1.

Report received and ordered to be published.

VISITORS

The SPEAKER: I advise members of the presence in the gallery today of students from Pembroke School, who are guests of the member for Hartley, and students from Para Hills High School, who are my guests.

QUESTION TIME

DESALINATION PLANTS

Mr HAMILTON-SMITH (Waite—Leader of the Opposition) (14:22): My question is to the Premier. Is it still possible that the Premier could break his promise to build a desalination plant in Adelaide? On 26 September the Premier told the house that the government was committed to a desalination plant. He repeated his promise made on radio that day. However, yesterday, on ABC Radio, the Treasurer revealed three times that there was no firm commitment. He said, first, 'If we

build a desalination plant.' He then said, 'We haven't given a firm commitment.' Finally, he qualified the prospect of a desalination plant by saying, 'It is almost certain.' Who do we believe?

The Hon. K.O. FOLEY (Port Adelaide—Deputy Premier, Treasurer, Minister for Industry and Trade, Minister for Federal/State Relations) (14:23): If that is the best the Leader of the Opposition can do—

Mr Williams: What figures were Moody's basing its assessment on?

The SPEAKER: Order! If the member for MacKillop has a question, I am happy to give him the call.

The Hon. K.O. FOLEY: After he said that borrowings are revenue, I think the member for MacKillop should refrain from making fiscal policy statements. The Premier has made it very clear that the government is committed to building a desalination plant.

Members interjecting:

The SPEAKER: Order!

The Hon. K.O. FOLEY: Yesterday's discussion was in the context of the Auditor-General's report and in the context of the fiscal, borrowings and debt position of the state. No cabinet decision has been taken. We do not know what the final—

Members interjecting:

The SPEAKER: Order!

The Hon. K.O. FOLEY: We have no final cost yet, sir. A working group is working through as we speak. It is yet to give government its final report. We have been briefed on it, but we are yet to receive it. We are yet to make final decisions relating to the project. We are scoping the project for its site. We are scoping the project for the length of discharge pipe that would be required. We are considering what would be needed for expansion. We are considering the implications of dam expansion in the Adelaide Hills.

We are considering a whole range of issues relating to both a desalination plant and the expansion of dams. That is totally consistent with a prudent approach. If members opposite want to split hairs and use the first question time in parliament to question whether or not I am conservative in my approach to these interviews they should go right ahead. A commitment has been made but no final decision has been taken because we have not yet got final advice or even the final location for where a desalination plant would be located. If the opposition wants to be taken seriously as an opposition it has to come up with better than that.

AFL DRUGS POLICY

The Hon. P.L. WHITE (Taylor) (14:26): Will the Premier advise the house of the state government's view in relation to the AFL drugs policy?

The Hon. M.D. RANN (Ramsay—Premier, Minister for Economic Development, Minister for Social Inclusion, Minister for the Arts, Minister for Sustainability and Climate Change) (14:26): I would think any parent in this house would be concerned about what is happening in the AFL at present in terms of a series of events in relation to the taking of drugs. The fact is that our children see these people as their heroes and, therefore, it is vitally important the AFL toughens up on its policy in relation to drugs and drug testing. Some of the criticisms of the AFL have not been accurate. Some people said publicly earlier in the year that the 'three strikes and you're out' policy means that nothing happens on the first two detections. That is not the case. There is a procedure for a zero tolerance. The first time drugs are detected immediate action is taken in terms of rehabilitation. There is a sliding scale of events that leads to a third strike, which is where the player is suspended and, therefore, named and shamed.

However, my view is that there needs to be a tighter regime. There should be a two-strikes policy, accompanied by a much more intensive frequency of testing. I think it would be a very smart move in terms of rebuilding confidence if the AFL was to announce, at the very least, a doubling of the intensity and frequency of drug testing of players, both in and out of season, plus also going from the three-strikes policy to a two-strikes policy. On the first occasion, if someone makes a mistake, they should be counselled and go through rehabilitation; the club is informed and so is the AFL. But on the second occasion that is it. Basically, they are suspended and thereby named.

Certainly we will be communicating to the AFL that we believe there needs to be a much greater tightening of the regime from a three-strikes policy to a second offence resulting in an

immediate suspension, whether in or out of season. Also, very importantly, there needs to be a much greater frequency of drug testing of players in and out of season.

AUDITOR-GENERAL'S REPORT

Mr HAMILTON-SMITH (Waite—Leader of the Opposition) (14:29): How can the Treasurer guarantee that reduced expenditure targets set for the next two financial years will be met? The Auditor-General's Report confirms that the integrity of the budget depends on reduced expenses in 2008-10. The Auditor-General in part C of his report (page 5) notes these improved results have not been achieved for the past five years and are 'therefore considered more uncertain'. The Auditor-General further notes that the 2006-07 budget estimated that the expenses would fall in real terms by 1 per cent, but that the estimated result shows real term increases of 3 per cent—an overall variation on the year's $11 billion expenses budget.

The Hon. K.O. FOLEY (Port Adelaide—Deputy Premier, Treasurer, Minister for Industry and Trade, Minister for Federal/State Relations) (14:30): I love the way he feigns that anger. I suppose any bloke who goes around saying he is the alternate premier has a fairly high opinion of himself—but anyway.

Members interjecting:

The SPEAKER: Order!

The Hon. K.O. FOLEY: I do not know where the leader (or the alternate premier, as he prefers to be called) has been for the last three or four years, because I have repeatedly made very clear the difficulty we have in controlling expenditures in government and, in particular, health. Health cost pressure—that is, the growth in health expenditure—is increasing at anywhere between probably 7 and 10 per cent; probably closer to 9 per cent per year. We have been grappling with that since day one in government. And—surprise, surprise—so was the former Liberal government. It is extremely difficult to drive efficiency and reform in the health sector. We are doing that, and we have been doing it—

Ms Chapman: Other states are.

The Hon. K.O. FOLEY: They are not. The deputy leader says other states are. They are not, because you know what has been happening—

Ms Chapman interjecting:

The Hon. K.O. FOLEY: They have not.

Ms Chapman interjecting:

The SPEAKER: Order! I have called the deputy leader to order.

The Hon. K.O. FOLEY: Sir, I am happy to answer this question in a constructive manner, but if the members opposite want to shout me down I will sit down. They either want to hear me or they do not. Would you like an answer?

Mr Hamilton-Smith: Oh, Mr Speaker—

The SPEAKER: The Deputy Premier will get on with his answer, please.

The Hon. K.O. FOLEY: The pressure and the stress on all state budgets—indeed, the national budget—from an ageing community is extraordinary. Peter Costello makes that point at every treasurers' meeting we have each year—the cost of the PBS scheme, the cost of Medicare and the cost of our hospitals, as technology advancement, longevity and an ageing community produce enormous pressures. However, what has made it even more difficult (and I think the Prime Minister himself has acknowledged this now) is that we used to have roughly a 50:50 split between the commonwealth and state governments. That, I think, has now dropped down to approximately 40 per cent approximately from the commonwealth. So, as the cost increases occur, the contribution from the commonwealth has decreased. If we are having 9 per cent growth, instead of sharing that growth, the state budget is required to pick up the vast bulk of it.

What has been happening is that we have put in what we believe to be appropriate settings for health expenditure in our earlier budgets, and the expenditure exceeded what we forecast. I have made no secret of that. In the budget before last, straight after the state election, if members recall, I was quite upfront about that and I said we have had difficulty in properly provisioning the right amount of money for health growth. So, in that budget we factored in a very large forward funding provisioning for expected health growth. That was a genuine attempt to set a

fiscal framework for health that we could live within. What happened then is that even that was not sufficient, because of the enormous growth in funding requirements for our hospitals.

Mr Hamilton-Smith interjecting:

The Hon. K.O. FOLEY: Just let my expenses go? When people arrive at an emergency department, when people arrive for critical care, governments have no choice—and nor should they—but to accept and treat those patients. When patients live longer in hospital, when technology gives people the opportunity to live longer, we take up that opportunity, but it comes at a real cost. To simply say that we cannot control our expenses indicates that the leader has no comprehension of government finances, and is not being fair and constructive in trying to put forward alternative solutions. This was the problem confronted by Dean Brown and John Olsen in the last Liberal government. That is why we are reforming the health system in the way in which we are. One way the former Liberal government dealt with it was to spend no money on the upgrade of the Royal Adelaide Hospital—or very little. So, you run down your capital program to such a point that a significant catch-up is required, and we are putting the significant catch-up into play; that is why we are building a new hospital.

However, I will say this. Notwithstanding the ridicule opposite, notwithstanding the ill-informed and quite silly comments like the member for MacKillop made earlier in question time, and the scaremongering that the leader is trying to whip up—he even trotted out the State Bank yesterday—I can say that, since coming to office, we have balanced each and every budget and we have restored in a very short time the AAA credit rating.

I can say that when the mid year budget review is released later this year you will all have egg on your faces, because what it will show is that the state's budgetary position continues to improve, surpluses remain strong, solid and growing, and the government's liabilities as a ratio to revenue surprisingly are in a better position than what they were at budget time. These figures jump around, for a whole lot of parameters. I will be meeting with Moody's in January in New York, as I meet regularly with them, and I will be updating them on the state's financial position. The former government had very little rapport with rating agencies. I have developed a very close relationship with the rating agencies. They trust me as a treasurer, they trust this government, they believe what we say, and they have access to all financial records of government. If any leader, or alternative premier as he prefers to be called, wants to go out there scaremongering and raising the State Bank they do so for base political reasons and it is not based on any substantial fact.

BROADBAND SERVICES

Mr PICCOLO (Light) (14:36): My question is to the Minister for Science and Information Economy. What progress has been made to ensure there is improved access to broadband internet services in regional areas of South Australia?

The Hon. P. CAICA (Colton—Minister for Employment, Training and Further Education, Minister for Science and Information Economy, Minister for Youth, Minister for Gambling) (14:36): I thank the honourable member for Light for his question. The state government remains firmly committed to the provision of broadband services across South Australia. We are keenly aware, of course, of the importance of broadband to both educational institutions and businesses, and also we recognise the role it plays in providing individuals with access to a vast array of information and communication services.

In March this year, following the sudden cessation of the federal government's connect subsidy broadband projects in the Yorke Peninsula, Barossa, Light and the Coorong were abruptly halted. I understand the reasons behind the cessation of that subsidy, and quite clearly it was that the amount of money that was being expended there was not getting a good enough bang for the buck. It went dry and, of course, it required a review. But it left those areas under a little bit of pressure, and indeed caused many months of frustration for residents and businesses in those areas. As a result of the intense lobbying and negotiation by the state government the Broadband SA team, in conjunction of course with the relevant local councils, the regional development boards and broadband providers like Internode/Agile and Amcom—

Mr Venning interjecting:

The Hon. P. CAICA: I will get to that, Ivan. I am pleased to inform the house that the provision of wireless broadband to regional areas of South Australia appears to be back on track. In response to the comments of the member for Schubert, I must also acknowledge the support of the member for Goyder, who took a very keen interest in this issue on behalf of his constituents. He was an absolute pleasure to work with. This is an outstanding result for our state and vindicates our

determined efforts to bring affordable, high speed broadband access to residents and businesses in regional areas.

In further good news on this front, I am informed that the OPEL consortium is expected to redeploy the resources they were proposing to use in the Yorke Peninsula, Barossa, Light and the Coorong. If this occurs it would further boost broadband services in other areas of South Australia not covered by the original OPEL proposal. In Yorke Peninsula, Internode, through its sister company Agile Communications, has been successful in registering the region under the Australian Broadband Guarantee, and they will be the first Australian provider to deliver a region-wide, wireless broadband service using the WiMAX standard. This will offer services, many months in advance, that meet or exceed those promised by OPEL. Connections for residents and businesses in the Coorong region are expected to begin almost immediately. In the Barossa and Light regions connections are expected to resume shortly, and Internode expects to begin connecting services for customers on Yorke Peninsula within a few weeks, following installation of the new WiMAX equipment.

I wish to highlight to all members that, right from the beginning, South Australia's regional broadband projects have been developed with a strong emphasis on community involvement so that the most appropriate local solutions could be determined. South Australia's unique collaborative approach, and our innovative system of broadband demand aggregation, is now paying off and thousands of individuals and businesses in our regional areas will soon have access to fast and affordable broadband.

AUDITOR-GENERAL'S REPORT

Mr HAMILTON-SMITH (Waite—Leader of the Opposition) (14:42): Why has the Treasurer failed to adequately control expenses over the four years to 2006-07, and is the Auditor-General correct in his finding that budget integrity has only been maintained because of unexpected, unbudgeted windfall revenues?

Part C on page 6 of the Auditor-General's Report reveals that over this period 'spending has increased annually beyond that projected' and that 'net operating balance surpluses were achieved after revenue windfalls (unbudgeted) allowed for funding of initiatives and expenditure pressures to be addressed'. Chart 8.5 on page 38 of the Auditor-General's Report reveals that, since coming to office, the Rann Labor government has exceeded its budget...expenses by $2.5 billion, and notes that 'expenses have consistently exceeded original budget expense targets in the last five years'.

The Hon. K.O. FOLEY (Port Adelaide—Deputy Premier, Treasurer, Minister for Industry and Trade, Minister for Federal/State Relations) (14:43): And the alternative premier's point is? This has never been a secret; this has been explained every budget, and I just went through a seven or eight minute answer highlighting the dilemma and pressures we have.

The funny thing is that barely a day has gone by when the alternate premier, in particular, has not demanded that the government spend more money; the opposition was saying in here yesterday, 'Spend more money on the drought.' Every day I have been in office as Treasurer there has been someone from the opposition—normally the leader—telling the government to spend more money. The Leader of the Opposition said 'Build a desalination plant,' but now he is saying that we cannot afford it because there is too much in the way of borrowings. The opposition has every single position possible.

I have made no secret of the very real difficulty that a state government—particularly in South Australia—will have, and will have for eternity, in meeting the expectations and demands of its community when it comes to expenses. State governments around the nation are the primary deliverers and providers of services; the commonwealth government's role is one of transferring payments. It transfers money to the community, it transfers money to state government; but, except for defence and a few other areas, it is for the states to deliver services. I am happy that we have had windfall gains in taxes, and I have never said otherwise. If we did not have those there would be kids who would not have wheelchairs, there would be hospital beds that would be closed, there would be a lack of police officers maintaining security, there would be more kids in our schools—because that is where the money goes.

We should be spending every dollar we get to the extent that it still leaves us with a sizeable surplus to maintain our fiscal discipline. We should not be running up surpluses to the extent that we are not meeting the service provision needs of our state; that would be wrong. In our first few budgets we did pay every single dollar off debt because we needed to get our expenditure

and our revenue into balance and then into surplus—and we did that. In this government every vital dollar goes two places: it goes directly to funding the important service needs of our state, or it goes towards building a sizeable budget operating surplus to protect our state's financial integrity. I am happy to put this government's financial record next to the last Liberal government's financial record any day of the week. Since coming into office, six surplus budgets—under the Liberals, deficit after deficit after deficit.

TOURISM

Mr RAU (Enfield) (14:45): My question is to the Minister for Tourism. How is the state government increasing South Australia's profile as a holiday destination in key international markets?

The Hon. J.D. LOMAX-SMITH (Adelaide—Minister for Education and Children's Services, Minister for Tourism, Minister for the City of Adelaide) (14:45): I thank the member for Enfield for his question. As he would know, I travelled to London earlier this year to strengthen the case for South Australia to win the first Pro Tour event outside of Europe. In addition, I met representatives of various airlines, including Singapore Airlines. We know that South Australia has won the first Pro Tour event outside of Europe and this has been a great boost, not only to our sports activities but also to our tourism activities and our profile on the world stage. In addition, we have been working with tourism operators and airlines to look at ways of increasing the numbers of visitors coming from our key markets: the United Kingdom, Germany and Singapore. These markets' levels of tourism will be boosted by a new funding agreement with Singapore Airlines. We have signed a joint agreement with this major international carrier to promote the state in our key markets. This agreement will help us boost—in accordance with our Strategic Plan goal—our number of visitors to deliver a $6.3 billion annual expenditure level.

This year the state government provided an additional $3 million over 4 years to the SATC as part of an international marketing budget. This has allowed us to work with other agencies and organisations to promote South Australia. In particular, the agreement with Singapore Airlines allows us to reach a larger international audience more effectively. Indeed, we have worked very hard to increase airline access to South Australia over the last five years, but Singapore Airlines is by far the largest provider of international passenger movements through Adelaide Airport and the agreement with this airline will allow us not only to support the great commitment that Singapore Airlines have given to South Australia but also to support the airport and additional tourists. It makes sense for us to pool our funds to entice more people to holiday in South Australia, and the latest announcement further underlines the confidence that Singapore Airlines has consistently shown in South Australia.

Our state has continued to grow in popularity amongst international tourists, with a record 375,000 international visitors coming to the state in the year ending June 2007. This is an 8.5 per cent increase on the preceding year. Indeed, international passenger movements to Adelaide Airport increased by 27 per cent in the 12 months to June 2007. This is the highest increase amongst Australia's major airports. In November we will have 27 international weekly flights into South Australia, up from 13 in 2003. All this is great news for the tourism industry and the economy in general. Unlike the opposition, the state government is committed to ensuring that our tourism industry continues to be a generator of export revenue and employment, even if this means travelling to London.

AUDITOR-GENERAL'S REPORT

Mr HAMILTON-SMITH (Waite—Leader of the Opposition) (14:48): My question is to the Treasurer. Why is the government, on current estimates, unable to achieve one of its primary fiscal targets, the continuing decline in the ratio of net financial liabilities to revenue towards that of other AAA-rated states? The Auditor-General has confirmed that the government is unable to achieve this fiscal target and selected savings targets. On 9 August 2007, on ABC Radio, Standard & Poor's Danielle Westwater said:

> The rating could be put at risk if the state government doesn't achieve the goals of its savings program.

The Hon. K.O. FOLEY (Port Adelaide—Deputy Premier, Treasurer, Minister for Industry and Trade, Minister for Federal/State Relations) (14:49): Again, absolutely correct. The Leader of the Opposition comes into this place today with some shock revelation that our financial liabilities to revenue ratio is slightly increasing over the forward estimates. If the leader (the shadow treasurer) was actually diligent at his job he could have levelled that allegation at me the day the budget was brought down, because it was there in black and white, and I have acknowledged it publicly ever since. It is actually in the table presented, I think, in Budget Paper 4.

It shows the ratio slightly increasing. I mean, hello, where have you been for three or four months? What an example of an alternative treasurer who needs to get a report from the Auditor-General and say, 'Shock, horror!' when it has been in the public domain for four months. I am happy to address the question, but the Leader of the Opposition now has egg on his face. He is now sounding and looking silly. He should have asked that of me 12 months ago, because it was there in the budget papers. What has occurred, Mr Speaker—

An honourable member interjecting:

The Hon. K.O. FOLEY: Well, I have signed an answer to you; you should have it by now. The situation is that, with a strong balance sheet and with the need to build infrastructure, you borrow money.

Mr Hamilton-Smith: You build a surplus.

The Hon. K.O. FOLEY: Well—

The SPEAKER: Order!

Mr Hamilton-Smith: Costello could do it: Foley could not.

The SPEAKER: Order!

The Hon. K.O. FOLEY: Nor could Brown, nor could Baker, nor could Olsen.

Members interjecting:

The SPEAKER: Order!

The Hon. K.O. FOLEY: There is probably only one state government that is able to fund its capital needs from its revenue—WA. Queensland, with its capital needs, has the biggest borrowing program of any state. Every state government with the acceptance and tick from the rating agencies and from the Reserve Bank—I think we have a comment somewhere from the Reserve Bank—knows that it is prudent, in good economic times when you have the revenue available, to take on modest borrowings to build capital. The Leader of the Opposition said, 'Let's build a desal plant.' Were you honestly suggesting that you would not borrow money to build that? Is that what you are suggesting? If that is what the leader is saying, he would have to find a billion to a billion and a half of budget cuts. He would have to decimate the budget sector. He would have to close schools, close hospitals and close police stations. If you want to build a $600 million prison, are you suggesting that you would cut $600 million of expenditure? Is that what you are suggesting?

Mr Koutsantonis: Silence.

The Hon. K.O. FOLEY: Silence. Because he does not have the answer, because he knows that what he is saying is absolute financial and economic nonsense.

Mr HAMILTON-SMITH: On a point of order, Mr Speaker: the minister is clearly debating. I ask that you draw him to an answer to the question.

The SPEAKER: The Deputy Premier is straying into debate, and I draw him back. The member for Little Para.

PUBLIC LIABILITY AND PROFESSIONAL INDEMNITY INSURANCE

The Hon. L. STEVENS (Little Para) (14:53): Will the Treasurer provide a summary of the findings of the recently released report by the Australian Prudential Regulation Authority relating to public liability and professional indemnity insurance across Australia?

The Hon. K.O. FOLEY (Port Adelaide—Deputy Premier, Treasurer, Minister for Industry and Trade, Minister for Federal/State Relations) (14:53): I know that the member for Enfield and other people from the legal profession in this place—perhaps the deputy leader, the member for Mitchell, the member for Heysen and others—will be particularly interested in this because this was a contentious piece of law reform undertaken by this government when we first came into office. The government picked its best legal minds to deal with this issue. I was given the job. In fact, that decision was taken by premier Olsen's team before we came to office. We undertook significant tort law reform. Many if not all in the house will acutely remember those difficult times. We faced massively increasing premiums for indemnity insurance, liability insurance and, in many cases, a total retreat from the market providers of the insurance.

It was a very difficult crisis for all state and federal governments to deal with. Senator Helen Coonan, a minister with whom I enjoyed the pleasure of working, was a very good federal minister in the way she dealt with all of the states. It might be a little different now with telecommunications portfolio, but when she was managing this issue she did it very well. What I can say is that, following those tort law reforms, favourable results for South Australia in both public liability insurance and professional indemnity insurance premiums have occurred. These favourable results, as I have explained, follow a successful program of tort law reforms. I would like to go through those individual tort law reforms, but we do not have time—

The Hon. M.J. Atkinson: Why not?

The Hon. K.O. FOLEY: —we do not have time—including tort law reforms in acts, including the Recreational Services Act 2002, the Professional Standards Act 2004 and changes to the Civil Liability Act 1936. Further improvements to these and other tort law reforms are expected in coming years as the full impact of tort law reform takes effect. What I can say with public liability is that average public liability premiums in South Australia fell by 7 per cent in 2006 and are some 25 per cent lower than what they were in 2003. In absolute terms, South Australia now has the second lowest average public liability premium of $660, after Tasmania with $514—that was in 2006. We have maintained this position since 2003. The average premium in South Australia in 2006 was 10 per cent below the national average of some $735.

In respect of professional indemnity, in South Australia average professional indemnity insurance premiums have fallen by 17 per cent in 2006 and by 16 per cent between 2003 and 2006. I can say to the house in absolute terms that the average professional indemnity premium in South Australia of $3,238 was 21 per cent lower than the national average premium of $4,110. I know this was contentious tort law reform. I know that people on all sides of the house had differing views on this, but it was a situation where state governments and the commonwealth government had to act. We acted appropriately with significant reform, and the benefits of those reforms are now quite evident.

PUBLIC SECTOR WAGES

Mr HAMILTON-SMITH (Waite—Leader of the Opposition) (14:57): My question is to the Premier. Why has the number of government funded fat cats paid between $100,000 and the highest figure of $640,000 grown from 782 (when his government came to office) to 3,044—up 45 per cent on last year's figure and up fourfold since Labor came to office? On 891 Radio on 8 February 2002, the member for Ramsay when leader of the opposition said:

> ...one of the things we are going to do is cut 50 fat cats...we've seen a massive explosion in the number of agencies where there's been a huge increase in exec. positions...In 96 there were 243 execs paid $100,000 or more...2001, there were 636 and it's rising fast...

It's sure rising fast—3,000!

Members interjecting:

The SPEAKER: Order!

Members interjecting:

The SPEAKER: Order!

The Hon. K.O. FOLEY (Port Adelaide—Deputy Premier, Treasurer, Minister for Industry and Trade, Minister for Federal/State Relations) (14:59): Sir, you know that some days when you come to work you are going to have a fun day, and I am having one of them. You are right; salaries have been rising over the past six years—that is called wage inflation. A couple of things—

Members interjecting:

The SPEAKER: Order!

The Hon. K.O. FOLEY: Hang on, what a public servant was earning six years ago compared to what they are earning today is a very important point. From the start, I say that that $100,000 includes salary and superannuation.

Mr Hamilton-Smith interjecting:

The Hon. K.O. FOLEY: Well, it could be a big difference.

Members interjecting:

The SPEAKER: Order!

The Hon. K.O. FOLEY: I am just making the point that a $100,000 headline actually includes a superannuation component, so their salary could be well under. I just say that as a fact. Let us have a look at this. In 2002 a state member of parliament earned $93,000 as their base salary. It goes quiet now! By 2007, a base salary for an MP is $125,060. The leader is saying, 'It's good enough for my base salary to go over $100,000 but no-one else's.' What a hypocrite!

The SPEAKER: Order! The Deputy Premier will withdraw the word 'hypocrite'.

The Hon. K.O. FOLEY: I apologise, sir. The word 'hypocrite' is unparliamentary. I unreservedly withdraw. The Leader of the Opposition is saying, 'It's okay for my base salary to go from $93,600 six years ago to $125,000 today, but it's not okay for a police officer, a primary school teacher or a nurse.'

Ms Chapman interjecting:

The Hon. K.O. FOLEY: Well, the deputy leader says, 'They don't get paid that.'

Members interjecting:

The SPEAKER: Order!

The Hon. K.O. FOLEY: In 2002, 149 education staff earned more than $100,000. By 2007 the number was 605. Do you know what I am told, sir? Most of these people are principals of our schools.

Ms Chapman: But they don't teach in the classroom.

The Hon. K.O. FOLEY: The deputy leader just said that they are not teachers in the classroom. Under the interpretation of the Leader of the Opposition and the deputy leader, a school principal is a fat cat.

Members interjecting:

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

Mr PENGILLY: The Treasurer is clearly debating the issue.

The SPEAKER: I do not think he is.

Members interjecting:

The SPEAKER: Order! In any case, if he was, he was merely responding to an interjection from the Deputy Leader of the Opposition. I suggest that members on my left do not interject. The Deputy Premier.

The Hon. K.O. FOLEY: I am sure that the Minister for Education and Children's Services will be quicker than me on this one. However, we will get the message out that the opposition considers primary and secondary school principals to be fat cats—not deserving of their salary. But do you know who else has got a big increase? South Australian police officers.

Members interjecting:

The Hon. K.O. FOLEY: This is very important, so listen to this. In 2002, 20 police officers were on salaries exceeding $100,000. In 2007, 434 police officers in uniform are earning more than $100,000. They are police commanders, police chief superintendents and superintendents. All these officers were earning under $100,000 back in 2002. I have identified school principals and the men and women in uniform protecting our state who are now classified by the opposition as fat cats. I will make sure all those officers in fine uniform know that they do not deserve that salary; that they are fat cats; that school principals are fat cats. Not only have you demeaned the responsibilities and the important tasks of many public servants but you are now demeaning the role of our police and our principals. But you are quite happy to get an increase in your base salary. Who really is the fat cat?

Members interjecting:

The SPEAKER: Order!

Mr Koutsantonis interjecting:

The SPEAKER: Order! The member for West Torrens will come to order.

Mr Koutsantonis interjecting:

The SPEAKER: The member for West Torrens!

Members interjecting:

The SPEAKER: Order! I was calling the member for West Torrens to order. I was not giving him the call.

Members interjecting:

The SPEAKER: Order! I am on my feet. I expect the house to come to order when I am on my feet. The member for Norwood.

TOUR DOWN UNDER

Ms CICCARELLO (Norwood) (15:04): Will the Premier outline the next steps following the decision to make the Tour Down Under the first Pro Tour cycling race outside Europe?

The Hon. M.D. RANN (Ramsay—Premier, Minister for Economic Development, Minister for Social Inclusion, Minister for the Arts, Minister for Sustainability and Climate Change) (15:05): I want to pay tribute to Vini Ciccarello, the member for Norwood, who, probably more than any other member of parliament in this state's history, has put the bicycle on the front line of political debate. The member for Norwood has done for bicycles what Don Dunstan did for pink shorts. I have to say, also, that the member for Mawson (who is not here with us today) and the member for Norwood have been two of the great protagonists supporting the Minister for Tourism in getting Pro Tour status for the Tour Down Under.

Late on Thursday 27 September (South Australian time), while I was attending the Silverchair and Powderfinger concert, it was announced in Stuttgart, Germany, that South Australia's own Tour Down Under would become the first Pro Tour cycling race outside Europe—a year quicker than planned. Members will recall the scenario earlier in the year when we were up against China and California. Never has the Pro Tour been conducted outside Europe. The President of the Union Cycliste Internationale (UCI), Mr Pat McQuaid—a French-speaking Irishman—announced that the Pro Tour series would kick off in South Australia in January 2008—a year earlier than that for which we had originally been bidding. In making the announcement in Stuttgart, Germany, Pat McQuaid said:

> This is a just reward for an event going into its 10th year that gets better and better each year, increased media attention in Europe and is a testament to the sport of cycling...I am personally pleased as this is working towards the globalisation of the sport, because this will be the first time a Pro Tour event will be held outside Europe.

He said other things, as well, but, obviously, I am far too modest to read them into *Hansard*. The news is a major victory for our state and the best present possible for the Tour Down Under's 10th birthday next year. We will be the first country outside Europe to host Pro Tour and our race will be the first on the Pro Tour calendar for next year. That is very important. It will not only be essential and compulsory for the world's best riders to be in Adelaide but also it will be the first Pro Tour of the season—which gives us that fantastic advantage. This is the highest ranking and highest honour that could be given to our Tour Down Under.

There could not be any bigger television advertising campaign for South Australia and, obviously, this would give us the type of publicity that money could not buy. It will beam South Australia through television screens around the world as the planet's best cyclists wind their way through some of our most stunning countryside. We know that we have a huge task to deliver a year ahead of time and work has already started in earnest under the direction of race director, Mike Turtur, and his team. While there is much work to be done, we are confident that we can deliver a Pro Tour race in less than 100 days, making us part of this historic milestone in world cycling.

A South Australian Tour Down Under contingent—and this is the breaking news I know members are waiting for—is in Italy this week at Lake Como (where George Clooney lives). Unfortunately, I am unable to be there this week for further talks with cycling's world governing body UCI. EventsSA's Leanne Grantham and race director Mike Turtur will meet with the UCI's Pro Tour licensing commission in Italy in the next day or two to finalise the logistics and the finer details for the 2008 event. The meetings present the opportunity for organisers and team owners to prepare for the best race possible in January 2008. I am told that team itineraries will be high on our agenda, as well as the travel, accommodation and meal arrangements. The trip coincides with the last cycling race of the UCI cycling season and the UCI Pro Tour gala, where the UCI annual cycling awards are presented. South Australia has been asked to supply vision of our event to be

screened at the UCI end of season function, the first of many overseas promotions of our race and our state. This trip also provides an opportunity to explore cross promotional marketing ideas with other UCI Pro Tour event organisers, increasing our ability to potential event visitors in our key international markets.

I want to make special mention of the Minister for Tourism, whose leadership in winning the Pro Tour has been critical—in fact, she even conducted at least some of the negotiations in French, I am reliably told, including some parts of her negotiations with Pat McQuaid, who seemed confused, given that he is an English-speaking Irishman. I am also very pleased with the great work of Mike Turtur, who is the inspiration for this event, and I have certainly been pleased to have discussions with Jean-Marie Leblanc in Paris and also with Pat McQuaid in London in May. This has been a great joint effort to help secure what I think will be one of the great wins for South Australia. This is the ultimate reward for a state that has made itself the cycling capital of Australia—and, indeed, the Southern Hemisphere—by truly embracing the sport and turning on a race that is second to none.

AUDITOR-GENERAL'S REPORT

Mr GRIFFITHS (Goyder) (15:11): Is the Treasurer concerned that the unbudgeted growth in employee expenses may threaten the state's fiscal position? The Treasurer's 2007-08 budget is based upon employee expenses growing, in real terms, by only 1 per cent, but the Auditor-General's Report (part C, page 33) observes that, in the four years to the 2006-07 year, employee expenses grew by an average of 7.9 per cent per year. The Auditor-General further observes that employee expenses now comprise $5.4 billion, representing the highest portion of government expenses at 46 per cent, with estimated increases of 5.4 per cent to come in 2007-08 and 2.8 per cent per year to 2010-11. Standard & Poor's, on ABC Radio on 6 June 2007, identified wage negotiations as a pressure point on the state's AAA credit rating.

The Hon. K.O. FOLEY (Port Adelaide—Deputy Premier, Treasurer, Minister for Industry and Trade, Minister for Federal/State Relations) (15:12): A very good question! In fact, we have a whole chapter in one of our budget papers (I think, again, Budget Paper 4), where we highlight, and are upfront about it, what are the ever-present risks to the budget, and wage pressures are clearly an ever-present risk. We have a certain allocation in our provisioning in the budget papers for wages, and that figure is reviewed consistently. We are yet to see it in a way that I fear (I have to be honest) because, clearly, with the skills shortage that is engulfing the nation, as we have this incredibly strong economy, at some point, wages pressure will be very difficult to control at the Public Service level. Let us take some practical examples—Roxby Downs. Let us say that we pay a uniformed police officer $55,000 or $60,000—

The Hon. I.F. Evans interjecting:

The Hon. K.O. FOLEY: Yes, the superintendent would be paid in excess of $100,000. But let us say a uniformed officer at $60,000 a year. If the mine is offering $100,000, that will be tempting to a fit, young (probably male) police officer. Let us take the example of a nurse in the Roxby Downs Hospital, to whom we may pay $60,000. There is a big demand for women to undertake a number of tasks at Olympic Dam. One of the tasks, I was advised a couple of months ago, is that they think a lot of the drivers they will get for the biggest mining trucks in the world will be women, because they drive at about 14 km/h; you cannot get lost—

Members interjecting:

The Hon. K.O. FOLEY: That was a joke—because they are safer drivers.

Members interjecting:

The Hon. K.O. FOLEY: Oh, have a laugh—got to have a laugh occasionally! They have a much better temperament than males, that they can handle driving at 14 km/h, they are better drivers and more patient, and those drivers could well be women.

Members interjecting:

The SPEAKER: Order!

The Hon. K.O. FOLEY: The good thing is that I know that my good friend Michael Owen will cut me some slack on that and not print that one. But the truth is that the public sector is increasingly coming under pressure on wages, and the Reserve Bank of Australia has already said publicly that the CPI is at the top end of the band, the 2 to 3 per cent band, and that is to a large extent being driven by the strong economy that is driving wages pressure. Unless the shadow

minister is saying that we should put public servants on AWAs—and maybe he is saying that, and maybe we should put them on WorkChoices, is that your answer? Is that the answer of the opposition—AWAs?

Members interjecting:

The Hon. K.O. FOLEY: Doesn't know.

Members interjecting:

The SPEAKER: Order!

The Hon. K.O. FOLEY: Again a revelation from the opposition that they are considering AWAs for the public sector.

Mr GRIFFITHS: Mr Speaker, on a point of order: clearly my question was about a completely different issue. He is misleading the house.

Members interjecting:

The SPEAKER: Order! Sorry, member for Goyder, I did not hear the—

The Hon. K.O. FOLEY: Sir, the member just said that I misled the house. I ask that he withdraw that or move a substantive motion.

Members interjecting:

The SPEAKER: Order! What is the member for Goyder's point of order?

Mr GRIFFITHS: Sir, my apologies. He is not misleading the house; he is debating the issue. My question does not refer to AWAs at all; it refers to the AAA credit rating.

Members interjecting:

The SPEAKER: Order! I uphold the point of order. The Deputy Premier will answer the substance of the question.

The Hon. K.O. FOLEY: We now have the revelation that the opposition would consider AWAs for the Public Service.

Members interjecting:

The SPEAKER: Order! The Deputy Premier will return to the substance of the question.

The Hon. K.O. FOLEY: Wages pressure puts a lot of pressure on the budget, absolutely, but I am confident, very confident, that we can accommodate fair wage outcomes and maintain the very strong operating surpluses and the very strong budget position and the state's AAA credit rating.

SA WATER CAPITAL WORKS

Mr WILLIAMS (MacKillop) (15:16): My question is to the Treasurer.

Members interjecting:

The SPEAKER: Order!

Mr Koutsantonis interjecting:

Mr WILLIAMS: You ought to read his budget, Tom. You might learn something. Treasurer, why has the government stripped $1.6 billion out of SA Water since it came to office in 2002, and has this put at risk SA Water's capital works programs? The Auditor-General in his report tabled in the house yesterday includes the following observation, an observation also noted in previous reports:

> For the corporation [SA Water] to maintain or increase the level of capital expenditure it will have to increase its level of borrowings. The corporation's ability to generate cash from its operations is not sufficient to fund its payment commitments to the government and maintain its current level of capital works.

The Hon. K.A. MAYWALD (Chaffey—Minister for the River Murray, Minister for Water Security, Minister for Regional Development, Minister for Small Business, Minister Assisting the Minister for Industry and Trade) (15:17): In response to that question, the Auditor-General's Report for 2007 does comment, on page 1270, regarding the sufficiency of the corporation's net cash inflows in covering both the corporation's investing activities and dividend payments to government. SA Water operates in line with a financial ownership framework, that has been

approved by cabinet in March 2005. The framework was developed by the Department of Treasury and Finance and benchmarked against other similar water utilities. The framework's dividend policy requires SA Water to distribute to government 95 per cent of profit after tax. The dividend distribution is only made after deducting from revenues the operating expenditure necessary to maintain assets and manage the business. This includes funds to service any borrowings and to meet taxation obligations. Based on the forward estimates agreed with government, this approach enables SA Water to finance around 80 per cent of its capital investment program and limit borrowings to around 20 per cent of the capital program.

Mr Williams interjecting:

The Hon. K.A. MAYWALD: Yes, limit borrowings to around 20 per cent of the capital program. The government has set a borrowing target for the corporation with a debt to asset, or gearing, ratio from 15 to 25 per cent, which is extremely modest. Overall the corporation's actual results and the forward budget estimates for 2007-08 to 2010-11 show that the current debt to asset ratio of around 18 to 19 per cent will be maintained. This is acknowledged by the Auditor-General. However, the Auditor-General does not distinguish between investing to maintain the corporation's current asset base, which is logically covered by the revenue generated by current assets each year, and the need for SA Water to invest in new assets to cater for growth. New assets need to be funded upfront by the corporation, with revenues to recoup the cost of these assets only coming on stream once they are in place. SA Water's borrowings are a vital element of underwriting economic growth, but there will always be a lag between the initial investment by SA Water and the resulting revenue stream. In addition, the capacity of SA Water to service the current level of debt is demonstrated by the interest to cover ratio, which is how many times profit covers interest. This ratio remains very sound.

COMPANION CARD

Mr HANNA (Mitchell) (15:21): Why has the Minister for Disability let down people with disabilities and their carers by failing to introduce a companion card scheme in South Australia? The Companion Card scheme, which has operated in other states for years, provides discounts for carers of people with disabilities. Constituents of mine received correspondence from the minister in 2005 indicating that the government would bring it in here in 2006, and then correspondence in 2006 and 2007 indicating that it would come in this year. My constituents—a gentleman in a wheelchair and his wife—are not pleased that Victorians in similar circumstances attending the footy in Adelaide pay less than they do, thanks to their Companion Card.

The Hon. J.W. WEATHERILL (Cheltenham—Minister for Families and Communities, Minister for Aboriginal Affairs and Reconciliation, Minister for Housing, Minister for Ageing, Minister for Disability, Minister Assisting the Premier in Cabinet Business and Public Sector Management) (15:22): An announcement will be imminent about the launch of a companion card—

Mr Hanna: Now is a good time.

The Hon. J.W. WEATHERILL: You will get an invitation to the event. In fact, I can announce that we are planning to launch the Companion Card in, I think, early December, and I will make sure that the honourable member has an invitation. We have had to revise the initial budget on what this would cost in discussions with ACROD (now called National Disability Services), which is the non-government organisation we had originally intended to administer this scheme. Instead of the additional $230,000 it will now cost $370,000—which we have found and will provide to it.

We have also been negotiating with Companion Card Victoria to borrow some of its intellectual property to assist us in setting up this system, and NDSSA has agreed to manage the marketing phase for the implementation of this program over the next three years. I think early December is the target date, and as soon as those arrangements are finalised we will happily invite all honourable members.

MARJORIE JACKSON-NELSON HOSPITAL

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (15:24): My question is to the Treasurer. From where is the extra funding coming to clean up the railyards to accommodate the proposed new central hospital? In its current transport budget, the government has provided $157 million for moving the railyards and cleaning up the site, but the opposition has been advised that remedial costs for the site at City West would be in the vicinity of $748 million for even a low level clean-up; for a medium level clean-up it would up to $1.1 billion.

The Hon. J.D. HILL (Kaurna—Minister for Health, Minister for the Southern Suburbs, Minister Assisting the Premier in the Arts) (15:25): I am very pleased to answer this question—in fact, I answered a similar question asked by one of the members opposite last night during debate on the site contamination bill, so I am happy to provide that same information again to the house.

The deputy leader does not source the information upon which she is relying, but I take it that she is referring to a television report on *Today Tonight* which speculated that the cost of remediation of the site was $700 million or more. That is total speculation based on no science whatsoever. I asked my department to have a look at their figures and they could make neither head nor tail of the figures that were provided on that program. I also would point out to the house that the program itself did not ask me for any comment in relation to those figures; but why would they want the facts to get in the way of a good story?

Just in relation to the site, the program said it was the most contaminated site in Adelaide. I think they were actually referring to another site, but it is a highly contaminated site. There is no doubt about that, and it does need to be cleaned up. I would say to the Deputy Leader of the Opposition that she should be a bit careful about asking these kinds of questions because her leader, the man sitting next to her, has advocated that in fact we should not build a hospital on that site, we should have an entertainment complex on that site. So, if you were going to put an entertainment complex on the site you would still have to remediate the site. The site does need remediating, whether or not we were to build a hospital or anything else. In fact, there is a hydrocarbon plume underneath the site which needs to be addressed as a matter of urgency.

This is the result of 100 years of history of activities on that site which did not comply with contemporary standards of behaviour. So, this is a legacy issue and it is a site which we need to clean up. The Department of Health, in collaboration with the Department for Transport, Energy and Infrastructure, is exploring the exact nature of the pollution, where it is and how it can be managed. I would point out to the house that the design of the hospital—the design that we have at the moment—would see at least three storeys being built underground for car parking, and the very construction of that car parking would involve the removal of a considerable amount of the pollution that is already at the site. So, that would, to a large extent, deal with the pollution issue. In addition to that, of course, there are other matters that would need to be addressed.

The government will announce the development of the hospital as part of the 2007-08 budget. As you know, it will replace the RAH. I am sorry, I am being asked to wind up. Let me say to the house that we are confident that in the budget provisions for the development of the hospital there is funding to remediate the site. The advice I have is that it will not come anywhere near the amount that was suggested by the television program.

GLENSIDE HOSPITAL REDEVELOPMENT

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (15:27): My question is to the Premier. Will the Premier assure the house that no trees will be removed from the Glenside Hospital grounds until he has provided the report on the proposed regulated and significant trees and the full community consultation on the government's concept plan for redevelopment has been completed? On 27 September, in response to a question as to how many trees would be removed, the Premier informed the house:

> So trees are dear to my heart. Therefore, I will get you a report on this matter sine die.

On 16 October, yesterday, a regulated tree was removed and fully chipped on site—it is a pile of chips already. The Burnside council has confirmed that this tree had not received approval for removal. A public meeting was held last week on the proposed redevelopment. A further meeting is scheduled for next Wednesday 23 October. Local residents have been assured that they will be fully consulted and their questions answered and that the process has only just begun.

The Hon. M.D. RANN (Ramsay—Premier, Minister for Economic Development, Minister for Social Inclusion, Minister for the Arts, Minister for Sustainability and Climate Change) (15:29): I am very proud of the fact that the greatest tree planting campaign in the history of this city was begun by this government—three million trees, in a series of interlinked urban forests. Currently, I think, we are getting close to the halfway mark. We are also now extending that to two and a half million trees along the River Murray. So, let me make this pledge today, my friends: we will ensure that there are more trees at Glenside at the end of the development than when we started.

GRIEVANCE DEBATE

HEALTH

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (15:30): I was interested to hear today the Treasurer's announcement of how successful tort law reform has been across Australia, and that, in particular for South Australia there is a reduction in overall of premiums. But he failed to tell the parliament that it is his government that has reaped an extraordinary windfall of stamp duty on very large insurance premiums. When it comes to health, and he complains about cost pressures on providing for South Australia's health system, let me remind the house of our requests for stamp duty relief on the very high insurance premiums that private hospitals have to pay in this state, particularly for obstetric services.

Why is this so important? It is important because, when the government is under a program of closing down obstetric services across this state, it must then provide some relief to the private hospitals at least by revenue on stamp duty. For Burnside Hospital, which still plays a major role in the provision of birthing services and obstetrics in this state, the stamp duty increase was some $20,000 extra per year on the premium for indemnity insurance for that hospital. When we asked for some relief, and that the government not just take the windfall of the extra stamp duty, the answer was a blatant no, that there would be no relief and that it would be across the board in relation to those premiums.

Here is what this government has done for obstetrics in the state. It has overseen what it described originally in 2004 as a 'suspension' of obstetric services at the Queen Elizabeth Hospital. We now find that, in fact, it is permanent, and that there is no reopening of the maternity wing at the Queen Elizabeth Hospital. So, we have an incredible irony for the western suburbs where you can have an abortion or pregnancy advice at the Queen Elizabeth Hospital, but you cannot have a baby. We then relocated the SHine facility for sexual health from my electorate in Kensington to Woodville, right near the Queen Elizabeth Hospital, to provide services, and yet, there is no opportunity for babies to be born there.

We have had the shocking revelations in the country where doctors are unable to practise obstetrics. They have even moved interstate, as was the case with the Cleve doctor. One mother drove to Whyalla to have her baby. She was not ready to have it, and she had to go to all the way back home—hours of driving—and come back again. We have heard stories of husbands or partners driving their wives to regional country locations to have babies in circumstances which are clearly unsafe—to be travelling those distances. We have heard of the transport demands on ambulance services in the country, and the like.

We had the announcement that there will no longer be an obstetric service at the Modbury Hospital. Some 700 babies a year are born at that hospital. The government announced that those patients can go off to the Lyell McEwin or to the Women's and Children's Hospital. The Lyell McEwin has an excellent birthing unit, as does Flinders Medical Centre, and that is to be commended. But it must be understood that the Women's and Children's Hospital has no extra budget, no extra cots and no extra beds to accommodate people from the Modbury region and the country regions which they currently service.

I was very interested to hear the member for Florey yesterday announce to the house her desire for the opening of a birthing unit at Modbury Hospital. I have no objection to that. I think that to have birthing units of a high standard is an excellent idea. But I think it is important that women have choice of obstetric services where they need that extra care and provision. It is quite interesting that we have seen recent media publicity about the demand at the Burnside War Memorial Hospital, to which I have already referred, which has taken 130 bookings for March 2008. As that is in my electorate, I have been familiar with the times when there has been such a waiting list at the Burnside Hospital to have a baby that women have to book in 10 months ahead, which means that you actually have to book in before you get pregnant.

Time expired.

ANDAMOOKA PRIMARY SCHOOL

Ms BREUER (Giles) (15:35): On 29 September, I was delighted to attend the Andamooka Primary School's 60th birthday celebration. It was a wonderful night—a beautiful Andamooka night, of course. I have had a long association with the town of Andamooka and with the primary school, so I was very pleased to attend. I was at the opening of the original school library building a couple of years ago, which, unfortunately, is no longer there. The history of the school is that it was

established in 1947 and, at that time, it was a simple wooden hut, with one teacher and 11 children. Later on, the community of Andamooka grew and it grew to quite a large school for the region in the 1970s and 1980s—of course, this was prior to Roxby Downs. At present, the school is a community-based primary school. In 2006, we had four devastating fires which burnt down most of the original school, all the teaching and administration buildings on the site.

However, I have to recognise the resilience and the spirit of the community. The staff, the local community, the parents and the students worked together, with support from the Department of Education and Children's Services, and maintained a program of learning and wellbeing for the staff and students at the school. After the final fire, the children attended the Roxby Area School for some months. During that time, a joint community and DECS decision was made to develop the school into an early year centre, and planning for that began last year. The school is still in a transitional phase, but plans have been well developed and tenders have been called for the new early years centre, and that should be completed by the end of this year.

A parenting program attached to the child-parent centre has also been established since the fires at the school. This program has been delivered through partnerships with Roxby Health Services and BHP Billiton. Other programs include a scrapbooking group for parents, a weekly toddler story time, an early years literacy program and a playgroup. School-wide baseline testing of all students has been done in literacy and numeracy, and all children at Andamooka Primary School have an individual education plan which has been developed in consultation with the parents. Another thing which arose out of the fires was a grounds revitalisation program. It is linked to a children's garden and a whole school integrated curriculum program for students.

I am looking forward to the results of this because it will include a new sports court, a pool recreation area, an adventure playground, a preschool playground and a desert garden and propagating centre. There have been many challenges for the Andamooka school over the years, from those harsh early days when there were no blackboards and only two books to the challenges faced by the school in that dreadful year last year. However, the community and the school have always pulled together. It now has 22 primary school children and a wonderful principal, Angela Turner, who has been an inspiration to that community through its troubled times. I do have to put in a good word for the school. One issue about which I am a little sad is the fact that year 6 and 7 students no longer attend the Andamooka Primary School, they now go to Roxby.

Lots of discussion has occurred about this issue. The reasoning is that it is believed that they are better off attending the Roxby school because they can mix with other children. I have to say that I feel for the community and I have had a lot of pressure from the community about this. They would like to get years 6 and 7 back to their school. I certainly hope that the minister will take heed of pleas that are on their way to her from a number of year 5 students who have to move next year and who want to stay in the area. The other thing to which I pay tribute is the completion of the Myall Place urban regeneration project in Whyalla in which I participated last week. The Housing Trust built its first homes in Whyalla in 1941, in fact they were the first country trust homes in the state. Myall Place was a project approved by this government and named after the western myall trees in our area, which is the main vegetation in the Whyalla area. It is a fine example of our investment in regional South Australia.

This project consists of a $1.6 million investment, and certainly it has paid off. Land sales have meant the construction of more than 100 new houses and money to renovate another 35. The whole project was instrumental, I think, in the housing boom that is happening in Whyalla. We now have a number of other private developers in the area building houses. The initial sale price for blocks of land in this project was $15,000. Similar allotments are now selling for more than $50,000, which reflects the prosperity and the great value this project has added to our community and which has spread out into the rest of the housing industry in Whyalla.

NATIONAL RIDE TO WORK DAY

Dr McFETRIDGE (Morphett) (15:41): Today is National Ride to Work Day. This morning I joined more than 1,000 cyclists in Victoria Square, along with the member for Norwood, the Hon. Mark Parnell and the Lord Mayor, Michael Harbison. It was great to see more than the estimated 1,000 cyclists there this morning for breakfast; and we got onto the ABC to have a chat about some of the things we are doing for cycling in South Australia. I say 'we' because it is something that both sides of this house have pushed. I see that the government is making more announcements about not only green cycle paths but also a state black spot program for cyclists.

In South Australia last year (2006) more bikes were sold than cars. It is a fact of life that Adelaide is the flattest capital city in Australia. It is perfect for cycling as it is perfect for trams. I

hope to see the green cycle path completed along the Glenelg tramway in the not too distant future. The Rann Labor government has put money into this. The green cycle path project is for shared walking and cycling paths alongside existing railways, or in our case the tramway. Obviously there will be some complications at the Goodwood flyover and the flyover at South Road we are about to get, but that can always be overcome with a bit of engineering skill. However, getting people out on their bikes is good for tourism, as we heard today, with the Tour Down Under coming here. I am looking forward to seeing that back down the Bay again next year. It is a fantastic event. We had more than 70,000 people there the last time. Cycling is good for your health, good for your families and good for tourism in South Australia.

Ms Ciccarello: And for the environment.

Dr McFETRIDGE: And for the environment, as the member for Norwood reminds me and as the Hon. Mark Parnell pointed out this morning. It is fantastic. It is a very healthy pastime. I do not ride my bike to Parliament House at the moment. Once the green cycle path along the tramway is completed I will do that. I do ride quite often from my home at Somerton Park to my electorate office at Glenelg. Certainly my wife and I frequently ride along the coastal way to both Henley Beach and Kingston Park for a coffee and a bit of exercise on the weekends. Cycling is an increasing part of transport and it is becoming more accepted as a way of getting people about their daily tasks. I encourage the government to keep spending on developing the bicycle networks across Adelaide's metropolitan area, as well as the Heysen and Riesling trails—let us not forget our rural and regional areas.

As I said, Adelaide is the perfect city for bikes and trams because it is so flat. I will just mention the new tram extension to North Adelaide. I am on the record saying that I support that. I think it is fantastic. We need more. I think the priority is wrong, but that is another issue and I will not talk about that today. Can I just say personally and on behalf of the number of people who have been working on the project how disappointed I was on Monday. I caught the tram in early. I wanted to go home on the tram about 2.30. I went over to catch it but there was no tram. The system had broken down. They said it was a teething problem, but that sort of problem should be sorted out. I am reliably informed that what you see is all brand new, but a lot of the electrics are more than 50 years old. Now, if that is the case, I urge the government to do as much as it can to upgrade that, because I want people in South Australia to be proud of this tram.

I want them to be proud of the light rail network so that we get more. I said to the Premier on Monday night at a Landcare function at Glenelg that I want the trams to go to Norwood, North Adelaide and all over South Australia. Unfortunately today, though, I went to go back to my office this morning after the bike ride. I thought that I would whiz back down to my office on the tram. I went over and there was the tram shuttle down to South Terrace. It had a big blue sign across the front, 'Tram Shuttle'. I went over there, pushed the button on the side of the tram but the doors did not open. I pushed it again and the doors did not open. Other people pushed the button but the doors did not open. The tram just left. I do not know what is going on there. We need to work out these so-called teething problems. They should be sorted out by now The tram is a good addition to South Australia and Adelaide. The priorities can be argued about, but I look forward to there being no more teething problems so that the people of South Australia can get the value for money they deserve because, by hell, they paid for this one.

DENTAL HEALTH

Ms CICCARELLO (Norwood) (15:45): Today I want to talk about one of the big issues in my electorate—and, no doubt, many other electorates—namely, dental health. Today 650,000 Australians are on public dental health waiting lists around the country. In my electorate 957 residents are on waiting lists, and the clinics in my electorate have 2,362 South Australians waiting for an average period of 22.9 months for dental treatment. These are unacceptable figures and can be laid squarely at the feet of the Howard government because it was the Howard government which in 1996 scrapped Labor's commonwealth dental health program, ripping $100 million per year from public dental health services and $1.1 billion over its 11 years in office. This was a cruel and heartless move—one which the government justified in its 1996-97 budget speech by saying 'as waiting times for public health dental services have now been reduced funding for the commonwealth dental program will cease'.

In other words, the federal government acknowledged the problem, acknowledged the work of the Keating government and acknowledged the great work that the commonwealth dental program was doing and then scrapped it. It does not make sense to me. When the Howard government faces any questions on why it abolished this program it resorts to its tried and tested

strategy of passing the buck and saying that the states have exclusive responsibility for dental health. I wish the Prime Minister and his cabinet would read the Constitution, in particular section 51(xxiiiA), which clearly gives the commonwealth the responsibility.

In any event Labor is not interested in the blame game and, as a result, state and territory governments have not shirked their responsibility towards public dental care. State and territory governments have more than doubled their investment in public dental care over the past decade from $205 million in 1995-96 to $503 million in 2004-05. In South Australia we have invested an extra $12 million over four years to try to cut the waiting list. It is paying off. We have reduced the waiting list for restorative dental care from 26 months in 2006 to 23 months in 2007; and we have set a target of 18 months for the coming year. However, we still need help from the commonwealth government. A commonwealth government—with all its ballyhoo surpluses and bragging of responsible economic management—simply sits on its hands and refuses to assist the hundreds of thousands of Australians who are stuck on long waiting lists around the country.

Let us take a look at what the Howard government has done during its 11 years in office for public dental health care. In its first year it scrapped the commonwealth dental health program. It then did nothing for eight years. In 2004 it was responsible for a program that can only best be described as a complete and utter failure—a program which made dental care available through Medicare but which imposed such complex and restrictive eligibility criteria, high out-of-pocket-costs and complex GP referral processes as to render it almost completely inaccessible and unworkable. Let us look at the figures.

Over the past three years the program has helped only 7,000 people across the country, including a pitiful 370 in South Australia, and spent only $1.8 million of its allocated $15 million. Yet what do they do? Faced with this train wreck of a public health policy, they take the old scheme with the same eligibility criteria and the same complex referral processes, add some extra Medicare items, throw hundreds of millions of dollars into it and wrap it up with election ribbon; and then, outrageously, as they did in this year's budget, say that this new scheme will attract 200,000 people. When the old scheme attracted 7,000 people over three years and the eligibility criteria have not changed, how do they expect to suddenly attract 30 times the number of people? In short, it will not. It will not help any of the people currently on the waiting lists.

Unlike the Howard government, federal Labor has a plan. Unlike the Howard government, federal Labor has acknowledged its responsibility in this area. Federal Labor will bring back the commonwealth dental health program. Federal Labor will fund up to 1 million additional dental consultations for Australians. Federal Labor will stop playing the blame game and work with the states and territories to deliver the best dental health care possible to those Australians who need it. Perhaps if the Howard government had spent some of the $2 billion it has wasted on advertising and propaganda over the last decade on public dental health this would not be the No. 1 issue in my electorate; and 650,000 Australians would be receiving the dental health care they deserve. I commend our Minister for Health for what he has done to reduce the waiting lists for those people who have been suffering for a long time.

GLENSIDE HOSPITAL REDEVELOPMENT

Mr PISONI (Unley) (15:50): On Thursday 3 October, I attended a so-called 'listening event' held by the state government at the Burnside Town Hall in relation to the proposed redevelopment of a large-scale sell-off of open space to developers at the Glenside Hospital site. Madam Speaker, you will note that, with the recent electoral district redistribution, Glenside will fall within my seat of Unley in the 2010 state election. Unley is the most densely populated electorate in South Australia, having an acute and well recognised lack of open space. Carving up Glenside's open space for high density housing and shops would be totally inappropriate.

Although the event was not widely advertised, over 200 very concerned locals and other interested parties attended. In fact, government advertisements for the meeting failed to mention Glenside Hospital or the intention to sell off nearly half the site. Also, it was a 6 p.m. starting time on a week night, when the members of most working families are preparing meals for their children or still making their way home. Obviously, the minister and departmental advisers were hoping for a small turnout. The general mood of those attending was probably best summed up by a local Burnside councillor, who said after the meeting: 'Clearly, the old adage of never stand between a pig and its trough still applies. We appear to have a government run by property speculators and developers.'

There has been an alarming lack of community consultation with respect to the entire Glenside development proposal. Certainly, the 'listening event' was more of an exercise in

indoctrination than information. Along with local residents, the member for Bragg, the Burnside council and I have effectively been left out of the information loop, despite many questions, in particular, from the responsible planning authority, the City of Burnside. The government is often dismissive of the leafy eastern suburbs, although many Labor MPs are more comfortable living there than in their own electorates. There is no doubt that the Rann government feels that the residents of the eastern suburbs can be ignored once they have paid their stamp duty and land and payroll taxes. The long overdue 'listening' process seems a token gesture, obviously, in the hope that people will be so overawed by the glossy flyers and slick master plan documents that they feel it is a deal and just roll over.

Notably, no Rann government members attended the 'listening event'. But, of course, there are none so deaf as those who will not hear! Apart from unease relating to mental health care arrangements at the site, Rann government members would also have heard, had they shown up, a vocal crowd expressing their disquiet about the sale of 42 per cent of the site to developers; the loss of up to 75 per cent of the total open space; the axing of 134 (or 45 per cent) of the trees on the site, many of them significant trees with circumferences greater than two metres; the destruction of habitat, including tree plantings dating back to the 1860s, which offer food and shelter for a huge variety of native birds, including black cockatoos and kookaburras; the protection of heritage buildings and possible destruction of a state heritage listed wall; and reduced public access to any remaining open space.

What residents are also alarmed about is medium to high density development. With current land costs in the area being about $1,000 a square metre, the highest bidding developer, needing to maximise profits, will want as high a density option as possible. The Rann government is promoting the plans as moving forward, with Commissioner David Cappo's social inclusion report. However, nowhere in the document did Monsignor Cappo recommend privatising open space at Glenside. The Rann government has dollar signs in its eyes; make no mistake. The South Australian state budget took 170 years to reach $8 billion, but only five years to reach the $12 billion it is now. I do not accept that it is necessary for Mike Rann to sell off irreplaceable inner suburban open space and heritage to fund mental health needs. After all, it was he who pledged no privatisations. Any large-scale sell-off of open space at Glenside needs to be adequately justified by the Rann government after a proper consultation process, not presented as a fait accompli.

HARTLEY ELECTORATE

Ms PORTOLESI (Hartley) (15:54): We all know in this place that community groups are the heart and soul of all our communities, and today I rise to acknowledge the hard work of three groups, in particular, from my electorate. Although all very different, these groups perform such an important function that I would like to pay tribute to them today. They are the Hectorville Parish Social Justice Team, the Campbelltown Residents and Ratepayers Association (about whom I have previously spoken in this place) and the Kensington Park RSL. They are all fantastic community groups, which I would like to acknowledge.

A couple of months ago I had the pleasure of meeting with the chairperson of the Hectorville Parish Social Justice Team, Mr Gerald Hinton, and I was so impressed by his dedication and his compassion. He talked to me about the work that this committed group of catholics undertake in the community, in particular with our newly arrived African communities. Can I just say on this point, and I do not wish to dwell on it, that I am completely appalled by the federal government's position on this and I would like to send a message to all of the African communities in my electorate that they are more than welcome in our community. They play an incredibly important part in our community. I am incredibly proud when I see them participating in our citizenship ceremonies, and we are a better community for having them in Australia.

But recently the group, in conjunction with the Church of the Annunciation, Hectorville, unveiled a plaque reminding parishioners of the fact that the land occupied by the church is traditionally that of the Kaurna people. The group is involved in advocating equal rights for indigenous Australians, as well as the disadvantaged and underprivileged. It supports initiatives, including the Australians for Native Title and Reconciliation campaign, NAIDOC Week activities, and the total ban and use of cluster bombs by world armies. I wholeheartedly support the group's work in promoting reconciliation. I congratulate them, particularly since we passed the 40th anniversary of the 1967 referendum on indigenous rights on 27 May this year.

I would also like to congratulate and acknowledge the fearless work undertaken by the Campbelltown Residents and Ratepayers Association, whom I have had the pleasure of getting to know over the last few years, and the work they undertake on behalf of the residents and

ratepayers in the City of Campbelltown. The group plays an extraordinarily important role as a scrutineer of the processes of local government, one that not too many people are terribly keen on taking up. In particular, I have had the pleasure of supporting the group's campaign for the retention of open space and their campaign more generally for more accountability in local government, something that I think the state government is taking up with vigour. There is also monitoring of rate rises, and so it goes on. They recently participated in the state government's independent review into local government elections, and I thank them for that. The group now celebrates their fifth anniversary, and I join with many other grateful members of the community in thanking them, in particular Marilyn Matthews and Cynthia Hood for their hard work and dedication. Well done!

Lastly, but of course not least, I would like to acknowledge the Kensington Park RSL—I live just around the corner from them in fact—on reaching its 60th year this year. In fact I spent a lunchtime with them just recently where we heard a fantastic presentation about the Battle of Passiondale, something that I was completely ignorant about; no longer anymore. I would like to pay particular homage to Murray Stock, the very elegant and charming president, and the secretary, Mr Craig Rossiter, who I think has been the secretary for more than 40 years. But over the past 60 years the group has had three RSL state presidents, two of whom have served the organisation nationally. I wish them well. I wish them happy birthday. They are all fantastic examples to all of us.

MARINE PARKS BILL

Received from the Legislative Council and read a first time.

PENOLA PULP MILL AUTHORISATION BILL

The Legislative Council agreed to the bill with the amendments indicated by the following schedule, to which amendments the Legislative Council desires the concurrence of the House of Assembly:

No. 1. Page 8, line 22 (schedule 1)—Delete '221-0-2011' and substitute:

221-0-2101

No. 2. Page 8, line 23 (schedule 1)—Delete '250-0-2101' and substitute:

250-0-4401 Rev B

No. 3. Page 8, line 25 (schedule 1)—Delete '441-0-2121' and substitute:

415-0-2121

No. 4. Page 11, after line 25 (schedule 1)—Insert:

(3) The minister must ensure that copies of a report provided to the minister in accordance with subclause (2) are tabled in both houses of parliament within 6 sitting days after the receipt of the report by the minister.

Consideration in committee.

The Hon. R.J. McEWEN: I move:

That the Legislative Council's amendments be agreed to.

In so moving, Madam Chair, I note in the gallery the presence of students from the Ardrossan Area School who would have listened to your earlier guidance and who would not have made the mistake I did, because they actually listen to their teachers. Equally, I can indicate to them that they have a very fine member in this house. It is lovely to have them with us.

The amendments are acceptable. One actually asks that, when a report is given to the minister in relation to dioxin emissions, that it be tabled in the house within six sitting days. In the interests of transparency, the government has no difficulty with that; it is just another addition to all the conditions already imposed on the developer and we are happy to accept it—it may or may not be necessary. The only point I need to make is that I think the select committee of the two houses of parliament, as a consequence of the work it has done, has actually set a model that should be adopted elsewhere in terms of the way to proceed with such significant developments. It is certainly a win for the environment, a win for the state and a win for the South-East because it says that resources grown in the South-East will be processed in the South-East at the highest possible standard. They will not be shipped overseas to be processed in circumstances beyond our control, and certainly at a much lower standard.

I think all those who have participated in the debate in the highest court of the land should compliment themselves in terms of what we have now done. We have said to a developer that the 'bar is set at pole-vaulting height' (to quote one of the members of the select committee); that if someone wants to build a pulp mill in this state we will not compromise the environment, that these are the standards that they must, by law, satisfy.

Mr WILLIAMS: I support and endorse the comments made by the minister, and in doing so I would like to make a couple of comments about the establishment of pulp mills. I strongly suspect that the successful campaign to stop the Wesleyvale pulp mill being built in Tasmania some 10 or 15 years ago has given a small group in our community, and groups in communities across Australia, some idea that pulp mills are intrinsically bad and should always be opposed. The reality is very far from that.

I certainly agree with the minister that the process that we have recently been through in coming to this position on this particular matter is a worthwhile one. I will not go into that again—I talked about that in an earlier contribution on the matter—but I do wish to acknowledge that both houses, and a whole range of members from different backgrounds representing different political parties and philosophies, have, by and large, supported this measure. We are now at the final hurdle. I received a phone call this morning from a very happy John Roache, the man behind the proposal and the man in my electorate who has been, for a long time now, working up this proposal. He told me that things are now full steam ahead; that they are going gang-busters and hope to start construction some time next year. I wished him every success with that. This will be a great development in my electorate, and the sooner it is up and running, processing the resource currently in the ground and growing in my electorate and in neighbouring electorates, as well as across the border in Victoria, the better.

I commend the amendments from the other place. Several of those amendments correct typos; the amendment of some consequence merely obliges the minister to table a report given to him, a report which is already an obligation on the proponent to give to the minister. The amendment further obliges the minister to table that in the house within six days of receiving it in, as the minister said, the interests of openness and accountability. The opposition supported the amendment in the other place and it supports the amendment here.

Motion carried

LEGAL PROFESSION BILL

In committee (resumed on motion).

(Continued from page 1081.)

Clauses 76 to 182 passed.

Clause 183.

Mrs REDMOND: I have picked that clause because it actually is the very first clause in the part dealing with the manner of legal practice, the rules for Australian legal practitioners and registered foreign lawyers. I am curious about what was in the minister's mind in terms of in what circumstances foreign lawyers would not be bound by the rules that apply to Australian registered legal practitioners.

The Hon. M.J. ATKINSON: The question is about Australian registered foreign lawyers who have that status because they are practising only foreign law. The default position, that is to say, if the bill becomes an act and comes into force and nothing further is done by the government about Australian registered foreign lawyers, they will be subject to the complaints and disciplinary regime, as other lawyers are. They will be subject to the professional conduct rules and to the rules about trust money. However, it is possible that their practice will be so remote from the concerns of the regulatory authorities that there is scope to exempt them, if that is thought necessary.

Mrs REDMOND: I do not want to delay the committee on this issue, but I am wondering whether the Attorney has any idea of what would comprise that sort of practice? I just have a concern about Australian registered foreign lawyers coming in, practising in this jurisdiction and there being any scope for them to be bound by other than the same rules as we who practise in this jurisdiction regularly. I do not know that we can take that any further.

Clause passed.

Clause 184 passed.

Clause 185.

Mr RAU: I have a question of the Attorney about division 3, which commences at clause 108 and goes through to 115, dealing with multidisciplinary partnerships. This seriously concerns me for a number of reasons, but I would just like to raise three. I realise some of these appear to be dealt with within the regulation-making powers already existing there.

The CHAIR: We are dealing with clause 185. Can you make your point relevant to clause 185?

Mr RAU: Yes, I will keep going. As I said, clause 185: the first question is the question of ethics and professional standards, where we have two groups who do not share the same ethical and professional standards coexisting, and the difficulty in making sure that those two different sets of rules and understandings are in some way accommodated without reducing the standard expected of legal practitioners. The second one is to bear in mind that, since the tort law reform legislation, we now no longer have joint and several liability in matters other than personal injuries. Therefore, it would be necessary for a potential claimant to sue each and every potential defendant. The complexities associated with that in a multidisciplinary practice may be considerable. Thirdly, there is the question of conflicts of interest and what I consider to be the nonsense of Chinese walls. Lastly, there is the question of adequate insurance. I think all those issues arise under the section that I am talking about.

The CHAIR: Attorney, is it possible for you to give a response within the meaning of clause 185?

Mr RAU: I wanted to express a concern about those matters. I trust that the regulations will enable the Attorney to address all of those matters comprehensively.

Clause 185 passed.

Clauses 186 to 237 passed.

Clause 238.

Mrs REDMOND: At this stage we have not filed although we have drawn up an amendment to this section. I anticipate that, in due course, we are likely to move in the other place to delete subsection (6) from this section. This is the statutory interest account. As I think I mentioned yesterday, every lawyer with a practising certificate and a trust account must do calculations and send a significant amount of the money that they hold in trust to the combined trust account where it is held. Clearly, that money cannot be used for any other purpose because it ultimately belongs to the clients whose money has been put into the trust account. Because it is combined and they can get good interest on it, that money earns interest, which is then paid into a separate account called the 'statutory interest account'. Subsection (6) seems to limit the amount. Once you have the statutory interest account it is then divided: five-eighths goes off to the Legal Services Commission, three-eighths goes to the guarantee fund. The guarantee fund is the fund from which defalcations can be repaid. This clause seems to limit the amount in that guarantee fund to effectively an amount equivalent to $7,500 per practitioner in the state. There is no apparent reason for that limit to be there, and I really question its purpose.

As it happens, I received a copy of a letter today. In it, the author, who is in fact writing to the Law Society, states:

> When the scheme was introduced in 1969, enthusiastically supported by both sides of politics, the then Attorney-General said, 'It could take from between five to 10 years before the guarantee fund builds up to the desired limits. This is one reason why a limit on the total size of claims in each case is required—

and we will come to that in due course.

> —but when the fund has reached its desired size, it will then be possible at a later stage to review the limit on claims.'

I will come back to that. Clearly, there was an expectation that there be a limit on claims. However, at the same time, when this was all put in place originally, we put a limit (which I think is artificially low) on the amount that is actually paid into the guarantee fund. That is where I think we are potentially going wrong. I indicate that we will in due course propose in all probability to remove that section so that there is not an artificial limit of saying, 'Well, we're just going to cap this guarantee fund.' There is more than enough money. I received this note during question time. The capital flowing into the combined trust account from the lawyers' general trust accounts in the 2006-07 year was $2,125,435, and the combined trust account balance this year was $52,933,159.

There is interest earned on that, obviously, and that interest has gone off in two different directions. There seems to be no reason why you would not say that there is no reason for having this incredibly low figure on the guarantee fund. There is absolutely no reason why, given that we have this money in the statutory interest account and if three-eighths is going to the guarantee fund, you would not then simply allow that to accumulate to a much more sensible level.

The Attorney has expressed to me the idea that the amendments that I am proposing (which we will come to a little later) in relation to payments from the guarantee fund would exhaust the guarantee fund and that that is why it is necessary to have the levy. We will come to that a little later also. The reality is that there would only be that need because of this clause artificially keeping the guarantee fund at an unnecessarily low figure. Even if you did not disrupt the proportion you pay to the Legal Services Commission and the guarantee fund, it is a fact that this then states that, once you get to that point of $7,500 per practitioner in the state, everything else has to go off to the Legal Services Commission or for some other purpose approved by the Attorney-General and society.

That is what creates an insufficient fund potentially, and there is no reason why we cannot simply allow that fund to grow bigger. What was set into the legislation in 1969 was never intended, according to this quote from the then attorney-general, to be the answer for all time. It was recognised at the time that these figures were in place for that time and for good reason, when you had very little money in the account. At the moment we have money in the account. We have put an artificially low limit on it—just historically that has come about. However, I indicate that, whilst I do not expect the Attorney to necessarily comment—he may wish to do so—we have had drawn an amendment to delete that clause and allow the guarantee fund to grow more appropriately in keeping with the 21st century.

Clause passed.

Clauses 239 to 269 passed.

Clause 270.

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

Page 139—

Line 5—Delete 'any' and substitute:

either

Line 7—Delete subparagraph (ii)

The government has learnt that it is common practice in refugee applications for the lawyer to agree to act on the basis that, if the application fails, there will be no charge, but if it succeeds, the lawyer will accept as full payment the costs awarded against the commonwealth. The government wishes this to remain possible. It is not concerned that this will apply to other applications under the Migration Act, apart from refugee applications.

Mrs REDMOND: I indicate that the opposition is content with that proposal.

Amendments carried; clause as amended passed.

Clause 271.

Mrs REDMOND: This involves the conditional costs agreements involving uplift fees. Again, the Attorney referred to it in his response to the second reading, but I do want to place on the record again my concern that, notwithstanding the provisions which will continue to apply in terms of people having a right to receive advice about likely costs and so on, the effect of this change to the uplift fees will be prejudicial to consumers compared to the current state of play in South Australia. The current state of play, of course, allows for what the Attorney referred to as double or nothing, but effectively it allows for you to take on a case on the basis of the payment of either nothing or just disbursements, but if you win, then you can charge up to double the Supreme Court rate. However, as I pointed out in my second reading contribution, this will allow a law firm which already charges four times the Supreme Court rate to enter into an agreement allowing them to charge (if they win) on a contingency basis up to five times the Supreme Court rate, or whatever their rate might be, up to 25 per cent in excess of what their normal fees would be. I do express my concern about the benefit of that clause in terms of legal consumers.

The Hon. M.J. ATKINSON: Cost agreements such as these have to be in writing and the principle of the bill is the client's informed consent.

Clause passed.

Clauses 272 to 300 passed.

Clause 301.

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

Page 155, after line 10—Insert:

(ga) the costs incurred by the society in carrying out its regulatory functions in respect of incorporated legal practices and multidisciplinary partnerships;

The Law Society will have new functions in regulating incorporated legal practices and multidisciplinary partnerships. The costs of carrying out these functions should come from the legal practitioners guarantee fund because the regulatory activity will largely consist of compliance audits. Provision in the bill dealing with the application of money in the guarantee fund is the same as the current section 57 of the Legal Practitioners Act, but did not contemplate these new business structures. Upon further consideration, it appeared that a specific provision is necessary to give the Law Society the money to carry out this important function.

Mrs REDMOND: I indicate that we have no problem with that proposal.

Amendment carried.

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

Page 155, after line 39—Insert:

(7) A court may not make an order requiring, or having the effect of requiring, the payment of costs from the guarantee fund.

This amendment is designed to ensure that a court cannot make a cost order directly against the legal practitioners guarantee fund. Elsewhere, the bill provides that the cost of an external intervener are recoverable from the law practice, with the rider that fees, costs and expenses not paid to the external intervener by the law practice are only then payable from the guarantee fund.

Mrs REDMOND: I indicate considerable disquiet about this proposal. It appears to me to be an attempt to avoid the consequences of the decision, first of all, of Justice Debelle in the Supreme Court, and subsequently the Full Court, in terms of costs and so on, but I have not had time to give it full consideration. At this stage, I will oppose the proposal. I will not be calling a division on it. However, I do indicate that it is being decided on very short notice on my part and that I will want to consider it further between the houses. Our position may change although I suspect that will be unlikely.

Amendment carried; clause as amended passed.

Clauses 302 to 312 passed.

Clause 313.

Mrs REDMOND: I move:

Page 161, line 10—

Delete 'all claims to which the notice relates is—'and substitute:

any particular claim to which the notice relates is 30 per cent.

This is one of the series of amendments the opposition is proposing in order to change the rules under which the guarantee fund currently operates. I will refer, again, to this letter from a former president of the Law Society to the Law Society. In the letter he speaks on behalf of himself and, I think, another former president. His letter states:

We remain gravely concerned at the plight of the victims of the misappropriations.

He goes on to talk about the various problems with the guarantee fund, and states:

We believe the guarantee fund provisions in the Legal Practitioners Act are outdated, often unworkable, often costly, often create unnecessary and unacceptable delay and frequently, as in this instance, aggravate rather than ameliorate financial distress.

He then goes on to point out that there are two main problems, and states:

Firstly, contrary to the position in some other states, here a victim of the defalcation is obliged to show there is no reasonable prospect of recovering the full amount of the loss. Effectively victims—often as in the Magarey

Farlam matter—litigate their claims at considerable expense, risk and emotional distress inevitably for months, more usually for years.

The second problem he highlights is as follows:

...the cap of 5 per cent on the fund's moneys limiting the maximum payment for a specified series of fiduciary or professional defaults may very well mean in this case that victims may only recover something less than one quarter of their loss unless their litigation is eventually successful. We suggest that many members—

meaning members of the Law Society—

practitioners in this state would not know (a) of the existence of the cap on payments imposed by regulation, not by the act itself; and (b) that when the scheme was introduced in 1969—

and that is the bit I quoted before—

it was recognised that basically it could take from five to 10 years before there was sufficient money there to meet the claims. No review of the limit on claims has occurred; rather, the excess interest from the combined trust account has been disbursed for other purposes.

He talks about a range of things in this particular thing and, indeed, at the end of the letter to the Director of the Law Society, he states:

Finally, without distracting from the main objective of submitting these resolutions—

that is a resolution that has been received by the Law Society—

we would urge the meeting to go further and support the amendments to the Legal Profession Bill 2007 proposed by Isobel Redmond, the shadow attorney-general. The main thrust of those amendments is to:

- remove the obligation on a victim of fraud to exhaust other remedies before claiming on the fund;
- lift the cap on payments to 30 per cent of the fund in respect of any claim; and
- provide in a transitional provision to enable claimants whose claims have not been finalised—

and, obviously, that includes the Magarey Farlam group—

under the existing act to take the benefit of the new provisions.

In essence, that is a reasonable summary of what my proposed amendments seek to do. I do not intend to call a division on everything, but I do expect that this proposed amendment will be lost in committee. I want to test the committee in relation to this issue simply because this is one of the key elements.

At the moment the clause provides that if a notice is published by the society, the maximum amount that may be applied towards satisfaction of all claims to which the notice relates is a certain amount, which, at the moment, is basically 5 per cent. We seek to change that 5 per cent in due course, but this first amendment simply seeks to make it clear that we do not want to lump everyone together, because what is happening with Magarey Farlam is that one of the arguments about how this will operate is to say that even though the Magarey Farlam defalcations occurred as a series of discrete events over a number of years before they were discovered in 2005, I think it was, until they were discovered, those events were going on.

However, the Law Society, on its interpretation of this legislation, is saying, 'Well, that is still one event and so all those claimants are restricted in total to the claim of 5 per cent,' and given that there is about $21 million in the fund that makes it about $1 million. They have lost $4.5 million, but that interpretation of the legislation means that they would recover from the guarantee fund only $1 million when, clearly, there is more than enough money in the guarantee fund to meet the claim in full. This is one of the key provisions which seeks to change that so it is clear that, instead of all claims to which the notice relates, we will now substitute the words 'any particular claim to which the notice relates' and increase the maximum from the 5 per cent at the moment to 30 per cent and put that not into regulation. We delete the reference to the regulation. We simply change the 5 per cent to 30 per cent and delete the reference to regulation. That is the meaning of this. It is probably the key to the proposed amendments that we are submitting.

As I said, when I have spoken to any number of legal practitioners over the last few weeks about this bill and about the situation with Magarey Farlam, they are largely unaware of these restrictions that currently inhibit the operation of the fund to provide a just and fair outcome for those who completely innocently have lost their money through a defalcation against a solicitor's trust account. As I said, I will test it with a division in due course if I am declared to be the loser of this, which I somehow suspect will happen in spite of the fact that there are more people voting for

it. We will put that amendment. Those are the reasons for it. I will not divide on any of the others but I will still go through them.

The Hon. M.J. ATKINSON: This amendment alters the provision and sets a cap on fund claims. At present the total of all claims arising from one default or a series of defaults is subject to a cap of 5 per cent of the balance of the fund at last audit. For example, if the fund holds $20 million the cap on the particular group of claims would be $1 million altogether The bill proposes a similar rule except that the cap applies only if the Law Society advertises that it does. This amendment would propose a different rule, that is, the cap per claim would be 30 per cent of the fund balance. Thus, if there were three claims, it would have the effect that any three claimants—

Mrs Redmond: It would be 10 times what it is at the moment.

The Hon. M.J. ATKINSON: Of course, if we robbed the LPEAC, the Legal Services Commission and Legal Aid generally, we could do any number of things. If we rob the taxpayer we could do more. If there were three claims by three individuals, then 90 per cent of the balance of the fund would be available to meet them, if there were three claims to the maximum. If there were more than three claims then the society would need to use its powers under clause 330 to make part payments, postpone payments or impose a levy.

Of course, we find that the member for Heysen—herself a legal practitioner—is also moving an amendment so that legal practitioners do not have to pay the levy. How convenient! Under the bill, as under the present act, there are many other calls on the guarantee fund besides claims arising from defaults. The fund is applied to meet the expenses of regulatory institutions, such as the conduct board, the tribunal and the Legal Practitioners Education and Admissions Council, all of which serve consumer protection functions. It is also used to support Legal Aid and public legal education. That has been the case for many years and the former Liberal government made no move in eight years to change it. This amendment will put the funding of those institutions and purposes substantially at risk and the government will support the general interest over the demagoguery and rabblerousing of the member for Heysen.

The committee divided on the amendment:

AYES (13)

Chapman, V.E.	Evans, I.F.	Goldsworthy, M.R.
Griffiths, S.P.	Hamilton-Smith, M.L.J.	Hanna, K.
Kerin, R.G.	Pederick, A.S.	Penfold, E.M.
Pengilly, M.	Redmond, I.M. (teller)	Venning, I.H.
Williams, M.R.		

NOES (27)

Atkinson, M.J. (teller)	Bedford, F.E.	Breuer, L.R.
Caica, P.	Ciccarello, V.	Foley, K.O.
Fox, C.C.	Geraghty, R.K.	Hill, J.D.
Kenyon, T.R.	Key, S.W.	Koutsantonis, T.
Lomax-Smith, J.D.	Maywald, K.A.	McEwen, R.J.
O'Brien, M.F.	Piccolo, T.	Portolesi, G.
Rankine, J.M.	Rann, M.D.	Rau, J.R.
Simmons, L.A.	Snelling, J.J.	Stevens, L.
Weatherill, J.W.	White, P.L.	Wright, M.J.

PAIRS (4)

McFetridge, D.	Conlon, P.F.
Gunn, G.M.	Bignell, L.W.

Majority of 14 for the noes.

Amendment thus negatived; clause passed.

Clauses 314 and 315 passed.

Clause 316.

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

Page 162—

Lines 6 and 7—Delete subclause (2)

Lines 16 and 17—Delete subclause (7)

These amendments bring the bill back into line with the national model when it comes to hardship payments. They effectively provide that the Law Society may, in its absolute discretion, make a hardship payment from the guarantee fund, even though the claimant is not entitled to recover from it because, in the opinion of the Law Society, he is likely to be paid from another source.

The government initially changed the model provisions because we thought that the second form of payment is not a payment of a claim, but prepayment of an amount expected to be recovered from somewhere else and, therefore, not a payment that the guarantee fund really ought to make. Instead, we opted to amend subtly the provision dealing with advance payments, which are possible where a claim on the guarantee fund is likely to be allowed, and provide that they can be made even if there is some prospect of recovery from another source. Bringing the bill back into line with the model provisions is a compromise position and will allow the Law Society to make a hardship payment (1) where a claim on the fund is likely to be allowed and also (2) at the absolute discretion of the society, where the payment is warranted owing to circumstances of hardship and the society is of the opinion that the person will be able to receive funds from another source entirely.

Mrs REDMOND: Whilst I may not have a problem with the essence of what is being put (and, again, these amendments have come up on very short notice), my concern with them is simply this. According to the information that was provided to me, clause 316 was a core non-uniform clause. Way back at the beginning of my comments on this bill (and it is a big bill; consisting of 515 clauses), it was explained that it had all come about because the Standing Committee of Attorneys-General had agreed to certain provisions to create this new model for national legal practice. What surprises me is that these amendments to this clause are being made to a clause that is identified, in the information that has been given to me, as core non-uniform; that is, the essence of the clause is central to the proposal that was come up with by the Standing Committee of Attorneys-General, but the wording of it can vary from state to state.

It surprises me for this reason: when my proposals about the changes to the guarantee fund were made public, the President of the Law Society wrote me a letter in which she was almost outraged that I had the temerity to suggest that I might want to change provisions that were, according to her, non-negotiable because they were core non-uniform. So, it puzzles me a little that the Attorney is now seeking to amend the provision in a way which disturbs something which, according to the Law Society, he had agreed was not going to be disturbed. In terms of the essence of it, I do not know that the deletion of subclause (7), for instance, makes any difference to the way one would read the act including the subsequent clause 323, so we will reserve our position on this. We will not oppose the proposed amendment at this stage but we will have a think about that and consider it between the houses.

The Hon. M.J. ATKINSON: I think the member for Heysen misunderstands. What we are doing is bringing it back to core non-uniform.

Mrs REDMOND: If that is the case, the information provided to me in the course of the briefing that I had was clearly not correct because it is identified in the 330-page email that was sent to me at 4.50 p.m. on the Friday before our last week of sitting as core non-uniform. I went through quite a lengthy process of figuring out which clauses were which and I have relied on that information. If the Attorney is saying that the information that was provided to me in the course of the briefing was incorrect, I am most disheartened to hear that.

Amendments carried; clause as amended passed.

Clause 317 and 318 passed.

Clause 319.

Mrs REDMOND: I move:

Page 163—

Lines 20 to 22—

Delete, from subclause (1), 'unless the Society considers that special circumstances exist warranting a reduction in the amount of costs or warranting a determination that no amount should be paid for costs'

Line 26—

After 'guarantee fund', in subclause (3), insert:

on a party and party basis

In deleting the words in my amendment to this clause, it reads as follows:

If the Society wholly or partly allows a claim, the Society must order payment of the claimant's reasonable costs involved in making and proving the claim.

It seemed to us that enough safeguards are there in the sense that the claim has to be wholly or partly allowed and that it can only be the reasonable legal costs; the claim must have been made and proven, and it seemed to us to be an unnecessary level of discretion to give to the Law Society to allow it to move away from that fundamental principle. So, we propose that those words at the end of that particular clause on the society's need to pay the reasonable costs as well as the actually money back to the claimant be deleted. After all, we are talking about people who have basically had their money taken from a solicitor's trust account. There should not be a safer place in the world to put your money.

They have had that money taken. It is to our mind just reasonable to say that not only do they get their money back, but also they get what reasonable costs they have incurred in getting it back. Hopefully, if our provisions ultimately get through, the costs will be a lot lower. Some people have already spent over $100,000 trying to get back their own money lost out of trust accounts. We are hoping that, with a bit of common sense, we will significantly and dramatically reduce the amount of costs that are used because, when we get to clause 321, the idea of being able to get the money from the fund in the first instance, then that will make the costs likely to be incurred by claimants so much smaller but, as I said, on this one we are seeking to simply say that if you get your claim (or part of it) then you get your reasonable legal costs paid in addition.

As to my second amendment to this clause, we are talking about costs on a party and party basis. I do not intend to go into a dissertation about the nature of costs but, essentially, they are the costs that would be allowed by the court based on the schedule of costs that are published in terms of the scheduled fees that solicitors can charge on the Supreme Court scale and so on. We have included those words after the word 'guarantee fund' at the end of the clause so that it reads that the costs are payable from the guarantee fund on a party and party basis to make that also abundantly clear.

The Hon. M.J. ATKINSON: This amendment would alter the rule proposed in the bill about the payment of a claimant's costs. The bill proposes that, if the claim is wholly or partly allowed, the Law Society must also order payment of the reasonable legal costs unless special circumstances exist, warranting a reduction or non-payment of costs. The amendment proposes that, if the claim is allowed (either wholly or partly), then the costs must always be paid. In some cases of special circumstances warranting a reduction in or refusal of costs, it might be that the available funds are sufficient only to pay claims and not the costs. In that case, the amendment will result in the full payment of costs at the expense of the full payment of claims.

The costs, of course, will be payable to the lawyers concerned, so it prefers the interests of lawyers (and we have seen enough of that today) over that of claimants. In its current form the provision derives from the national model where the clause is core, non-uniform. That means that the substance should be adopted although the wording may differ. The provision, in the form in which it appears in the bill, is the same as that adopted in New South Wales, Victoria, Queensland, the Northern Territory and the Australian Capital territory. The government does not support the amendment.

Amendments negatived.

The Hon. M.J. ATKINSON: I would like to say, apropos of the now vanquished second leg of the amendment, that it would have amended the bill so that the costs payable to the claimant were calculated on a party and party basis. This means that the claimant does not get the whole of the costs incurred but rather such part of them as would be allowed as reasonable in a taxation or adjudication of costs between the claimant and the Law Society. It is usual in all litigious matters that the costs actually payable by the client to the solicitor are more than the cost recoverable from the other party. The bill simply says that the costs must be reasonable, and the government believes that is an adequate protection. This is the approach taken by the national model and adopted in other jurisdictions.

Clause passed.

Clause 320 passed.

Clause 321.

Mrs REDMOND: I move:

Page 164, lines 7 to 11—Delete paragraphs (c) and (d)

Again, this is at the heart of the amendments we propose. This clause deals with a reduction of claim because of other benefits and, in essence, it is the clause that has the effect of postponing people's entitlements pending their ability to get an entitlement from other sources. The opposition believes that the guarantee fund should be the claim of first resort, so that a person who has lost their money can go to the guarantee fund and get their money. Then the guarantee fund, having the subrogated rights of the claimant, can chase whomever it is.

This clause allows that if, in the opinion of the society, a person is likely to receive money from another source then they will not get it from the guarantee fund. We have no difficulty with (a) and (b) in the sense that we are not trying to get into a situation where someone can double dip by getting funds from elsewhere as well as claim from the guarantee fund; however, we do take the view that the guarantee fund should be the first resort, the first place from which the claimant gets their money. So we propose to delete subsections (c) and (d). The clause provides that a person is not entitled to recover from the guarantee fund any amount equal to amounts or to the value of other benefits:

(c) that (in the opinion of the society) are likely to be paid to or received by the person; or

(d) that (in the opinion of the society) might, but for neglect or failure on the person's part, have been paid or payable to or received or receivable by the person.

In both cases the words 'in the opinion of the society' appear in brackets so if, of course, the society were to form the view that you had the prospect of being able to recover from some other party then it would not allow you to receive that money from the guarantee fund. This is at the very heart of what we are seeking to do in our amendments.

The Hon. M.J. ATKINSON: This amendment would make the fund the first resort to claimants, even though they had other recourse, unless they had actually received or stood to receive funds from that other source. As a result, the cost of pursuing any other entitlements the claimants may have will fall on the fund rather than the claimants. This is a big departure from the present law and from the model bill. Under the present law a person cannot make a valid claim on the fund until other avenues have been exhausted. That is the effect of section 60, which permits a claim only where there is no other reasonable prospect of recovering the full amount of the loss. In other words, the fund is intended as a backup for claimants who have no enforceable legal entitlements to recover their losses. That has been the law since 1981. The first recourse should be the wrong-doer; the fund is the backup for when there is no reasonable prospect of recovering the money from those who should, by rights, pay.

The national model takes the same approach. The provisions sought to be amended here are core, non-uniform provisions of the model that has been adopted in New South Wales, Victoria, Queensland, the Northern Territory and the Australian Capital Territory. If anything, the national model is more generous than the present law because the claim can be made despite the likelihood of recovery from other sources. The Law Society accepts the claim and then forms a view on whether it is likely that other benefits will be paid or received or whether, but for the claimant's failure to take action, other payments might be received.

If the Law Society is persuaded that there is no likelihood of recovery then it may pay the claim. The proposed amendment would go further; transferring a substantial new cost to the fund—that is, the cost of litigation to pursue the wrong-doers. Eventually some of that cost will be recoverable from the wrong-doers or their insurers, although it will probably not be recovered in full; certainly, there will be a delay of months or years between the date of payment of the claim and the date of recovery of the costs from the litigation on the subrogated rights.

The only new source of income proposed for the fund under this bill is a levy on legal practitioners, so one could have assumed that the member contemplates that that is how the gap will be bridged.

Mrs Redmond interjecting:

The Hon. M.J. ATKINSON: No, she interjects. That is right; the member for Heysen is not just the fairy godmother for claimants, she is the fairy godmother for lawyers as well. So, it takes us back to the 1950s and the old Liberal cry, when the then Labor opposition has sought election to the government, 'Where's the money coming from?' That is what the member for Heysen does not

answer. How convenient. The member for Heysen has only ever had the pleasure, the leisure, of being in opposition and it shows in her litigating.

Ms CHAPMAN: I rise on a point of order. That is the most offensive statement by the Attorney-General to any member of the house, to make a personal reflection on the practising capacity of one of the members of the house. It was a poor reflection and I would ask him to withdraw it.

The CHAIR: There is no point of order.

The Hon. M.J. ATKINSON: I meant her legislating—sorry.

Members interjecting:

The Hon. M.J. ATKINSON: An error on my part—in her legislating.

The CHAIR: Attorney, are you continuing your remarks?

The Hon. M.J. ATKINSON: The government is—

Mrs Redmond interjecting:

The Hon. M.J. ATKINSON: That is very kind of the member for Heysen to say.

An honourable member interjecting:

The Hon. M.J. ATKINSON: It has not died, it has a representative in the Victorian parliament. The state government is pledged to the national model. Where a provision is core non-uniform there is room for some change in the wording, but not for a complete reversal of the policy. Having signed the inter-governmental agreement, as all Attorney-Generals did, I am bound to use my best endeavours to see that the substance of the core non-uniform provision is retained, even though there may be changes to the detail of the wording. The government does not, and should not, support this amendment.

Mr RAU: I have listened very carefully to the remarks of both of the speakers before. On the negative side for the Attorney, I am utterly unimpressed with what some national talkfest has agreed to, as I have frequently said to this place. So, that is the poorest of his arguments. However, I think the fundamental flaw with the member for Heysen's point is this: why is it that a particular class of aggrieved litigants, namely those who have lost money because of the defalcation of a legal practitioner, should be in the privileged position over and above small business people, over and above people who have accidents at work, over and above people who have accidents in a motor vehicle and over and above people who have commercial disputes with other individuals, why is it that that one particular tiny sub-class of individuals who feel themselves to be aggrieved, and quite possibly are, as in the case of the defalcation with the particular trust account that has been mentioned here a number of times, why is it that those individuals, and only those individuals, should have the Rolls Royce ride straight into a, 'No questions asked, here's your cheque, thank you very much, goodbye' solution to their problem? That is the problem, I think, with respect, with the proposition that is being advanced by the honourable member.

If the honourable member was arguing about the nuance as to whether a fund of last resort or a fund which is accessible, when the applicant to the fund has satisfied the fund managers, that there is no prudent self-funded litigant who would pursue the matter any further, that might be a different matter. But that is not what is being put up. What is being put up is that this fund is like an open cheque: all you have to do is wander up and say, 'Look, I had my money in Magarey's trust account. It's now gone. QED. Give me the money.'

Mrs Redmond interjecting:

Mr RAU: Yes, I know. But, member for Heysen, the point is that there are people out there who put moneys on deposit with mortgage brokers. They think the money is safe with the mortgage broker and, surprise, surprise, it disappears. There are people who put their moneys on account with various businesses which offer them all sorts of inducements to place their funds—they are usually a high interest rate, which should ring an alarm bell—and surprise, surprise, the building company collapses. We see the tragedy of all these pensioners sitting in a room with the cameras panning around their faces, you know, with the tissues out. Do those people have a Rolls Royce ride straight into a cheque book? No, they do not. What about all the people who have accidents at work? What about all the people who have accidents in their motor vehicles?

The problem is that a person who loses money is in a bad situation, and they have my total sympathy, particularly if that money is stripped from them by fraud or some form of deception or

misconduct—they have my total sympathy. But if they have a reasonable course of action which they themselves can undertake I do not see why they should be not required to undertake that reasonable course of action. If, however, the course of action that they are being invited to take is so speculative and so ridiculous that no prudent self-funding litigant would ever contemplate it, that may be a different matter, but that is not the question in issue.

Mrs REDMOND: I cannot let that comment go without a response. I am surprised at the member for Enfield because he surely, of all people in this place, although he did practise as a barrister rather than a solicitor and therefore might not know about the word 'trust', but a trust account is not like placing money into any other investment. In fact, the very reason for establishing the guarantee fund, as the name might suggest, was to guarantee people against just this potential happening. So, there is just no way that you should be saying these people are just sliding in. For a start, they still have to prove their claim. They do not just slide in and say, 'Here I am. I want money.' This is their money, and the fact is, as I have already explained, that this guarantee fund has come from clients' money.

We are not able to keep it in our own trust accounts as a protection against this very circumstance, where most of the money has to be hived off downtown into the combined trust account. Most people who should be entitled to interest on that money, as a notional, theoretical prospect, would be pretty calm, I imagine, about the idea of, 'All right, you are not going to get interest on your money that is in trust in a solicitor's trust account, because that money will be used to create a fund to protect you against this sort of situation.' That is why they are in a particularly different situation. As well as that, I refer to other areas such as the travel compensation fund, and a whole range of other funds that are specifically set up to ensure that it is common in a number of areas of work for people to have recourse to a particular fund set up to protect people dealing with a particular profession, so that if there is a defalcation, as there has been in the past and no doubt will be in the future, by solicitors or people dealing with money in those trust funds, then they can get access to it.

All I am saying is that it is unreasonable. Surely, the situation that some of the people have found themselves in already, spending over $100,000 trying to retrieve their own money, and still facing, according to the letter I got today, at least two or three years more before they even get to court, is just unreasonable. Most practitioners in this state believe that if there is a defalcation it will be met pretty promptly from the guarantee fund, and so it should be. Hence, the need for this amendment.

Amendment negatived.

The Hon. I.F. EVANS: Now that the member for Heysen's amendment is lost, I wish to take up the point made by the member for Enfield. The Attorney-General has some knowledge of this. I am surprised, given the passion that the member for Enfield has for the prudent self-funded litigant, that the government has not brought forward this bill in the form argued by the member for Enfield. I emphasise that the Liberal Party has just lost an amendment that was seeking to make it fairer for the litigant. A retreat position for the government is the member for Enfield's position. The Economic and Finance Committee looked at the question of the agents indemnity fund, and made a report to this parliament that the government should look at adopting the position in relation to prudent self-funded litigants. The Attorney might well remember how we eventually defeated the Attorney's position in not adopting a piece of legislation with the land agents indemnity fund.

I know it is not this bill, but the principle is essentially the same. There was an industry guarantee fund to help people out in the case of crime or fraud. That case was Growdens, of course, and we ended up agreeing to pay $13 million, I think, out of that fund. There were suicides by people who had spent their last dollar chasing ridiculous rabbits down burrows that were never going to deliver them a cent. The agents indemnity fund under the real estate legislation is essentially a fund of last resort. The Economic and Finance Committee looked at it, and said, 'This is ridiculous.' There were people who lost hundreds of thousands of dollars, some of them pensioners—it was the only investment that they had. The fund—'the fund' being us as legislators—expects them to spend their last dollar chasing ridiculous rabbits down burrows that will not deliver a cent. That is why the Economic and Finance Committee reached a position and said, 'Well, if the Commissioner for Consumer Affairs thinks that a prudent self-funded litigant wouldn't chase that rabbit down, then neither should the fund expect it, and therefore the payout can be made.'

Given that the member for Heysen's amendment has not been adopted—unfortunately—a retreat position for the government would be to look at whether this fund should adopt exactly what

the member for Enfield has outlined—the government has had three years to look at this principle—and whether this fund, indeed, all indemnity funds under the various respective acts. should adopt the principle of what a prudent self-funded litigant would do. Having lived through the Growdens experience—and I fought it for six years against my own government and against this government—I had three attorneys-general tell me that it would not and could not be paid out. Eventually, common sense saw through.

The Hon. M.J. Atkinson interjecting:

The Hon. I.F. EVANS: No. I know that the Attorney sat with Allan Samm, and I know what he told Allan Samm, who has since passed away. I know what other members told people who lost their livelihoods out of that investment. If we can make life simpler for people who have lost money by adopting the member for Heysen's amendment—which I think we should adopt—why not adopt the position of a prudent self-funded litigant? Why would the parliament ask anyone who has lost money to do anything other than what a prudent self-funded litigant would do? When you ask yourself that question, why would we as a parliament, with people having lost money and coming into the parliament asking what is the law in relation to this? Why would the law ask of those people anything other than: what would a prudent self-funded litigant do? When you ask yourself that question, the answer is, 'Of course that's what we should ask them to do: nothing more, nothing less.'

I support the member for Heysen's position. But, having lost that amendment, the retreat position for the government, if it cannot bring itself to support the member for Heysen's amendment, is the exact position laid out by the member for Enfield. I encourage the government to look at the member for Heysen's amendment and adopt that between houses. If it is not prepared to do that, then it should go and draft something that takes up the member for Enfield's position, because it is a little bit better than what is in the current legislation. It is not as good as what the member for Heysen suggests, but it is better than what is in the current provision.

Mr HANNA: My position has been that, first, the fund should pay out and, secondly, then seek redress from the person defalcating, but if that is not the position of the committee on this occasion, then I think what has been suggested by the member for Enfield and the member for Davenport is a sensible compromise, and I hope the government will look at that between the houses.

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

Page 164, after line 12—Insert:

(2) The society may, at its absolute discretion, pay to a person the whole or part of an amount referred to in subsection (1)(c) if satisfied that payment is warranted to alleviate hardship, but nothing in this subsection affects section 323.

I earlier articulated the argument for this amendment.

Mrs REDMOND: I will make a brief comment because at least this seems to be a slight improvement on what is there at the moment. At least, as I understand it, what the Attorney is adding on to the end of the clause dealing with the reduction of claims because of other benefits is that the society may pay to a person the whole or part of an amount referred to in subsection (1)(c) (which is likely to be received from somewhere else), if satisfied the payment is warranted to alleviate hardship. I indicate that we will support the amendment.

Amendment carried; clause as amended passed.

Clause 322.

Mrs REDMOND: I move:

Page 164, lines 22 to 24—Delete subclause (3)

This amendment proposes to delete subclause (3). In essence, I guess people are aware that what happens with subrogation is that, if you do have a successful claim against the fund, then the fund has the right to pursue on your behalf the wrongdoer or wrongdoers against whom you might have had an action. The same policy applies in respect of insurance policies generally; that is, when you make a claim against your insurance company, they pay you and your rights are subrogated to them and they can then pursue whoever caused the damage which you have suffered and for which they have paid. Again it is part of this overall scheme. We are seeking to remove subclause (3). Subclause (1) says that the rights are subrogated to the society.

We are seeking to say that subclause (1) does not apply to a right or remedy against an associate if, had the associate been a claimant in respect of the default, the claim would not be disallowable on any of the grounds set out in subclause 317(3). Clause 317(3) deals with the society being able to wholly or partly disallow a claim if a claimant was involved in or was in some way responsible for the claim, or, because of their negligence, contributed in some way to the claim. We are seeking to delete that, but again it is part of this overall scheme, So, all our proposed amendments are interrelated. Again, whilst I expect to lose it in this place, it is one of the series that we will continue to pursue.

The Hon. M.J. ATKINSON: The bill following the model would permit an innocent associate to claim on the fund for the loss of his money and would protect him from subrogated action by the Law Society. The amendment proposes to remove that provision so that a subrogated right can be exercised against an innocent partner. Again this is a departure from the model. The provision as it stands in the bill has been adopted interstate. The government is bound to oppose any amendments that make a substantial change to the operation of the core non-uniform provisions of the model and, indeed, when I go to the Standing Committee of Attorneys-General, the commonwealth Attorney-General (Hon. Philip Ruddock) is always talking about uniformity. If only he could see the member for Heysen in operation.

Amendment negatived; clause passed.

Clauses 323 to 325 passed.

Clause 326.

Mrs REDMOND: I move:

Page 165—Lines 35 to 38—Delete subclause (3)

Page 166—Lines 1 to 3—Delete subclause (3)

This is still part of the same scheme. We seek to delete subclause (3), which provides that, on an appeal under this section—that is, an appeal to the Supreme Court against a decision in relation to a claim—the appellant must establish that the whole or part of the amount sought to be recovered from the guarantee fund is not reasonably available from other sources, unless the society waives that requirement. Clearly, it is part of this idea that we say that it should not be up to the claimant to have to establish that. The rights will be subrogated in favour of the society. They can pursue whomever they think is appropriate, but it is unnecessary, cumbersome and unfair to expect claimants to have to go through a further legal process in relation to proving that they cannot get the money elsewhere.

Amendments negatived.

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

Page 166, lines 4 to 6—Delete subclause (4)

This is a technical amendment removing a redundant clause. The Law Society has pointed out that clause 328 of the bill will achieve the same outcome by admitting evidence against a practitioner about an act for omission giving rise to a claim despite the practitioner not being a party to the proceedings.

Mrs REDMOND: I simply make the comment that, after all the consideration by the standing committees of attorneys-general for five years in reaching this proposed model set of clauses, it surprises me that, by the time we are in committee, we find that a technical inconsistency is going to be removed. However, I make no objection to it.

Amendment carried; clause as amended passed.

Clause 327.

Mrs REDMOND: I move:

Page 166, lines 25 to 31—Delete subclause (3)

Effectively I have spoken on this issue. In fact, it is the same amendment as was proposed to clause 326, which sought to delete certain words from the section dealing with appeals against decisions on the claim. Effectively, clause 327 seeks to delete those same words against appeals against failures to determine the claim. It is a slightly separate circumstance we are dealing with. I do move the amendment but I recognise that it will fail.

Amendment negatived; clause passed.

Clauses 328 and 329 passed.

Clause 330.

Ms CHAPMAN: This bill, which has the general support of the opposition, is essentially to repeal the Legal Practitioners Act 1981. I note with some disappointment that, after the extensive work and contribution by our lead speaker, the member for Heysen, the government has failed to recognise the benefit of the amendments to deal with the Magarey Farlam case. It seems to me a commonsense resolution of a very difficult matter, which has absorbed considerable time and money of those who have become victims under that defalcation; and, indeed, the time and money of the judiciary and legal practitioners, as well as portions of that fund in terms of dealing with those most difficult matters. I am disappointed to note that. However, I speak on this clause because the area of some explanation I would seek from the government relates to this somewhat more innovative addition as to how the legislation is proposed to deal with the circumstance when there are insufficient funds in the guarantee fund to meet its purpose.

It is proposed under this clause that, in circumstances where the Law Society is of the opinion that there is likely to be insufficient funds, the society may do one of a number of things. The one I wish to address is the imposition of a levy under section 331. The proposal under that clause is to impose on each legal practitioner a levy payable to the society on account of the guarantee fund. I raise the fact that a number of meetings were held during the consultation period on this bill, and the Law Society gave advice and presented submissions. I think that the Law Society undertook a considerable amount of work. Margaret Kelly, President of the Law Society, met with opposition members, including our leader, the shadow attorney-general and me, to run through a number of the contributions.

The Hon. M.J. Atkinson interjecting:

Ms CHAPMAN: I am sure that she met with the Attorney also. The Law Society raised a number of issues which appear in the final draft of the bill. I think the government appropriately accepted a number of its submissions, and as a result of that effort we will have a better bill and legislation. One matter on which the society appears to be completely silent is the introduction of this proposed levy on legal practitioners relative to the current legislation.

The Hon. M.J. Atkinson interjecting:

Ms CHAPMAN: This did not apply. This is a completely new idea to introduce some kind of discretion on the Law Society to impose a levy on legal practitioners. The bill was introduced to the parliament and debate commenced last month. As a member of the SA Bar Association—which I disclose—within two days of the draft bill being sent to the chair of the SA Bar Association I received a copy of a letter which was sent to the association inviting it to make recommendations in relation to the bill. The bill and the explanatory memoranda was distributed to members of the Bar Association. I think it was very good that the government invited the Bar Association to make a contribution. I note that the association made a very substantial submission on an earlier draft bill and presented an extensive written submission in relation to costs agreements, billing and the standards proposed under this legislation, and made some comment adverse to the draft (as it was) in relation to the fears of the profession—all of which seems to have been ignored completely. Whilst the Law Society seems to be able to ensure there were significant worthwhile amendments, the submission by the SA Bar Association seems to have been completely ignored.

However, the Attorney-General issued the draft bill. A couple of days later he tabled it in the parliament and, of course, we got on with the debate. What became clear was that no-one had given consideration to the major stakeholders in relation to the new provision of the levy. I can see no reference to it in the debate to date, other than by the member for Heysen who raised the question yesterday. I am asking the Attorney-General to explain how he understands this is to apply and what justification there is for imposing it. The guarantee fund is resourced largely from interest earned from trust account funds that are held by solicitors, some of which is directed to the benefit of the Legal Services Commission and Legal Aid and a portion of which is invested in this fund to cover circumstances where there are acts of dishonesty, fraud, or the like, by a legal practitioner.

I ask the Attorney-General to explain why it is that in relation to such a fund—which is currently funded by the interest earned on money from members of the public who are clients of legal practitioners—not enough money is earned on the investment in the trust account, which, otherwise and historically, has gone to the bank. The bank has got the benefit of that money in the

past, but, since the introduction of this fund and the distribution of moneys to it, that fund, which would otherwise be in the pocket of the bank, would fund this. Why is it proposed that, if there is not enough of that money, that a group within the public—namely, legal practitioners themselves—should be the resource on which this fund is supplemented.

I have not understood any causal link. There is no obligation for solicitors to pay for the defalcation of a colleague down the street who might be acting dishonestly or fraudulently in relation to trust account funds. Why suddenly under this legislation is there an expectation that law-abiding lawyers—who happen to have the same academic and practice qualifications as the person who acted dishonestly—should be paying in a circumstance where, at the discretion of the Law Society, they are called upon to do so. I seek an answer to that question. I do not know any other profession, business or trade in which the colleagues have to pay for the bad guy.

Mrs Redmond: They have insurance.

Ms CHAPMAN: They have insurance when someone is negligent. There is a criminal process upon which they can rely in criminal injuries compensation for victims of crime (if it is personal injury). They have the right to sue. If a plumber dishonestly puts faulty parts into a house, the place gets flooded and someone gets injured, then the good plumbers out there who put the correct parts in someone's house are not called upon to put money into a fund.

The Hon. M.J. Atkinson: You would think the insurance would pay.

Ms CHAPMAN: It may. As the Attorney-General says, you would think their insurance would pay. In those circumstances the good plumbers are not called upon to write out a cheque at the request of the plumbers association to put into a fund to pay for the bad guy. I do not know of any other industry, trade or profession where there is that expectation. I ask the Attorney-General to clarify why it is that the good legal practitioners—or legal practitioners at all—should be called upon in those circumstances. When considering that I ask the Attorney-General for some clarity as to whom this will apply.

I have read the definition clause. I am sure that the member for Heysen has a much clearer understanding of how this all applies in relation to interstate qualifications, and that is good; however, when it comes to the application of the levy being imposed on each local legal practitioner, I would like it to be made absolutely clear by the Attorney that he means not only solicitors in practice and solicitors who might have a trust account, but that it also includes barristers, judges, persons who are not practising but are registered and have a practising certificate and are undertaking other careers, or whether it is to include, at the same level, someone who is a new graduate from the university and is employed and on a limited income, or whether it is the Attorney-General or someone in a major firm who has a very significant income.

If there is to be some discretion on behalf of the Law Society, if it is to impose this levy, is there to be some guideline as to who is to be exempt? In the event that the terms of the act are applied, how will it happen, and how will it be effected? How will it be implemented in relation to whether a person is in a sole practice or a large practice, or whether they are employed or not? And what about the poor local legal practitioner who might be registered and unemployed and have no income?

The reason I ask these questions (and I think we need some explanation from the Attorney-General in this answer) is because we know of at least one circumstance in New Zealand where this levy has applied and has been implemented and, in its Law Society equivalent, cast an imposition on legal practitioners there as a result of a defalcation of, I think, over $10,000 per practitioner. I do not know any other details of that. Both the member for Heysen and I have been informed of some of the details of that case—and there may have been good reason for its implementation. However, I would like to know who will have to pay, how it will apply and, in the first instance, why legal practitioners should suddenly be picking up this responsibility.

When I inquired of representatives of the Bar Association with respect to their view on this, they had not really had an opportunity to even consider it. They obtained the bill, and they had that invitation, but they certainly wanted some clarity. Individual counsel to whom I have spoken were completely unaware of it, and were concerned to have these questions answered by the Attorney-General. The Law Society (and, in particular, the President, Margaret Kelly) indicated to me that the Law Society had given some consideration to this matter—it had not been the subject of any submission or any written material, but it had been brought to her attention. To summarise the position as she explained it to me, she had mentioned it to the Attorney, and she understood that the Attorney simply would not consider that this should be a matter upon which the responsibility

should be spread amongst the general public—the taxpayers; that that is something that the Attorney-General simply will not entertain and that, therefore, it is the position of the government that it should be imposed on all of us—meaning (to use the general term) legal practitioners.

I do not think that is a good enough excuse. I have no doubt that it is the explanation, as Ms Kelly has presented, but I do not think that is sufficient reason or justification for allowing such a revolutionary piece of legislation to go through without some further clarification and explanation. Can the Attorney explain how the situation applies in other states? I understand that there may be one or other of the states that has this provision and, if they do, how is it to apply? There does not seem to be any clarity about whether this is a core, uniform, non-uniform, or the other combination. It does not seem to be identified as one or other that would invite a response from the Attorney to say, 'Look, we have really just put this in because this is fitting in with the general model code, and we have not taken it any further. There has been much discussion at a national level and, therefore, it is a good reason.' I will be very interested to hear the Attorney-General's explanation. I did look for whether there was, perhaps, some new found extension—

The Hon. M.J. ATKINSON: Madam, I rise on a point of order. I understood that contributions in committee were confined to 15 minutes.

The CHAIR: In general, they are confined to 15 minutes. I ask the deputy leader to wind up.

Ms CHAPMAN: Initially, I had thought that the levy may be applied to a larger and broader use of funds. Perhaps we are going to be called upon as a profession to assist with some capital fund for the rebuilding of the Supreme Court, or some other useful purpose, which the government, for whatever reason, has failed to address. So, I was looking to see whether there might have been some other sort of meritorious benefit to this fund. However, I note that it appears that the definition clauses have not changed, and that it is still confined very purposely to the fund. I seek some of those answers.

The Hon. M.J. ATKINSON: I am advised that there are comparable provisions in equivalent legislation in other jurisdictions, and I will obtain that information for the member. It is true that the Law Society did not make a submission to me on this point, probably because it does not have the chutzpah of the member for Bragg to propose to hoover up, in three instalments, the entire guarantee fund, then, to top it all off, having laid bare the guarantee fund, give lawyers benefit of clergy about the losses. Guess what (for readers of *Hansard*)? The members for Heysen and Bragg are lawyers! Surprise, surprise.

The member for Bragg asked who was likely to pay this levy: well, on the face of it, everyone who has a practising certificate—and that will include our barristers, but not the Attorney-General or judges. Of course, this is not necessarily going to happen; it would require a resolution of the Law Society, and the clause gives the council of the Law Society authority to differentiate between categories of lawyer. Frankly, I think all these points have been made by the member for Heysen earlier in the debate; they were made more succinctly and they were made better.

Mrs REDMOND: I cannot let this opportunity pass. I was going to stop at clause 331 to talk about levies, but as it has been opened for discussion at 330 (which refers to these levies) I think it will save time if I made some comments now. I agree with the member for Bragg that there is no basis for saying that lawyers who have done nothing wrong should, for some reason, have to bear the brunt of the defalcation by someone else in practice somewhere. The Attorney keeps responding to that by saying that the opposition's proposed amendments will deplete the fund, but the reality is that this fund would not be depleted if we deleted subclause (6) from clause 238 and thus allowed the fund to grow as it should.

As I have previously said, the money is really notionally clients' money, and at the moment private clients' money is going off to fund the Legal Services Commission. Now, five-eighths of the money is going there; if the guarantee fund was running low (which it would not be if the government turned on the tap and let the money flow through as it was meant to) why would you then not divert some of that money? I would even be prepared to consider a levy provision if there were that potential, after consideration of other options. However, to say that this levy is in there—which is no part of the national model being proposed anyway, it does not classify as any of that—is very concerning and, whilst we have not moved to remove that provision, I indicate that we may well do so in the other house.

Clause passed.

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

That the sitting of the house be extended beyond 18:00.

Motion carried.

Clauses 331 to 466 passed.

Clause 467.

Mrs REDMOND: This is the section that deals with the Law Society. As I read this bill, it seemed to me that the Law Society would have a considerably expanded role simply in terms of the necessity of managing multi-disciplinary and incorporated legal practices. Its role as a regulatory authority under this bill seems to inherently mean that it will have a somewhat larger part to play, and I ask the Attorney whether he is aware of any indication or suggestion regarding to what level the Law Society might expand in the foreseeable future.

The Hon. M.J. ATKINSON: I have no comment on that matter.

Clause passed.

Clauses 468 to 515 passed.

Schedule 1.

Mrs REDMOND: I move:

Clause 13(1)(b), page 253, lines 14 to 17—Delete paragraph (b) and substitute:

(b) a claim in respect of a default (within the meaning of that part) occurring before the commencement of this clause if the claim had not been determined under part 5 of the repealed act before the commencement of this clause.

This is the last of the series of amendments, and seeks to put a new provision, clause 13(1)(b), into schedule 1, which contains the transitional provisions. It is, in essence, to ensure that the Magarey Farlam claimants (although we have not actually used the name Magarey Farlam in the provision), and basically anyone else who has a claim afoot at the present time, should be dealt with under the new regime that we are proposing in the amendments that have already been moved and so far defeated in this place.

The only intention of this particular amendment—which adds in the words 'a claim in respect of a default within the meaning of that part occurring before the commencement of this clause, if the claim had not been determined under part 5 of the repealed act before the commencement of this clause'—is to ensure that in addition to making these changes to the guarantee fund and the way it operates for the future, we make it very clear that any claim afoot that has not been satisfied, and that would clearly involve the Magarey Farlam claimants, would be dealt with under the new regime which we propose. That is the essence of the last amendment.

The Hon. M.J. ATKINSON: This amendment would alter the transitional provisions so that any pending claims that have not been determined by the time the new law starts will become claims under the new law. That would mean that, if the earlier amendment making the fund a first resort succeeds, these claimants would have the benefit of that provision and would not need to pursue any other remedies. Other claimants whose matters have been completed would not have this benefit. All through my time in parliament with the attorney-general of blessed memory we heard how dreadful retrospective or retroactive legislation was, but now it is not so bad, especially if it suits the opposition's purposes. Presumably the claims affected by this provision will need to be started all over again and any time limits that formerly applied to them will have to be overcome. A fairer approach would be to treat all transitional claimants the same as the bill proposes to do. The government, therefore, opposes the amendment.

Amendment negatived; schedule passed.

Title passed.

Bill reported with amendment.

Bill read a third time and passed.

ENVIRONMENT PROTECTION (SITE CONTAMINATION) AMENDMENT BILL

In committee.

(Continued from 16 October 2007. Page 1042.)

Clauses 2 and 3 passed.

Clause 4.

The Hon. I.F. EVANS: My understanding of the committee is that we get the chance to speak as well as to ask questions.

The CHAIR: For a maximum of 15 minutes.

The Hon. I.F. EVANS: I want to make some comments in relation to clause 4, which amends the interpretation of divisions in the original act (the Environment Protection Act), because we are talking about contamination by a chemical substance. The way I read it, 'chemical substance' will be defined in the amending bill as meaning:

> ...any organic or inorganic substance, whether a solid, liquid or gas...and includes waste;

In the main bill, 'waste' essentially means:

> (a) any discarded, rejected, abandoned, unwanted or surplus matter, whether or not intended for sale or for recycling, reprocessing, recovery or purification by a separation operation from that which produced the matter; or
>
> (b) anything declared by regulation...

So, 'chemical substance' really means anything at all, because you could basically put anything into that waste category. Unfortunately, I have to leave at a quarter to seven, so the minister will be pleased to know that I will not take as long as I might have. There are other provisions later in the bill that talk about human safety. So, all the recycling depots and those sort of things suddenly come under this because 'waste' is defined as recycling, 'chemical substance' includes waste, and 'contamination' talks about human safety; so, they are linked through. I have no questions in relation to that; I just wanted to raise the matter so that the committee is absolutely crystal clear and will know what it is voting for. I think the bill is far broader than it needs to be and far broader than the committee thinks it is.

Another issue I raise for the interest of the committee is that, under clause 4, which amends section 3 of the original act, is a definition of `remediate'. In the definition, 'remediate' also means to prevent. So, all of these powers are not only about rehabilitating sites but they are also about prevention. The prevention of contamination by a chemical substance also (and the officer is shaking his head) says 'eliminate or prevent actual or potential harm'. So, it does have a prevention element, which I do not think has been explored in great detail.

The other issue I bring to the attention of the committee is that we are now introducing another form of harm. Under the provision I am talking about, under 'remediate' it talks about 'prevent actual or potential harm' and in (b)(ii) it then it talks about environmental harm. Under the EPA Act—

The Hon. J.D. Hill interjecting:

The Hon. I.F. EVANS: Yes. Clause 4, on page 4, under the heading 'remediate', it talks about environmental harm. In the main bill, there are two types of harm: material harm and another one that escapes me. So, the government is actually introducing a third concept of harm, which remains undefined. It is unclear to me what is not already covered under the two definitions of harm in the original EPA Act, and I would have explored that in great detail if I were to be here for the full committee. In clause 4 under 'sensitive use' what other uses is the minister considering by regulation? What is envisaged? The other issue to bring to the attention of the committee is that 'the site' means an area of land. If you go back to the Environment Protection Act, 'area of land' includes land under water. So, you are talking about everything within the state borders, whether it be under the ocean, under the reservoir, or under any land. It is not land in the physical sense as we would know it; it is also under water. I want to make sure that the committee is crystal clear about what it is voting on.

In relation to the same clause, page 5 of the bill, under 'water', I do not understand why you need the new definition, given the existing definition in the act, which provides that water includes 'water under the ground'. The new bill provides that water means 'water occurring naturally above or under the ground'—where else could it occur?—or 'water introduced to an aquifer or other area under the ground'. If it is in an aquifer, it is already under the ground. The original act states that 'water includes water under the ground'. So, I do not quite know why we need water in the aquifer; I think that it is already in the bill. I do not quite understand what is intended in paragraph (c), which provides that water means 'an artificially created body of water or stream that is for public use or enjoyment.'

I assume that you are taking about private pools or public pools. I assume that the clause will also cover stormwater. But is that not already covered under the act? Why do you need a new definition of water? What is not already caught by water, including water underground, I am not sure. That is a very quick synopsis of clause 4. I have a couple of questions for the minister, but I just wanted to bring to the committee's attention just how broad this is, because I think that too many people are focused on the bill and not the definitions in the main act. When they are combined together, I think they will be quite surprised at how broad this is.

The Hon. J.D. HILL: I thank the member for Davenport for that series of questions. I will try to go through the items that he raised. If I miss out something, I am sure that he will remind me. The first point in the definition was the notion of 'chemical substance'. It is a very broad definition; it covers pretty well anything, and it is deliberately meant to broad. The emphasis is not on the notion of chemical substance; it is about what a chemical substance can do. Its use is contained in section 5B on page 5. It really provides that site contamination exists at the site if a chemical substance—you could have said X matter, or some other way of describing virtually anything—does something which then causes an actual or a potential harm.

Would it matter if it was a load of bricks or a pool of petrol, or a whole range of things? If it could cause the harms that are described in that section, for the purposes of the act, it is defined. We wanted a broad definition. I am not suggesting that a pile of bricks would cause the harm; I am just saying that it could be any matter. The definition by its very nature is very broad. I am getting agreement that that is what it is about. The definition is used to describe an effect on a particular property, because we are trying to stop a negative impact on the property.

The next issue was one of remediation and the notion of potential harm. I think you have to read that in the context in which it is used. Remediation means things that you do to a site in order to cause a particular impact. The impacts are the elimination of something or the prevention of something. For example, if you had a site—I will get direction if I am wrong—under which there is, say, a chemical plume which is heading towards a river, if you remediate that site by removing that chemical it may not necessarily do anything in the short term—It may just clean up the site—but it stops the potential of that plume going into the river, so that it prevents another harm. So I think it is in that context that the potential notion is used.

In regard to sensitive use and the other definitions that might be included in the regulations, we have no particular views about that. There is no list of ideas. If we had a list I guess they would have been put into the legislation. But, for example, there may be some activity which would involve children. A council might decide to set up a garden for children to learn about vegetables associated with a farmers' market. If you were planning to do that on the site, clearly that is something you would want to prescribe by legislation because it is analogous to the other uses that are included under 'sensitive use'.

The other matter was to do with the word 'site'. 'Site' means an area of land. I am not entirely sure what concern the member had with that.

The Hon. I.F. Evans: Just to bring it to the attention of the house.

The Hon. J.D. HILL: I understand the definition of 'land' does mean a piece of turf with water above or below it, and 'site' is just another way of expressing the same idea. We could have used 'area of land', but saying 'site' means an area of land so, for the purposes of the legislation, the word 'site' is being used.

In relation to water, I think the point the member was making is included in this definition. There might be some redundancies in that the matters are covered in another place. The advice I have is that the legislation deliberately tries to cover every possible scenario in which water could be found.

In relation to the artificially created body of water or stream that is for public use or enjoyment, for example, in the South-East there are a whole lot of water bodies—drains, for example—that have been created which are artificial streams that could be considered to be for public use, although not necessarily for public enjoyment. There would be a whole range of water bodies that have been created for a whole range of purposes and it would cover those. It is also to cover the introduction of something into an acquifer, I am advised.

Mr VENNING: I have a question that I want clarified, because I have been reading the bill while I have been sitting here and now I quite understand. I had some experience with this in relation to the Gilles Street Primary School and contamination. I understand that a site is not deemed to be contaminated unless the use is quite clearly explained, and that is quite clear in the

bill. So, what happens if a site is deemed not to be contaminated because it has a certain use? Does that endorsement stay on the title of the land so that, if in 25 or 30 years' time someone wants to change the land use, the caveat is on the title so that people are protected? Is that guaranteed?

The CHAIR: We are dealing with clause 4 at the moment?

Mr VENNING: Yes.

The Hon. J.D. HILL: The short answer is yes, the information will be maintained in relation to the title. For example, clause 7 I think is the notification of any particular matters that would be brought to attention, it will also be in the Land Titles Office, and a register will be created. The public register of the EPA will have all that information.

Mr Venning interjecting:

The Hon. J.D. HILL: Absolutely. To give an example that was put to me, someone might buy a piece of land and want to build a house on it, but in the back corner there may have been some activity to do with chemicals.

Mr Venning interjecting:

The Hon. J.D. HILL: Whatever. They might build a garage over that site which constrains and contains the site and it is fine, but if in 30 or 40 years' time someone else wants to bowl it over and put something else there you need to know that that is where the sheep dip was. So that becomes a permanent record.

The CHAIR: Member for Schubert, just looking more closely at the clauses, I am confident that your question related to clause 5 and we need to distinguish that for the record.

The Hon. I.F. EVANS: Under the definition of 'remediate', new section 3(1)(a) talks about 'taking into account current or proposed land use'. At what point is the land use proposed? In other words, if it is deferred urban, does that then attract a higher level of consideration by the EPA because it is deferred urban, or is it only when it is rezoned urban, or is it only when there is an application to build? At what point does the proposed land use kick in? There is no definition in the bill and so it is open to interpretation as to what the proposed land use is.

The Hon. J.D. HILL: I am advised that it 'kicks in' (as you put it) at the time the development application is brought forward.

Clause passed.

Clause 5.

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

Page 5, lines 28 to 37—Delete subsection (1) and substitute:

(1) For the purposes of this act, site contamination exists at a site if—

(a) chemical substances are present on or below the surface of the site in concentrations above the background concentrations (if any); and

(b) the chemical substances have, at least in part, come to be present there as a result of an activity at the site or elsewhere; and

(c) the presence of the chemical substances in those concentrations has resulted in—

(i) actual or potential harm to the health or safety of human beings that is not trivial, taking into account current or proposed land uses; or

(ii) actual or potential harm to water that is not trivial; or

(iii) other actual or potential environmental harm that is not trivial, taking into account current or proposed land uses.

I gave some information about the amendment last night. I can give some further information tonight. The amendment is not a departure from the meaning of 'concept of site contamination', rather it is to clarify an aspect that has resulted from an amendment in the other place that was consequential to the main amendment under new section 103C(1)(b) moved by the Hon. Mark Parnell.

A major part of bill is the concept that site contamination can exist at the site where the original activity took place, and also elsewhere, as a result of the migration of chemicals by, for example, groundwater. The government had an amendment in the other place to change a note in

the previous bill to a subclause to this effect. This amendment inadvertently was dropped following the amendments moved by the Hon. Mark Parnell. Advice received recently from parliamentary counsel was that there may be some legal uncertainty that this aspect of the bill remained under the original definition. An amendment is being made to avoid any possible legal questions as to interpretation. That is, for site contamination to exist, chemical substances must have been directly introduced by human activity to the particular site contaminated.

By removing the words 'introduced to the site' and by the addition of proposed new subsection (1)(b), it will be clear that site contamination will exist regardless of whether the chemical substances have been directly introduced to the site, introduced at another site, or migrated to the site in underground water or otherwise. I repeat: this amendment is necessary as a result of the amendments to new sections 103C and 103D in the other place which resulted in the removal of an explanatory note to the same general effect.

The Hon. I.F. EVANS: I understand the opposition is supporting the amendment. Some constituents of mine have raised some interesting points. They would argue that the bill in its current form makes it clear that the contamination had to be introduced. Even if it comes from downstream—arsenic into a creek and onto the land—that has still been introduced. By taking out the word 'introduced', I think my constituents think the parliament is opening the bill up to be interpreted that the contamination does not have to be introduced.

The Hon. J.D. Hill interjecting:

The Hon. I.F. EVANS: No, I understand. I have read the bill; I know there is an issue about 'natural'. How else can the natural state of the land be contaminated other than by the contamination being introduced? By taking out 'introduced to the site', we are giving an indication to a future court that it is open to the question of whether we should deal with contamination that is natural, if you like. The point is that, if it is natural, if the arsenic levels are high, then the obligation on previous owners to clear up the site becomes an interesting question. The only way contamination can be on a site is if it is introduced by human activity. The minister says that they want to take out that provision. If you take out the introduction of contamination by human activity, the only other way it can be contaminated is by nature. If it is there by nature, why is the owner required under the act to clean it up? I understand why my constituents argue that the current wording is a better protection for the land owner, because it makes crystal clear that it must be introduced.

The Hon. J.D. HILL: I can only repeat what I have told the committee on two occasions: that this is to clarify what the intention has always been. I am at a loss to see how else I can say it, other than to say that it is exactly what has been proposed.

Mr VENNING: On behalf of the member for Goyder, we support the amendment. As the minister said, it defines what the site contamination is and is a result of the clarification required by the amendments of the Hon. Mark Parnell in another place.

The Hon. I.F. EVANS: I refer to the issues of potential harm and environmental harm in the drafting of the minister's amendment and the bill. Under the EPA Act there are two types of environmental harm: material environmental harm and serious environmental harm. The bill and the amendment talk about harm that is not trivial. Under the main act's definition of environmental harm, only material environmental harm has the words 'not trivial'. Why have we not used the words 'material environmental harm' to make crystal clear that we are talking about that type of environmental harm, or are we now introducing a definition of 'serious environmental harm' that is also not trivial? That is the point I made earlier about having three types of environmental harm with the way the bill is drafted.

The Hon. J.D. HILL: The advice I have is that the environmental harm definition in the EPA legislation is a much broader set of definitions and relationships with other factors. It may be better to focus on what is in this legislation, where we are talking about environmental harm that would be sufficient to cause the legislation to come into play. The definitions here cause that to happen. I am advised that the notion of material environmental harm is too broad a definition to use in this context.

The Hon. I.F. EVANS: I will not argue with the minister, but I invite him to reread the words in the bill, which are clear: 'environmental harm'. If we go to the Environment Protection Act it talks about what environmental harm is. There are two types; material environmental harm is the only one that has the same words 'not being trivial'. This is the point. It does open it up very broadly. Enough said on that one.

The Hon. J.D. HILL: There is more I can say. If one refers to page 6 of the act, section 5B(3) provides:

> For the purpose of this act the following provisions are to be applied in determining whether environmental harm is material environmental harm or serious environmental harm if—
>
> (a) environmental harm is to be treated as material environmental harm if—

And there are three different points. The point that is applicable to the site contamination legislation is the second. The first talks about an environmental nuisance of a high impact on a wider scale which, I am advised, does not apply and nor does the third definition. It is really that limiting of the definition to that which involves actual or potential harm to the health, safety and so on that is not trivial, and the word 'trivial' comes in there as well. I hope that helps.

Amendment carried; clause as amended passed.

Clause 6 passed.

Clause 7.

The Hon. I.F. EVANS: I want to make sure that my understanding is correct. This clause deals with section 83A, 'Notification of site contamination of underground water', and part 2 provides:

> A person to whom this section applies must notify the authority in writing as soon as reasonably practical after becoming aware of the existence of site contamination at the site...

Given that it is under the heading of 'Notification of site contamination of underground water', I assume that we are dealing only with underground water. The provision says that you must notify the authority as soon as you are aware of the existence of site contamination. Now, site contamination exists under the minister's amendment (which we have just passed) if a chemical substance is present below the surface of the site in concentrations above the background level, that the chemical substances have, at least in part, come to be present there as a result of activity on the site and that the presence of the chemical substance in those concentrations has resulted in the various types of harm. How does any mug punter know? My point is that I do not think you will be able to prosecute anyone under that clause because they will not actually know that contamination exists. They will suspect.

To prove that site contamination exists they would have to know each of those three clauses under the definition of 'site contamination', and therefore I think that piece of the legislation is probably flawed. It probably needs to say 'where you suspect site contamination then you have an obligation'. This says 'after becoming aware of'. The only time you become aware is once you have satisfied yourself that chemical substances actually caused it, that they are over and above what is naturally occurring and that they will actually cause harm. The average punter will not know that about underground water. I raise it now. It is too late to amend it. The reality is that that clause should have been worded 'when you have a suspicion of contamination you have an obligation to report' rather than when you actually know. I do not think you will get a prosecution under that clause.

The Hon. J.D. HILL: I thank the honourable member for his exploration of that clause. I guess what he would be suggesting is a broader clause which would potentially capture more people. The advice I have is that this is designed deliberately to constrain the application to a particular class of people; and also, of course, to the auditors. You must think of the practical circumstances in which this would apply. If somebody owns a parcel of land, and they are planning to subdivide it for housing, a child-care centre or something like that, under the provisions we now have we will have to make a determination about whether there is any site contamination.

So, if it was going to be a sensitive use, the owner of the land would need to get an audit done of that land, and the auditor, in the exploration of the site, would discover whether or not there was site contamination. There is then a responsibility not only on the owner but also on that individual, the auditor, to draw that to attention. So, it is early advice, and we are particularly concerned about that in relation to water contamination because, as you know, water travels and, if it is not dealt with soon, it may affect somebody else's property.

I guess the issue it is trying to address is where somebody might have an idea about selling a piece of land for development; they get an auditor in to check it and discover there is a problem there and then say, 'I'm not going to do that now. I'm going to do something else with it which means that I don't have to notify the auditor. I might cover it with concrete and turn it into a car park or something.' What we want to know is that if the auditor, in particular, discovers this, they

have a duty to pass it on. I think that the legislation is not trying to say that there would be an onerous responsibility on anybody who has just a mild suggestion that there might be a problem if they did not report a suspicion or a suggestion. It is about an actual understanding of pollution on that site that might threaten some other site. If you look at the penalty, it is particularly severe. I do not think you would want that penalty to apply in a broader context.

The Hon. I.F. EVANS: Who is responsible for notifying on government land? What penalty applies if they do not? If the department of forests is using poisons, does it notify? Who is ultimately responsible?

The Hon. J.D. HILL: The owner of the land or the auditor is responsible. So, if it were a government agency—for example, in the case of the new hospital site at the railway yards (and we know it already)—if we thought there were no problems there, and I became the owner of the site and the property were transferred from the Minister for Transport to me, I guess he would have to notify the registrar at that point of transfer or, if I were already the owner of the site, once we did the testing and became aware of problems, I would have to notify the agency. So, the government would be responsible, and I guess ultimately the minister is always the owner of the land, so it would be the minister. It would be the Crown in a general sense.

Clause passed.

Clause 8 passed.

Clause 9.

The Hon. I.F. EVANS: I wish the member for Stuart were here. Powers of authorised officers—I cannot believe he has missed the debate about these 'Sir Humphreys'. I just want to check, minister, why you need clause 9 at all given that, under the existing act, the officers can request any document they want anyway. I wonder why you need this provision at all.

The Hon. J.D. HILL: I am advised that this is the power of entry provision, which is a necessary provision for someone to assess the existence of causes.

The Hon. I.F. EVANS: Think about that. They want to enter a house or a car (they can enter anywhere else, essentially) for what purpose? They will not find contamination there; it will be in the paddock. They can already ask for documents under the existing provisions, so I am intrigued as to why they need to enter a house. Clause 10 provides 'that site contamination may exist in a place or something a be found in a place that constitutes evidence of a cause of site contamination'. Minister, what do you think will be in a house that will cause site contamination? What do you think will be in a car? I understand why you need access to documents. We have had this argument on environment legislation and the officers are familiar with it, but I cannot understand what evidence you think you would need within a home to constitute contamination of underground water or land.

The Hon. J.D. HILL: This is business premises, not houses or cars. The point is the word 'reasonably'. I cannot tell you what might be reasonably required for the purpose of assessing, but it may be a report that is on the property. There might be something in the business. It could be a factory, for example, which is broken and which is spewing chemicals down the drain. Who can say? It is whatever is reasonably required to be done.

The Hon. I.F. EVANS: Where are houses exempt under that provision?

The Hon. J.D. HILL: Section 87(2) of the EPA act provides:

> (2) An authorised officer may not exercise the power of entry under this section in respect of premises except where:
>
> (a) the premises are business premises being used at the time in the course of business; or
>
> (b) the authorised officer reasonably suspects that—
>
> (i) a contravention of this act has been, is being, or is about to be, committed in the premises; or
>
> (ii) something may be found in the premises that has been used in, or constitutes evidence of, a contravention of this act.

I will clarify my advice. The member is right in that paragraph (a) refers to business premises and then there is an 'or'. If there had been an 'and' what I said would be correct. Paragraph (c) of the bill provides, 'the exercise of the power is reasonably required for the purposes of assessing the existence'.

I withdraw the comment I made about business premises and I apologise to the committee for that. The general point I make is that this is a power that would be used only when it is reasonably required. The examples I gave would still be the same. For example, if documentation was required or something was actually happening in the premises, most likely industrial premises but it could be a house, where something was causing pollution—some chemical was leaving the house or business premises—and being got rid of through the drainage system. That would be the most logical example I can think of.

Clause passed.

Clause 10 passed.

Clause 11.

The Hon. I.F. EVANS: Will the minister give the committee some guidance as to what is intended by clause 11, which deals with the insertion of part 10A. It provides:

> (b) if, in accordance with the regulations, a person of a particular kind is to be taken to be an occupier of the land in the circumstances of the case—includes a person of that kind.

I do not quite understand what is intended by that provision at all.

The Hon. J.D. HILL: It might include, for example, people who are franchisees; it might include people who illegally entered onto the land and dumped stuff there. That might happen reasonably commonly in rural settings where a property might be out of the way and people in the local community might regularly go and dump stuff there and then, some time later, it is discovered. It might be those kind of circumstances.

The Hon. I.F. EVANS: You might have answered the next question, which is a different clause, but since you have raised it, it might be easier to deal with it now. Who then is deemed to have caused the contamination in the circumstances where someone was dumping on someone else's property without permission?

The Hon. J.D. HILL: The general hierarchy of responsibility is the polluter. The first one you go to is the polluter. If you cannot find the polluter because you do not know who did it or the person has died or disappeared or has been bankrupted, or whatever the circumstances are—

The Hon. I.F. EVANS: I understand that. I have read the *Hansard* from the upper house overnight. Under new section 103D it says the person who is taken to have caused the site contamination is the occupier of the land. What I am saying is that if the occupier of the land did not put the contamination there, where in this bill does it deal with the person who dumped it? If I am the occupier of the land and the member for Hammond comes and dumps something on my property that contaminates it, where in this bill does it say that he is the contaminator and not me? Under section 103D it says that I am the occupier and I caused the contamination. What I am saying is that I have not caused it and I want to know where in the bill it covers the circumstance that I have not caused it, because new section 103D(1) clearly states:

> For the purposes of this act a person is taken to have caused the site contamination if the person was the occupier of the land.

The Hon. J.D. HILL: That was the point of your former question. Under the regulations that class of people can be deemed to be the occupiers at the time. New section 103D says an occupier is responsible for contamination but, if somebody else was occupying the premises temporarily by illegally dumping, then by regulation they can be defined as 'occupiers' and they are then caught.

The Hon. I.F. EVANS: My layman's understanding is that if you dump stuff on someone else's property you are the person who is deemed to have caused; if the occupier themselves have done it, they are deemed. If the person who dumps cannot be found who then becomes liable? Is it the occupier or the owner?

The Hon. J.D. HILL: It is the owner of the property.

The Hon. I.F. EVANS: I want to run through this so that I understand it. Some of my constituents have concerns about the retrospective nature of this. The way I understand it is that if there is contamination that is not naturally occurring on any land, then the occupier is responsible for cleaning it up if it is going to cause environmental harm as defined, or contamination as defined. There is a series of steps they have to go through before that is the case.

If the owner of the land decides to rezone the land, that may trigger a decision that contamination exists because of the new use and, therefore, the new owner who triggers the rezoning is responsible for the clean-up. If I had land that I sold 20 years ago, the new owner has the land now and has not rezoned it and the EPA decides that there is a risk, I understand that, as the previous owner, I am responsible for cleaning it up.

The Hon. J.D. HILL: I will say what I think the case is, and I will seek correction, because I understand that this is a complex area. It is only at the DA stage that the site contamination issue comes to the fore. So, if what was done on the land 20 years ago was consistent with what the land was used for then, as I understand it, it would not now be considered to be site contamination by that previous person. However, the owner of the land now wishing to re-zone it into something else would be responsible for clearing it up.

The Hon. I.F. EVANS: Take out the rezoning. I have simply passed the land through to a new owner; there is no rezoning. If site contamination is then found on it, is it the new owner or the old owner who cleans it up?

The Hon. J.D. HILL: Put simply, if there is site contamination found on it, under the circumstances, a person would only become aware of that if they were thinking about rezoning it, I would have thought.

The Hon. I.F. EVANS: No, they might be ploughing the paddock and come across it, or something like that.

The Hon. J.D. HILL: Let me just obtain advice: I think I understand this. I think this is what the member for Davenport is saying. I am a farmer and I own a piece of land. I have done things which are consistent with farming, which might be having a dump somewhere of chemicals or machinery, or whatever farmers did 20 years ago. I sell my farm to another person, who continues to farm it. In the course of farming, he uncovers the dump: 'Hello, this is site contamination: I have to notify the EPA of this.' Who then is responsible: was that, essentially, the question?

The Hon. I.F. EVANS: Who is responsible for cleaning it up; which owner?

The Hon. J.D. HILL: Yes. It is what I said before. If you are a farmer for 20 years, you are treating your land at the standard that would have applied at the time, in terms of use of the land. So, you dump whatever you dump. You have a landfill where you dump stuff from your kitchen; you have cars somewhere else and all the rest of it—whatever was consistent—and 20 years later that is discovered. That would not be considered to be site contamination where an offence or a responsibility would apply to the original owner. The current owner could just manage that site as any farmer currently would. If it is escaping, it becomes a slightly different issue, but if it is not escaping that is fine. However, if they were trying to re-zone the site for some other purpose, the burden would fall on the current owner. However, if 20 years ago the farmer did things which were inconsistent with that—for example, he might have dumped some plutonium there, hypothetically, however he would get it—

Mr Williams: Farmers have stopped using it.

The Hon. J.D. HILL: Yes, that is right. It could be DDT, I do not know, but the point is he could have dumped something there which was incredibly toxic and then it was discovered and it was inconsistent with the current occupation of farming so it made the site contaminated; then the original polluter would be the responsible person.

The Hon. I.F. EVANS: The way I understand it is that, forget farming, because it could be builders' yards or all sorts of things, as long as they have adopted normal practice, which was unspecified 20 years ago or prior to this act coming into place, they are going to be protected. If a farmer had put plutonium in the back paddock—and given your previous answer that, if someone else had dumped it there and that person could not be found, it is the owner who takes responsibility—wouldn't any owner of land who is subject to an investigation who might have acted outside the normal practice simply say, 'It wasn't me. It was some rogue visitor' and, therefore, the previous owner will escape the provision and it will transfer to the new owner.

What I cannot understand with this bill is why it is simply not the new owner of the property who is required to clean it up in any circumstance because, if you were the previous owner of land and the EPA knocked on your door and said, 'How did the plutonium get in the back paddock?' and you had read the *Hansard*, you would say, 'I was the occupier at the time and someone (I cannot remember who) put it there.' Under the act, it goes straight to the new owner, so isn't that the out clause for every past owner?

The Hon. J.D. HILL: It all becomes a matter of evidence in a court. This is setting up a set of principles and guidelines, and then courts would work this through. That is the trouble with hypothetical situations because they are not based in substance. I am making the general point that it is to do with evidence. If somebody was going to try to get somebody for doing something 25 years ago, they would need very good evidence. However, for example, in a situation where somebody ran a garage or something of that nature and there is a whole lot of pollution on that site as a result of running the garage and it was managed in a way that was inappropriate, then you would think that there would be some evidence that connected the operator with that. There might be witnesses around, they might be—

The Hon. I.F. Evans: Don't you think the new owner would know he was buying a garage?

The Hon. J.D. HILL: That is true, and all of this is subject to whatever contractual arrangements there were between the parties. One would hope in most cases that the contract would make it plain that the responsibilities would carry over. I guess where this is really important is in how we manage these sites into the future when they are being transferred from existing operations to something which is sensitive use, particularly housing—

The Hon. I.F. Evans interjecting:

The Hon. J.D. HILL: No; but we have seen many examples over recent years where housing has been discovered on properties which had been polluted. Who is responsible in that situation? First we go to the original polluter, if we can find them, and then we go to the owner of the land—

The Hon. I.F. Evans interjecting:

The Hon. J.D. HILL: And we can do both.

Progress reported; committee to sit again.

PRINCE ALFRED COLLEGE INCORPORATION (CONSTITUTION OF COUNCIL) AMENDMENT BILL

The Legislative Council agreed to the bill without any amendment.

At 19:00 the house adjourned until 18 October 2007 at 10:30.