HOUSE OF ASSEMBLY

Wednesday 26 November 2008

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

NATURAL RESOURCES COMMITTEE: DEEP CREEK

Mr RAU (Enfield) (11:01): I move:

That the 23rd report of the committee, entitled Deep Creek Revisited: A Search for Straight Answers, be noted.

This is the second report of the Natural Resources Committee on the subject of Deep Creek. As chairman of the committee, and I think I can probably say this comfortably on behalf of other members of the committee that it is a regret to all members of the committee that it was necessary for us to have to prepare this report at all.

We were driven to the point of having to prepare this report because of frustrations and difficulties the committee encountered in relation to both the preparation of the first committee report and subsequent inquiries which arose as a result of recommendations from the department arising from that original report.

From the perspective of the committee, there was sufficient evidence in the response provided by the department to suggest that the department had chosen to misunderstand recommendations of the report and to discredit and/or reject serious environmental issues raised by the committee. This, of course, was a matter of grave concern to all members of the committee. To this day, we do not understand how it is that DWLBC, which was the main department charged with responsibility for conserving the state's biodiversity, chose to take the path that it ultimately did.

In order to assure ourselves that our Deep Creek report (the original report) was factually sound, the committee carefully reviewed the responses of the department, checking them against our recommendations in light of the available evidence, and a number of inconsistencies came to light. In an attempt to resolve these the committee invited the officers from the departments who had contributed to the initial report and, indeed, the departmental response, to come before the committee and explain themselves. I have to say that we were not particularly happy with the outcomes.

I think it is important for members to understand that I do not believe that a single member of the committee—and this is a diverse committee with members from both major parties and the Hon. Sandra Kanck; it has members of the upper house and of the lower house—is against forestry per se. That is not, was not and never has been the issue. We are not even of a view that forestry in the region around Deep Creek is evil or should not occur per se. That was never the issue.

The issue, and the recommendations of the original report, dealt with a very particular subcatchment of the Deep Creek area, and a particular stream. If I could just explain very simply what we were talking about: it was that the plantation forestry in that area had converged to such an extent on the stream and the swamp, which was the headwaters of the stream, that it was seriously interfering with the perennial stream.

In other words, water was not getting into that stream, which meant that that stream went from being a perennial stream supplying the Deep Creek Conservation Park to being something that ran only in the winter and spring. That had implications for the biodiversity in the region of the stream. It had implications for the aquatic life in the stream, none of which managed to survive the months from basically November through until April because there was no aquatic environment, and that was the matter of concern for the committee.

The other thing that is important to make clear is that as chair of the committee, and again I am sure that I speak on behalf of all members of the committee, the committee does not assert, and never has asserted, that it is our responsibility, or indeed our entitlement, to tell executive government what to do: that is entirely a matter for them.

In making a recommendation to the parliament, and through the parliament under the Parliamentary Committees Act requiring the relevant department to respond to the committee, the committee does expect that department to take seriously the recommendations made by the

committee, to treat them fairly and to respond in a way which is actually responsive to the recommendations.

That response might well be: 'We have read the recommendations, we understand the recommendations, but we don't agree with them, and here is why we don't agree with them,' and that is fine, they are entitled to do that. But to deliberately misconstrue the recommendations as meaning or representing something that they never did, and then having set up a straw man to go around belting the straw man up until he is torn to shreds, which is basically what happened to this committee report, is not acceptable. It is completely unacceptable.

Not only that but the committee, in the process of further investigating this matter, confronted delays in the provision of advice to the committee. I need to say again that some of those delays occurred in a context of committee meetings having been called in May of this year, the then chief executive of the department coming before the committee and giving on the record undertakings to provide material, information and legal opinions to the committee forthwith. Sadly, I have to report—and this is part of the reason for this further report being before the parliament—much of that was not done.

It would be one thing for a lay person to appear before a parliamentary committee and say, 'Yes, I'll get back to you about that' and that person not understand the significance of the undertaking which they had given. It might be a matter about which the committee would take a dim view, but one might forgive a lay person for not understanding that an undertaking given at a public hearing, to a parliamentary committee, is one that needs to be taken seriously. But, for a head of a government department to come in to a parliamentary committee and give an undertaking—and more than one undertaking—and for those undertakings not to be followed through is a completely different matter.

In my view—and I think I can again say this without any fear that other members of the committee will contradict me—it was the opinion of all members of the committee that that was completely unsatisfactory. That particular experience was what provoked this report. As I said in my initial remarks, none of us took any pleasure in having to write this report, having to go through the forensic exercise of comparing statements made by departmental officers on one day against statements they made on another, and having to chase up undertakings given to the parliamentary committee.

In one instance, an undertaking to provide information to the committee was given in March 2007, and the material was not provided to the committee until June or July 2008. It was made clear to the officers who were requested to provide that material that, if they did not provide the material within a short space of time—which was the window between March 2007 and the tabling of the committee report in June 2007—the report would not be able to take into account anything they thought because, if we did not have it, we could not consider it.

Subsequently, the committee's findings were the subject of criticism by the department, in part at least because they did not include reference to the material which we had, as yet, still not received from the department. How good is that? As a parliamentary committee, you are criticised for not including material by the people who have refused to provide it to you. That is really quite extraordinary.

I will not burden members of the chamber today with a chapter and verse account of each and every matter that came to our attention and each and every matter that concerned us, but I will just give you a couple of examples. The department claimed that it misunderstood the area under review, yet conflicting statements in its own responses and internal documents—which we subsequently obtained because we requested that the department give us those documents; eventually they turned up—showed that it knew exactly what area we were talking about.

Another example is that the departmental officers claimed that the minister had no power to remove a plantation in the subject area, in spite of the fact that this subject area was controlled by the state government; it was a state forest. As it turned out, we asked where they got the opinion that the minister had no power, and a departmental officer told the committee—after being told that he had to answer the question—that he got it from a chap he worked with. The chap he worked with was not even a lawyer. Subsequently, crown law opinion was sought and—surprise, surprise—the result was that the opinion of the non-lawyer about whether the minister had power was wrong, but it was good enough to give to the committee, not only in a response from the department, but in evidence as recently as May this year.

The department claimed that rainfall, not forestry, was the main contributing factor to the decline in the stream flows, yet data from the Bureau of Meteorology and the department's own internal technical documents contradicted this position. I could go on and on about the details of this, but I really do not want to burden members with this, because other people have business that they want to attend to here today. However, I just want to finalise my remarks on two points.

The first one is this: it is, in my opinion, unsatisfactory for a departmental officer—and, in particular, a head of the department—to make responses to a parliamentary committee which they either know or should have known are false or misleading and then slip that under the hand of the minister so as to procure some sort of immunity from criticism on the basis that it is all the minister's fault, not theirs. That is rubbish. That is absolute rubbish, because we all know that no minister, no matter how competent, can know every single detail of every single thing going on in their department all the time. That is not possible; that is why they have the department. Ministers must reasonably be able to rely on their officers to tell them the truth and to be honest and forthright in their conduct. To blame a minister who is reliant on their department is, in my opinion, scurrilous, yet that appeared in *Hansard* several times.

The last thing I want to say is that these comments are confined to a period which is now historic. The then chief executive officer is no longer the chief executive officer, and I report to the parliament that there has been a very cordial meeting between the new minister and the new chief executive officer and the committee has noticed an improvement already in the communications and the attitude of the departmental officers in their dealings with the committee and, for that, we are very appreciative. We look forward to that being a continuing trend because we are keen to work in a cooperative fashion with the department and none of us wish to have to go through the experience of preparing, writing or tabling a report anything like this ever again.

The Hon. G.M. GUNN (Stuart) (11:16): I support the comments made by the member for Enfield, the presiding member of the committee. This report should serve as a clear warning to other bureaucrats who think that parliamentary committees are there to be taken for a ride, to provide them when or if they determine any information. What has taken place on this occasion would have to rank as one of the most arrogant attempts to deny a parliamentary committee the information which this parliament has deemed it should have. If the committees are to do their job properly and they are to report to this parliament in an accurate fashion, they have to have accurate information provided to them in a speedy manner.

This inquiry, which was set up to investigate a number of complaints in relation to the forestry department—and let me say from the outset that I strongly support the forestry industry in South Australia. I think it is very important and I think that we need to continue to have a well-managed, well-organised forestry department providing the resources that the people of this state want. However, like any other section of industry, from time to time their operations will come under scrutiny. The committee did not set out on a witch-hunt, and the criticisms which have been levelled at the department are all of their own making.

For some reason these people thought that this parliamentary committee was a jolly nuisance and got in their way. Of course, they have since learnt that the parliamentary committee had a fox terrier attitude—it was not going to let go—that it was going to pursue the issues to ensure that this house was properly informed. It was a tedious exercise but I believe that it was a most worthwhile exercise. As I said earlier, it should be a clear warning to other sections of the bureaucracy that there are parliamentary committees that are going to demand accurate information because that is their role and function, and I think it is a very good thing that this group of people has been brought to account by this committee as a warning to others because, if democracy is going to work efficiently, this parliament has to have true and accurate information before it.

The difference between the public servants and the members of the committee is that we are elected and they are appointed, and they should clearly understand that. If we get it wrong, the electors will deal with it; unfortunately, if they get it wrong, we all have to wear it. On this occasion they are wearing significant criticism which was all of their own making. Mr Speaker, you, as the custodian of rights of members of this house, know full well that this committee has acted diligently, thoroughly and in a reasonable manner. I think that anyone who looks through this report and at the evidence would have to say that the reasonable approach we took surely tested our patience.

I sincerely hope that in the remaining period of time that I have on this committee we do not have to go through another one of these exercises because we have other important matters which we should be focusing our attention on and the committee plays a very important role. It is a

cooperative committee which goes about its business in a professional manner, and we expect to be treated in a professional manner. When we deal with senior members of the Public Service, we expect them to give us accurate information and if they make an undertaking that they carry it out. Otherwise, other departmental officers can expect the same sort of treatment.

I endorse the comments made by the member for Enfield and I think he did an excellent job in chairing the committee. He was far more tolerant than I would have been with these people but they did not appreciate his wise counsel to them. They did not appreciate that they were being given a fair go and, as a result of not appreciating that, they now have this report which they deserve. I say this is fair warning to others. I commend the report to the house.

The Hon. L. STEVENS (Little Para) (11:21): I, too, endorse the comments of the presiding member and the member for Stuart. The presiding member has already very clearly articulated the events that led to the writing of this report and its content. The committee could have gone on and on with this because it was a forensic exercise to try to get to the truth of the matter. In the end, we had to draw a line and say, 'Let's make the point and move on to other important business that we are dealing with,' but the point has been very well made. I know that every member of the committee concurred precisely with the contents of that report.

Like the member for Stuart, I think that it is worth all members reading this report because it has a general application to the conduct of parliamentary standing committees. These committees are very important in terms of being able to cast a critical eye over very important issues affecting the state. We have on all committees, I believe, very much a bipartisan approach to solving issues and to making a positive contribution to complex issues that our state is dealing with. It is extremely important that the information that is provided to a parliamentary committee is correct and evidence-based and that people are fully accountable for what they say. It is also really important that that information is timely. The presiding member eloquently described the sort of frustrations that we were faced with.

During that process, it was very much the feeling that, from the perspective of those providing the information to the committee, their modus operandi was, 'Near enough is good enough, and we'll eventually get around to providing this information.' We were in the position of wondering whether, in fact, they hoped or thought that we might even forget about it and that it would become all too hard for us to do the forensic examination that is required.

We decided that we would take on this matter and that it was not good enough for us and not good enough for any other committee of this parliament. I encourage all members to have a look at the report. You do not need to read the whole thing to get a very clear understanding of what happened. I encourage all members on their committees to make sure that people understand that these are standing committees of the parliament of this state; they must have accurate information; it needs to be evidence-based; they need to be able to stand by that evidence; and they need to take it seriously.

As the Presiding Member said, the personnel at the top of the department have changed. There was a very productive meeting with the new minister and CEO. The committee looks forward to a better working relationship. I am pleased that we did this report and that we followed through with it, and I look forward to having more constructive relations in the future with that particular department. I hope the members in other committees will be able to take on board some of the learning from our report in their work.

Mr PENGILLY (Finniss) (11:25): Although not a member of the committee I rise to support the report. I wholeheartedly endorse the comments made in the chamber this morning by the member for Enfield, as Presiding Member, and also other members who have spoken. As the house is more than aware, it just so happens that this particular issue—the Foggy Farm and Deep Creek inquiry—is in my electorate. I remind members that, still, nothing has happened. This is the environmental damage that is taking place while this thing goes on and on.

It should have been entirely unnecessary for a committee of this parliament to go back and revisit this case. These former—and perhaps some are still there—departmental officers of DWLBC have treated this parliament and, more to the point, have treated this committee with absolute contempt. I sat in on the hearings as an interested local member, and I was disgusted. I thought that the way the committee was treated and the fact that it had to go back to this was quite disgraceful.

I also take on board the comments of the Presiding Member, the member for Enfield, that substantial changes have taken place at the head of that department and that things have

improved. I hope they have improved, because I will raise an issue this afternoon about the same mob of cowboys who were running the thing, and hopefully the new mob can deal with another issue concerning water in my electorate. It may well be that the new minister has exercised a bit more control over this department and made the changes necessary to get it back on track. What took place, as far as the committee was concerned, was blatant bastardry. It should never have occurred, and the committee should never have had to waste time.

At the risk of repeating myself, I am going back to revisit this issue. I again make the point that the best interests of South Australia were not being served and the best interests of my electorate were not being served: it was the best interests of those government officers, who chose to lead a parliamentary committee up the garden path, not supply answers and not do things that they should have done. What happened is quite outrageous.

Along with the member for Stuart and, I am sure, others, I am a great supporter of the forestry industry in South Australia. It is a critical industry which needs to be supported and looked after and which provides great benefits to the future economy of South Australia. However, we have not always got it right, and I do not know that we are getting it right now. Last Thursday I spent the whole day, with the member for Heysen and Robert Brokenshire from another place, on a farm forestry field day tour of the Fleurieu Peninsula looking at forestry woodlots, plantation forestry and, indeed, the issue of blue gums.

This particular issue is about radiata pine plantations. There is concern about the impact on the hydrology of the Fleurieu Peninsula, and it is only right and proper. I went along with open eyes and ears. In relation to one of the issues we looked at—Adelaide Blue Gum—they said they were looking at 10,000 hectares of blue gums and so far have been able to acquire only 1,600 hectares, so that is another story.

A major outcome that I need from this inquiry is a successful conclusion to the problem at Deep Creek, to get some of those trees removed and to get some environmental flows going back down that creek. That is the issue. That is why the committee went down there. I was with them at a site inspection. We met with locals and came back, and I listened in on the hearings up here. Now, here we are once again discussing another report in the parliament from what is basically a second inquiry, but what has happened? Nothing has happened. The trees are still there.

We have had pretty good rainfall down on the Southern Fleurieu and, as the member for Enfield indicated, the bureaucrats totally ignored the evidence on rainfall down there. They did not want to know about that. They were running their own philosophy on it and the facts of the matter could go to blazes. My concern is to get some action down there and indeed, referring to the member for Enfield's comments again, he stated that it is a government forest and that government agents could have done something about it: reduced the trees and got some flows going back down there. I think that is the imperative that we need to come out of it.

I still have landholders down there speaking to me regularly about it. Indeed, one of the landholders, Mr Kevin Bartolo, spoke to me again yesterday about the matter, and he is passionate about Foggy Farm. They just want to see some action. One of the major hiccups in getting anything to happen in the state is that bureaucracy takes over and we get no action. What we want is to have the trees removed.

I may sound painful, but we want the trees removed so that we can get something happening again. It is no reflection on those people who put the forestry plantations in decades ago. They thought they were doing the right thing and, indeed in many respects, they did do the right thing. They are well-managed but, in this particular case, I hope that the first report and this report leave no-one in any doubt that we need action down on the Fleurieu. We need those trees removed, and environmental flows need to recover.

I totally and unreservedly support the report that has come before the parliament today. The title of the report 'A Search for Straight Answers' is no mean title. Quite frankly, the member for Enfield needs to come down two rows, to the front there, and pick up a substantial ministerial position and be able to do something constructive, even more constructive than what he is doing at the moment.

So, it is a good report. It was very much bipartisan, and what came through to me time and time again from the members of various political parties who were on that committee was that they were quite single-minded about the outcome that they needed and that they want.

I urge the committee, through the presiding member, not to take its foot off the throttle on this one, and that, if we have new people at the head of the Department of Water, Land and Biodiversity Conservation, they are encouraged to actually fix this thing up once and for all so that we can get that area back into some sort of reasonable semblance of flow. I support the report.

The Hon. R.B. SUCH (Fisher) (11:33): I do not need to canvass all the details of this. I think it is a most unfortunate saga. The issues seem quite clear to me. I was not on the committee, but you do not need to be Einstein to realise that if you have pinus radiata close to the creek, they are going to suck water out of the creek. That is what trees do; that is how they survive. I find it quite amazing that someone should argue that the minister does not have the power to have some trees removed in a government forest.

The key point is that parliament is meant to be the supreme body. The committees derive their power from the parliament itself and it is important not only in that it devalues committees, but also it generally devalues the parliament, in this state and other states, where parliament has come to be regarded as simply a place where people talk. It is time that parliament was reinstated as the supreme body that represents the views of the public. I would now like to move an amendment to the motion, which I have had circulated and tabled, as follows:

After 'be noted' insert 'and this House condemns those public officials who knowingly misled the Minister for the Environment, the Natural Resources Committee and the Parliament in respect of the Deep Creek Inquiry'.

I think the amendment is fairly self-explanatory, and I ask members to support it.

Mr HANNA (Mitchell) (11:35): I feel compelled to contribute to the debate on this report from the Natural Resources Committee. This is a report entitled 'Deep Creek Revisited: A Search for Straight Answers'. I have followed the work of the Natural Resources Committee with great interest. The committee itself had its genesis in recommendations of a select committee into the River Murray. I was pleased to serve for about 18 months on that select committee. One of its recommendations was that there should be a permanent committee of the parliament to examine issues of water resources in this state and, when that was eventually considered by the parliament, it was deemed appropriate to have a Natural Resources Committee.

Today, we should commend the members of the Natural Resources Committee: the Hons Russell Wortley, Caroline Schaefer and Sandra Kanck from another place, and also the Hons Lea Stevens, Steph Key and Graham Gunn, and the chair of the committee, Mr John Rau, member for Enfield. These members have considered it so important to uphold the integrity of the administrative and parliamentary process that they have pursued the truth in this matter despite a lack of integrity and deliberate obfuscation on the part of public servants.

The subject matter of the report is not something that I intend to go into today. It concerned forestry in the Deep Creek region and the question of whether and how that forestry had an impact on a particular stream in the Deep Creek region.

The important facts in this debate are contained, of course, in the report. The list of misdemeanours goes on beyond lengthy delays from public servants after the committee had requested information, beyond the refusal to supply documents (which, it was said, were prepared for cabinet), beyond key information being omitted to the committee and it goes, in fact, beyond disingenuous responses and incorrect advice given to the committee.

It goes right to the point of public servants having lied to the committee. One can only conclude from reading the transcript of the committee proceedings that there was a deliberate misleading of the committee. I am not afraid to name some of the personnel concerned. The person deserving of most censure, in my opinion, is Mr Darryl Harvey of the department. He is referred to in the proceedings as a principal policy officer of the department. There were a number of occasions when he deliberately withheld the truth to the point where it must be concluded that he was deliberately deceiving the members of the committee. This is a gross offence in terms of the administration of public affairs in this state.

I note also that Mr Michael Deering, an officer of the department, was present during investigations of the committee, and, when it was open to him to provide positive and truthful contributions in response to committee questioning, he said nothing. In his case it may be a matter of errors by omission, but that is nonetheless an extremely serious matter. I also note that the then chief executive of the department, Mr Rob Freeman, gave assurances that documents and information would be provided and, in fact, those assurances were not met. That is an extremely serious matter when one considers that members of the committee then make recommendations to

the parliament and, as a result of that, the minister herself, or the cabinet itself, may make decisions affecting the economic and environmental welfare of South Australia.

There is an answer to those who might say, 'Well, what does it matter if a parliamentary committee was misled?' What happened was that, on the basis of evidence reported to the committee, the committee reported on the substantive issue concerning this water resource in the Deep Creek region. As is required, the minister then provided a formal response to those recommendations. The response undoubtedly was prepared by public servants—in some part the same public servants to whom I have referred. The minister adopted that information without adequately questioning the source of her information.

The minister's response—and, after all, it was in her name and it is her responsibility—condemned the committee for making errors; and, beyond that, her response stated that the recommendations of the committee should not be carried out. We have here not only the misleading of a parliamentary committee but also further misleading information being provided to the then minister for the environment to formulate her response to the committee's recommendations. I say, again, that this is a gross offence in terms of the public administration of this state. What then should be the consequences?

I certainly support the amendment moved to the neutral motion moved by the chair of the committee. I support the amending motion moved by the Hon. Bob Such, which brings a note of censure into this debate. But I see it this way: the officers concerned—or at least in respect of Mr Darryl Harvey—there needs to be some disciplinary action. The house—and, as far as I am aware, the committee—has not been advised that any such disciplinary action has occurred as a result of the transgressions which have been outlined by me and other speakers. Either Mr Harvey needs to be disciplined, or, if the minister is not prepared to ensure that that happens, the minister needs to face the consequences.

In my view (and I am not sure whether this is shared by other members of the house), the misleading of a parliamentary committee, to the extent done and with the purpose that is evident on the transcript, is something that warrants dismissal of a public servant. It is that serious. If that is not going to happen, or if some appropriate disciplinary action is not going to be taken, the minister needs to cop it. The minister should resign if that disciplinary action is not going to be taken (if it has not been taken already) or, if the minister is not going to resign, the Premier should ask the minister to resign.

If the minister does not resign in that circumstance, the cabinet should resolve that she should resign and the Premier should go to the Governor and ask for the withdrawal of her commission. It is that serious. As I say, those consequences are predicated on Mr Harvey not being the subject of disciplinary action. If he is allowed to go scot-free, the minister must, according to the traditions of the parliament, accept the responsibility for her response to the committee, which itself contained false information. It is only with such action, either the strongest disciplinary action in relation to the public servant concerned or the resignation of the minister, that the traditions of our parliamentary system will be upheld.

Debate adjourned on motion of Mrs Geraghty.

ENVIRONMENT, RESOURCES AND DEVELOPMENT COMMITTEE: NATURAL BURIAL GROUNDS

Ms BREUER (Giles) (11:46): I move:

That the 62nd report of the committee, entitled Natural Burial Grounds, be noted.

Natural burial grounds have been promoted as providing an environmentally responsible modern burial practice. The concept originated in the United Kingdom and natural burial grounds have now been developed in a number of other countries, including the USA, New Zealand and the Netherlands. A natural burial ground is a place where human burial takes place in a biodegradable coffin or shroud, and a tree, a shrub or wildflowers are planted as a memorial instead of a headstone. Essentially, it is a type of green cemetery where the occasion of death and the burial of human bodies provides an opportunity to repair the environment through establishing native bush on the cleared land.

Therefore, the principal rationale for natural burial grounds is an environmental one. There are other social issues, however, which are driving interest in this approach to burial. For example, when this inquiry began, many members of the public contacted the committee out of concern about the current system of interment rights and the costs of renewing leases. This is likely to

become a greater social issue as the lack of land available in existing cemeteries leads to increasing rates of grave reuse. There is a need to provide land for burial and the disposal of cremated remains, and this need will increase in the coming decades due to our ageing population.

Natural burial grounds are a proposed new way of meeting this need. They are an innovative approach to cemetery management and may provide multiple benefits to the South Australian public. Natural burial grounds can be incorporated into public space and be linked to the metropolitan open space system. Natural burial grounds can contribute to a number of social and environmental objectives, including more urban green space for passive recreation, enhance local environments and biodiversity, reduce carbon emissions, as well as the burial of human remains.

Natural burial grounds are an expression of contemporary western culture. For natural burial advocates, it is the linking of death and funeral practices to environmental and social benefits that makes the idea so appealing. For them, natural burial grounds represent both greater choice in funeral arrangements and the chance to contribute positively to the environment.

The committee believes that members of the funeral industry are committed to providing high quality services that meet the needs of their customers. As business operators, they will respond to market demand for better environmental performance in their industry. Some cemetery operators have indicated that they may develop small areas for natural burial within their cemeteries as another interment option available to the customer.

Dedicated natural burial grounds, however, provide more than just another interment style and have wide environmental and social objectives. This level of innovation is unlikely to be provided by the market alone. The community is likely to be limited in its capacity to realise these positive outcomes unless natural burial grounds are given government assistance. Therefore, the committee recommends that the government facilitate natural burial grounds in South Australia where demand and suitable sites can be demonstrated.

The committee recommends that the government provides public land, along with financial and technical support to enable this approach to be tested in South Australian conditions. The government should also consider incorporating natural burial grounds as a secondary use in areas designated for revegetation as buffers between conservation and other land uses and for public open space reserves. This may provide the opportunity to introduce natural burial grounds without great additional expense on land dedicated to compatible uses. The great innovation of natural burial grounds is that they allow many public benefits to be gained simultaneously. As the South Australian population ages and available burial plots are used, especially in southern Adelaide, it is timely to consider the issues of available land for burial, alternative interment styles and changing community expectations.

I pay tribute to the member for Fisher who initiated this inquiry. Initially, I think our committee was not terribly interested, but as we went on with the inquiry, we certainly understood and appreciated the issues involved and became quite passionate about the need and use of a natural burial ground. It is a natural way and certainly I think it has huge potential in the future. I certainly thank the many witnesses who appeared before us and who sent in submissions, and particularly I also thank the people from the Enfield cemetery, which we toured. It was a really interesting day and they went out of their way to show us around.

We looked at all aspects of burial at Enfield from the mausoleum to the potential natural burial grounds at which they are looking. It was a most interesting day for all of us. Many of us do not like to think about death too much, but certainly on this occasion it was certainly very natural and we appreciated what happens. Certainly I have a great appreciation for the people at Enfield who gave us such a great tour and really looked after us and who gave us a far greater understanding of what this is all about.

I particularly thank Penny Worland who was our research officer at the time of this inquiry. She did an excellent job. She was able to pull together information for us. It is always a tough job for research officers to be able to tame a committee of six politicians, put their thoughts into some order and produce a good report. Penny certainly did a very good job of this report. We appreciated her time with us and wish her well in the future. Of course, our committee executive officer, Phil Frensham, keeps an eye on our research officers and keeps them in line. He also did an excellent job. Even though initially we were not sure why we were conducting this inquiry, we found the inquiry quite valuable and enjoyed doing it.

I certainly hope that the government does take notice of the recommendations that the committee has come up with. I believe that earlier this week the first natural burial did occur

somewhere. That is not related to this report, but I think that was the case and I am sure that the member for Fisher will comment on that. I commend this report to the house.

The Hon. R.B. SUCH (Fisher) (11:53): I am delighted that this report from the ERD Committee is being noted because, as the Presiding Member just indicated, it is, I think, very significant. I acknowledge the support of members of that committee, including obviously the Presiding Member; the Hon. Michelle Lensink, who replaced the Hon. David Ridgway, on 24 April 2007; the Hon. Mark Parnell; the member for Schubert; and the Hon. Russell Wortley, all of whom generously accepted a submission to the committee that it inquire into natural burial grounds, which has been a passion of mine for a long time. I suppose someone might want to label me Dr Death, because I chaired the select committee on cemeteries and then was instrumental in bringing about this inquiry.

The reason for my interest is that none of us likes to think of death and we tend to put it out of our mind, but the reality is that we cannot escape it, because eventually Mother Nature catches up with us. The whole purpose of a natural burial ground (as the Presiding Member indicated), is not only an environmental one, because it offers the possibility of revegetating sites; restoring old quarries for use as natural burial grounds; and using more environmentally friendly practices, such as a shroud instead of a coffin or a wicker or cardboard coffin instead of the conventional timber coffin. It also lends itself very well to not only full burial but also the interment of cremated remains and, importantly, allowing for a new generation of disposal processes, including promession and resomation.

Promession is a freezing technique, which avoids cremation, and resomation is a chemical technique, which also avoids cremation. Cremation has become a very popular way of dealing with human remains, but it is not environmentally friendly because of the energy used, and there is a problem in disposing of ashes (contrary to what many people think).

The Presiding Member alluded to the fact that a natural burial occurred this week in Adelaide. I guess, in a strict sense, there have been natural burials before on farms and elsewhere, because the law does not prohibit people from being buried on their farm or in a rural setting (not in a township or in your backyard). I think the former member for Unley canvassed that idea when he was in here, but what happened on Monday of this week, in fact, at the Enfield cemetery does relate to our inquiry, because during our inquiry we did visit the Enfield cemetery. They showed us an area next to Folland Park, where natural burials could occur. In fact, on Monday of this week, Kevin Hartley (an undertaker who is very committed to natural burials) conducted that natural burial ceremony.

The first part of the ceremony was held in a local Lutheran church, and the burial took place in that area of open land near Folland Park, in the cemetery trust area. It involved using a shroud instead of a coffin, and I am told that a considerable number of people attended. It was reported to me that the feeling among those people was not joy, obviously, at the passing of a loved one, but recognition of the fact that at last in South Australia and in the metropolitan area we now have as an option natural burials.

I must say that over time I have had tremendous support from the Attorney-General (Hon. Michael Atkinson), the then minister for the environment, now Minister for Health (Hon. John Hill) and Minister for the Southern Suburbs, and the Hon. Paul Holloway, as Minister for Planning, who have all been very supportive of this concept and, whenever I have asked them to assist in helping to facilitate natural burials in terms of location and so on, they have all been very supportive.

The challenge in terms of creating what I call a forest of memories (natural burial grounds) will be not only in areas such as where it is now available (in the Enfield area) but in particular, down south. There is a group seeking to create a natural burial ground down at Aldinga, and I know that group has had discussions with the Minister for Planning and the Minister for the Southern Suburbs (Hon. John Hill). That will be a great thing when that occurs down south as an additional option.

Natural burials are not for everyone; they are an option. As I say, they are more ecologically friendly. They do offer the possibility of permanency, and that is my great wish. It is not available currently at Enfield. The burial this week was a 99-year lease. I want to see natural burial grounds where the person's remains are untouched forever; that would be the ideal.

I thank the research officer, Ms Penny Worland, and the executive officer, Mr Philip Frensham, for their help in helping to bring about the conclusion of this report. I think this heralds a

new era. I receive inquiries every week from people who want this option, and I think that we have to ensure that funeral directors make this option available to people at a time of obvious distress, and not suggest—as has been happened in the UK—that this is only for people who are hippies. This is a low cost option and it offers the chance for permanency, rather than a 50-year lease.

Debate adjourned.

STATUTES AMENDMENT (BETTING OPERATIONS) BILL

Second reading.

The Hon. M.J. WRIGHT (Lee—Minister for Police, Minister for Emergency Services, Minister for Recreation, Sport and Racing) (12:01): I move:

That this bill be now read a second time.

This bill seeks to amend the Authorised Betting Operations Act 2000 and the Lottery and Gaming Act 1936 to strengthen integrity arrangements for betting and racing, to provide a sustainable funding source for the racing industry and broaden consumer protection regulation to include interstate betting operators.

The amount of change in betting service providers operating across Australia since the enactment of the Authorised Betting Operations Act 2000 has been significant.

This change is arriving in parallel with changes more broadly felt across the economy and the community as internet services develop. The model that underlies the Authorised Betting Operations Act is one of a single major betting operations licence, bookmakers and licensed racing clubs with services offered through the traditional face-to-face environment and telephone.

Betting services offered over the internet are becoming increasingly competitive. A significant shift occurred when the Tasmanian government issued Australia's first licence for a betting exchange to Betfair Pty Ltd.

Betfair's description of a betting exchange is a wagering operator that 'matches' punters with directly opposing views on the outcome of a particular event or race. It operates in a manner resembling a stock market in that a punter can either back or lay an outcome on a race or event.

Understandably, representatives of the Australian racing industry became concerned about the integrity implications for betting exchanges which allow any person to bet, for example, that a horse will lose.

To address concerns about integrity, other jurisdictions introduced legislation that sought to limit the operation of betting exchanges and control the availability of race field information to betting operators.

The Western Australian legislation was challenged by Betfair in the High Court. The High Court ruled in favour of Betfair Pty Ltd.

The High Court found that because the Western Australian legislation precluded Betfair competing for wagering customers with in-state fixed-odds bookmakers and the government-owned totalisator, a discriminatory burden of a protectionist kind was placed on interstate trade.

The High Court gave emphasis to evidence which shows 'that there is a developed market throughout Australia for the provision by means of the telephone and the internet of wagering services on racing and sporting events'.

While the High Court decision limits the state's ability to prohibit interstate betting operators from providing services to persons located in South Australia, it is still possible for the state to legislate for the welfare of their citizens, so long as it does not have a protectionist purpose, and it is appropriate and adapted to address the identified welfare objective.

The authorisation process reflects the requirements of section 92 of the Constitution, but also specifically requires authorised interstate betting operators to have the same regulatory requirements as licensed South Australian wagering operators.

This bill creates a process for the authorisation of interstate betting operators that have been licensed in another Australian jurisdiction. Authorised interstate betting operators can offer betting services to persons located in South Australia by telephone, internet or other electronic means provided they comply with South Australia's consumer protection requirements which equally apply to South Australian licensees. Key elements of that environment are:

- prohibitions on accepting bets from children and requirements for systems designed to prevent bets from being made by children;
- compliance with advertising codes of practice;
- compliance with responsible gambling codes of practice; and
- limitations on the contingencies on which bets can be accepted.

These obligations are in addition to the licensing and regulatory requirements on the operator from their 'home' jurisdiction. To provide for effective compliance, the statutory default provisions have been extended to include authorised interstate betting operators. Prohibitions on unlawful totalisators and bookmakers have been extended to include unlawful betting exchanges.

It should be noted, however, that these changes that are necessary to address the Betfair High Court decision and to ensure application of consumer protection measures to interstate operators have the potential to trigger a claim of compensation by the South Australian TAB under their approved licensing agreement with the government.

The government has consulted with the South Australian TAB on the proposed bill. The South Australian TAB has advised that in-principle they support the changes. At this stage, however, the South Australian TAB has not formally consented to the bill under the approved licensing agreement, which is required to avoid the potential for a claim of compensation.

The government will continue to work cooperatively with the South Australian TAB to arrive at an outcome that will not expose South Australians to the risk of litigation and compensation. The results of this work will be reported to the council.

To address concerns about integrity, all betting operators that accept or facilitate bets on South Australian races will be required to have in place an integrity agreement with the relevant racing controlling authority.

Integrity agreements provide for the sharing of information relating to betting activity, provision of specific information as required by the controlling authority, notification regarding disciplinary and criminal proceedings and the facilitation of investigations.

The provisions contained in this bill represent the minimum essential requirements. Racing controlling authorities will not be constrained in their efforts to ensure ongoing integrity of their racing operations. Specific provisions regarding disclosure of information and confidentiality underpin the integrity agreements and pave the way for information to be provided to the racing controlling authorities.

Another consequence of this increasingly national market is that the funding arrangements for Australian racing have broken down. In the world contemplated in the year 2000 with the Authorised Betting Operations Act, the racing industry in each state or territory would source its funds from betting operations conducted in that state or territory, regardless of where the races that generated the wagering revenue were actually conducted.

In a marketplace where the location of betting operators is no longer relevant, this arrangement cannot be maintained. This is evidenced by the recent implementation by the New South Wales government of legislation that allows its racing controlling authorities to levy a charge of up to 1 per cent on the gross wagering turnover of all Australian wagering operators that accept bets on New South Wales races from 1 September 2008. It is understood that this has the potential to impact on the South Australian racing industry by up to $180,000 per month. This would increase if other jurisdictions followed New South Wales' lead, as they are expected to do.

This is a financial impact that cannot be sustained by the South Australian racing industry. It was for this reason that on 28 August 2008 the government announced changes to the Authorised Betting Operations Act to provide for the South Australian racing industry a sustainable funding mechanism for the changed national betting and racing environment.

This bill makes good on that commitment to the racing industry. All betting operators that accept or facilitate bets on South Australian races will be required to have in place with the racing controlling authorities contribution agreements that require operators to make contributions to the racing industry, state the basis for calculation, identify the terms of payment and include information provision requirements to support the agreement.

From 1 September 2008, there are special provisions for recovery of the contribution to the racing industry, calculated in accordance with the position stated by the industry and documented in the media release of 28 August 2008. In that release, it was stated that the three codes wished to charge pari-mutuel operators (TABs) 1.5 per cent of turnover held on South Australian racing events and other operators, including TAB fixed-odds betting, all bookmakers and betting exchanges 20 per cent of their gross revenue from wagering on SA events. This position is reflected in the bill. It is considered that this outcome does not discriminate in a protectionist way between the various types of wagering operations, so it is consistent with section 92 of the Australian Constitution.

This bill creates an environment wherein consumer protection measures are applied to both local and interstate betting operators. It achieves a mechanism for sustainable funding for the South Australian racing industry, and it improves arrangements for integrity in South Australian racing.

To put this simply, we need to do this because of the High Court decision. As a result of that decision, New South Wales has broken what has previously been a gentleman's agreement in Australian racing, where you could bet on someone else's product and not be charged. New South Wales is the first state to change that operation. It was able to do it because of the Betfair v WA Government High Court decision. As a result of that, South Australia and other states are financially disadvantaged. We predict that, if other governments do what New South Wales is doing and charge to bet on their product, something like $9 million would leave the South Australian jurisdiction; and, put simply, we cannot allow that to occur. So, what we are doing with this legislation is facilitating for South Australia to be able to charge to bet on out product and, as a result, we will not be in a revenue-negative situation.

Dr McFETRIDGE (Morphett) (12:11): I indicate that I am the lead speaker on behalf of the Liberal Party, and we support the bill. The second reading explanation just read out by the minister explains most of the issues behind the bill, so I will not keep the house long. Before I came into this place, I was a veterinarian. I used to work in racehorse practice and I, for one, am very aware of the size of the industry, particularly in a state the size of South Australia.

The equine industry, which includes leisure horses, is about the fourth biggest industry in this state. The racing industry—which includes thoroughbreds, harness and greyhounds—is a huge employer. I think it employs something like 3,000 full-time equivalents. It is a very big industry that needs to be supported. We cannot allow the effects of legislation that has been put in place in other states or jurisdictions, and imposed upon us, to be detrimental to the industry as a whole.

We know that South Australia has always been a bit behind the eight ball regarding prize money. I was recently given some comparisons. At a recent Saturday race meeting in South Australia, the total prize money was $213,000 compared with $560,000 in New South Wales, $405,000 in Queensland and $900,000 in Western Australia. On any Saturday, the Spring Racing Carnival in Melbourne is worth well over $1 million. I think on that particular Saturday, when the comparisons were being done, it was $1.32 million in Victoria. That is significant prize money and significant betting on all forms of racing in South Australia and interstate.

We now have a situation where people can bet from all over the world. People from South Australia can bet all over the world and people from interstate can bet on South Australian races. Revenue can leave South Australia through those wagers, but nothing comes back to the industry by way of dividends. This legislation will ensure that that money now comes back to the industry in South Australia. As the minister pointed out in his second reading explanation, this will bring about $9 million back into the South Australian racing industry.

One part of this legislation that the Liberal Party would normally object to very strongly is that it is retrospective. As I understand it, in this particular case, because of what has happened in New South Wales, the legislation is retrospective to 1 September this year—not a huge time gap, but a significant one. I think the minister said that $180,000 a month is leaving South Australia, so that is a significant amount of money that we can at least claw back from that time. The concern is still with betting through overseas agencies. How that is ever going to be controlled, I am not sure. I do not know what proportion of bets are placed with overseas agencies. I know that a number of people choose to bet with interstate betting agencies because of better odds.

The nuances are beyond me at this stage. I am not a big punter; I might bet on the Melbourne Cup but that is about all. I was in racehorse practice for too long to see what a mug's game it could be if you were on the wrong end of it. I think the only people who made money out of

the racing industry were a few owners. As a vet, I used to make a lot of money out of both the owners and trainers but I steered away from betting because I know how erratic horses can be, and when you then put a jockey on top, that compounds the issue. So I am not a big punter.

People look at the odds they can get and sometimes they get better odds when they bet interstate or overseas. The need to be able to control it within Australia is explained in the minister's second reading explanation and, for those who want more, this bill went through the other place last night so they can avail themselves of that information in *Hansard*.

As to the original Betfair issue that we spoke about in 2005, minister Wright (when he was minister for racing) put out a press release relating to the problems we were having then. That issue has not gone away but compounding that issue was the High Court decision in Western Australia which banned the ban on Betfair, for want of a better description, earlier this year. The reality now is that it is possible to bet anywhere in the world and, more particularly for us with this bill, anywhere in Australia.

We need to get some money back for our industry here and we need to protect it, hence we have this piece of legislation before us. I thought it may have come a bit earlier, particularly with all Labor states in place at the time. We had an opportunity for 12 months with Labor states around Australia and federally, but it was not to be.

We support the bill. We may have to come back to review it at some stage because of the overseas issue. I see in the Western Australian legislation a provision that betting operators located overseas will be required to apply to the Gaming and Wagering Commission for approval, and in that respect I say, 'Good luck!' I think there is a fat chance of that happening, just as I think there is a fat chance of the Rudd federal government controlling the internet through the censorship it wants to bring in with ISP providers. I think the only outcome of that will be to slow down the internet for all Australians which is something we need to resist strongly.

Last night the SAJC had its annual general meeting. I understand from reading the media report this morning that a number of issues were raised, including some legal matters and injunctions being discussed. I will not discuss the ins and outs of that too much other than to say that I strongly encourage all those connected with thoroughbred racing in South Australia to get their act together to make sure that the industry is not being harmed in any way by egotistical agendas, and to make sure that we take full advantage of the opportunity we have. This legislation will enhance those opportunities. The Liberal Party supports this bill.

Mr PEDERICK (Hammond) (12:19): I, too, rise to support the bill and I note that it will bring more gambling money into South Australia. Whether or not we like betting, it is a practice that some people in the community enjoy, so if there can be some benefit brought back to support an industry which supports thousands of people in this state, well and good. I note that as part of the bill interstate betting agencies will be establishing a fund, essentially an integrity fund, to protect the situation.

It is very interesting to consider horses and horseracing. The member for Morphett alluded to the cost of horses. I have a sister who is very involved with horses. She has six, maybe seven if you include the 24 year old horse that is retired on my farm. I indicated to her that I do not mind how long the old racehorse stays there but I am not paying for the hay. Whether you are involved in horses on a social basis or in the racing industry, plenty of costs are incurred. I have always referred to horses as hay burners, and plenty of people have gone broke trying to get a winner.

In fact, my sister, Nicole, resides on King Island and I had the opportunity to be down there a couple of Christmases ago. She had a racehorse running that she was a part owner of and she had a win, which was quite a shock because I heard from punters in the crowd that it was within a hair's breadth of being put down. This year I laughed when my sister said to me that she came into the racing season at King Island and realised that she did not have a share in a thoroughbred, so out she trotted to get a share in a horse. So, I do not know how that hay burner is going—

Mr Venning interjecting:

Mr PEDERICK: Yes; I guess we will find out. I am so glad that my sister's husband has a very good job and he obviously has a lot of patience.

Mr Venning: And money.

Mr PEDERICK: Yes. In saying that, I also support horseracing at a local level. The Murray Bridge Racing Club is proactively looking at its new facility across the southern side of the freeway,

and I hope the government is doing all it can to assist that development. I believe that, if it is good enough for my area to facilitate a state prison, it is good enough to facilitate other amenities such as good horseracing venues. This will be a training venue, which I think is a great initiative by the local club. I know that the processes are underway but I also know that things need to happen quickly because the landholder cannot hold out much longer on the surety of that land being sold. I hope that the government works collaboratively with the racing club and the local council to get that process fast-tracked. With those few words, I support the bill.

Mr VENNING (Schubert) (12:22): I rise briefly to support the shadow minister, the member for Morphett. I have been in this place for some years and have seen this industry go through a pretty difficult time. It is a major employer in South Australia. I used to frequent the racetrack as a secondary schoolboy, when I followed the jockey, the late Noel Mifflin, whom you might remember, who was a very good jockey. If you followed him and backed him you usually went home richer than you went to the races. Sadly, he passed away some years ago. Since then, I have not frequented the racetrack or the betting ring at all, apart from the occasional flit on the Melbourne Cup. One day I did scoop the Melbourne Cup with an ill-gotten gain of $500 on Saintly, which came home at 11:1; so work that out.

I welcome this, because it does strengthen the integrity arrangements for betting and racing, and that is what we all want to do in South Australia. Authorised interstate betting operators can offer betting services to persons located in our state by telephone, internet or other electronic means provided they comply with South Australia's consumer protection requirements, which apply equally to South Australian licensees.

I believe that all betting operators will have no problem in accepting that, if they facilitate bets in South Australia, they will be required to have in place an integrity agreement with the relevant racing authority. With that, I commend the member for Morphett for his work in this area as a vet. It is quite unique to have a vet in the parliament and a horse lover to boot. Certainly, we have been very much guided by his input on this matter, and we support the bill.

The Hon. M.J. WRIGHT (Lee—Minister for Police, Minister for Emergency Services, Minister for Recreation, Sport and Racing) (12:24): I would like to thank members for their contribution, and I wish the bill a speedy recovery.

Bill read a second time.

The Hon. M.J. WRIGHT (Lee—Minister for Police, Minister for Emergency Services, Minister for Recreation, Sport and Racing) (12:24): I move:

That this bill be now read a third time.

In doing so, I would like to acknowledge the opposition which has allowed this bill to go through both houses quickly. I would also like to acknowledge the industry, particularly Thoroughbred Racing SA, Harness Racing SA and Greyhound Racing SA. They have all been very supportive of this bill. This will be good for the racing industry and good for South Australia.

Bill read a third time and passed.

STATUTES AMENDMENT (POWER TO BAR) BILL

Received from the Legislative Council and read a first time.

The Hon. J.M. RANKINE (Wright—Minister for Families and Communities, Minister for Northern Suburbs, Minister for Housing, Minister for Ageing, Minister for Disability) (12:26): I move:

That this bill be now read a second time.

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

Leave granted.

Amendment of *Liquor Licensing Act 1997*

Police power to bar

Under section 125 of the *Liquor Licensing Act 1997* (the *Act*), a licensee or a responsible person for licensed premises can bar a person from the premises for any of the following reasons:

- if the person behaves in an offensive or disorderly manner;
- if the person commits an offence;

- if the licensee or responsible person believes that the welfare of the person or the person's family is seriously at risk as a result of the consumption of alcohol by the person;
- on any other reasonable ground.

The power to bar is a protective order for the person concerned, another person with whom the person resides and other patrons and staff.

However, following incidents involving outlaw motorcycle gangs and licensed premises (such as the shootings at Tonic nightclub and more recently in the Gouger Street precinct), it has become apparent that there is a need to amend the Act to grant the Commissioner of Police, and other police officers on the authorisation of a police officer of a specified rank, the power to make an order to bar persons from licensed premises. Licensees have expressed concerns that, in certain circumstances, they are reluctant to issue barring orders, particularly if the patrons concerned are members of outlaw motorcycle gangs or the like; they are, understandably, too frightened and intimidated to do so.

In other situations, police are frustrated by undesirable patrons being present on licensed premises in circumstances where, while no offence has been detected, police nevertheless hold concerns as to the safety and welfare of persons resorting to those licensed premises.

Thus, it is proposed that Part 9 Division 3 (Power to bar) of the Act be amended. Some of the amendments will further divide that Division into Subdivisions, each of which will relate to barring orders.

Proposed new Subdivision 3 is headed 'Police barring orders' and contains sections 125A to 125D. Sections 125A and 125B will enable the Commissioner of Police to make, and police officers of a specified rank to authorise the making of, orders to bar persons from licensed premises (including multiple premises in certain cases) for an indefinite period or a period specified in the order.

Police sergeants will be given the power to bar people for up to 72 hours—for committing an offence or for disorderly or offensive behaviour—in or around licensed premises.

Police inspectors will be able to bar for longer periods of up to 3 months—on the first occasion of offensive behaviour or an offence being committed—and 6 months for the second time. A third offence could lead to indefinite barring. Police inspectors will also be able to bar people indefinitely on welfare grounds if they believe the welfare of the person or the person's family is seriously at risk as a result of the alcohol consumed by that person.

Authorisations to police officers are subject to certain restrictions set out in new section 125B of the Bill.

It is also proposed that police will be required to provide relevant licensees of information on the barring that identifies a person who has been barred.

Barring orders made by the police will be subject to review by the Liquor and Gambling Commissioner (*LG Commissioner*) under section 128.

Criminal Intelligence

Section 28A of the Act provides that police may rely on criminal intelligence when lodging objections to applications or in disciplinary matters. In such cases, the objection or application need only state that it would be contrary to the public interest if the person were to be or to continue to be licensed or approved.

As a result of the proposed amendments to provide the Commissioner of Police with the power to bar persons, it is necessary to amend section 28A to provide that the Commissioner of Police may rely on information that is classified as criminal intelligence to do so. A barring order by the Commissioner of Police based on criminal intelligence need only state that it would be contrary to the public interest if the person were not so barred.

Provision of identification information

It is proposed to amend section 125 of the Act, the section that makes provision for licensees to make a barring order. The first amendment will enable police to provide information (including information that may identify a person) to licensees for the purposes of the licensee barring the person under subsection (1) of that section. It is an offence under section 125 for a licensee, a responsible person for licensed premises, or an employee of the licensee, to allow a person barred from the premises to enter or remain in the premises. The proposed amendment to section 125 that will allow police to provide licensees with information (including photos where available) which may identify persons who have been barred from premises should assist licensees so that they do not inadvertently contravene the section.

Extension of barring period

Currently, when a licensee or responsible person for licensed premises bars a person for welfare reasons under section 125(1)(aa), the barring order may be for an indefinite period or for any period the licensee or responsible person sees fit. In all other cases the following applies:

- a person may be barred for no more than 3 months for a first offence;
- a person may be barred for no more than 6 months for a second offence; and
- a person who has committed third and subsequent offences may be barred indefinitely or for any period at the discretion of the licensee.

In the case of a barring made by a licensee for an indefinite period, or for longer than 6 months, the order will lapse if information regarding the barring is not provided to the LG Commissioner within 7 days of the order being made. The LG Commissioner may review an order if the person is barred for a period exceeding 1 month, and may confirm, vary or revoke the order. For an order barring a person for a period exceeding 6 months, or for an indefinite period, the LG Commissioner may vary the order until further order.

Licensees have expressed their concern that circumstances have arisen where serious incidents (including assaults, drug related offending or property damage) justify a period of barring in excess of that currently permitted under section 125(5) of the Act.

It is proposed to amend section 125 of the Act to empower a licensee to apply to the LG Commissioner to bar a person for a period exceeding 3 and 6 months for first and second barrings respectively, in which case the LG Commissioner's decision will be reviewable by the Licensing Court.

Police power to require personal details.

The proposed insertion of section 125E will empower police to require a person to provide personal details and, if necessary, to verify any statement made. It will be an offence if a person refuses or fails, without reasonable excuse, to comply with such requirements carrying a maximum penalty of a fine of $1,250.

Reporting to Minister on barring orders

The proposed insertion of section 128A will require the LG Commissioner to report annually to the Minister in relation to barring orders made by licensees in force for an indefinite period or a period exceeding 6 months, barring orders made by the Commissioner of Police based on criminal intelligence, and the number of reviews of orders conducted under section 128 and the outcome of such review. The Minister must cause copies of the report to be laid before each House of Parliament.

Amendment of Casino Act 1997

It is also proposed to amend the *Casino Act 1997* to enable the Commissioner of Police to bar persons from the Casino under that Act.

In contrast to the position in other jurisdictions in Australia, the Commissioner of Police does not currently have the power under the Casino Act to initiate a person's exclusion from the Casino. This is despite the fact that the Commissioner of Police is better placed than either the Casino operator or the industry regulator to make an informed decision about barring orders that target criminal activities, particularly money laundering. Existing Casino barring provisions are focussed on problem gamblers and not preventing criminal activity.

The Bill inserts new section 45A into Part 4 Division 7 of the Casino Act. New section 45A gives the Commissioner of Police the power to bar a person from the Casino by written order for a period specified in the order on any reasonable ground. Subject to the non-disclosure of criminal intelligence, a barring order must set out the grounds on which the order is made and the barred person's right to have the order reviewed. A copy of the order must be served on the barred person and on the licensee (along with information that identifies the barred person). A barred person who enters or remains on the casino while a barring order is in force is guilty of an offence. Reasonable force may be used to eject a barred person from the casino. The Commissioner of Police may delegate his power under section 45A, but only to a Deputy Commissioner or Assistant Commissioner of Police.

Amendments to section 65 of the Casino Act will ensure a barred person has the right to apply to the Independent Gambling Authority for a review of a barring order made by the Commissioner of Police.

As with the power to bar under the Liquor Licensing Act, the Commissioner of Police will be able to rely upon criminal intelligence when determining whether to make a barring order. Criminal intelligence will be protected from disclosure in the same way it is protected under the Liquor Licensing Act provisions.

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 *Liquor Licensing Act 1997*

4—Amendment of section 28A—Criminal intelligence

Section 28A relates to information relating to actual or suspected criminal activity, the disclosure of which could reasonably be expected to prejudice criminal investigations, or enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement. Such information is criminal intelligence if it is so classified by the Commissioner of Police. It is proposed to substitute subsection (1) so as to clarify that information classified by the Commissioner of Police as criminal intelligence for the purposes of the Act may not be disclosed to any person other than the Liquor and Gambling Commissioner (the *LG Commissioner*), the Minister, a court or a person to whom the Commissioner of Police authorises its disclosure.

An additional subsection to be inserted relates to the amendments to Part 9 Division 3 proposed by this measure. New subsection (5) provides that if a person is barred from licensed premises by the Commissioner of Police because of information that is classified by the Commissioner of Police as criminal intelligence, the order need only state that it would be contrary to the public interest if the person were not so barred.

Additional amendments are proposed to this section to provide for the maintenance of judicial functions in relation to the classification of information as criminal intelligence and the confidentiality of information that has been so classified in any proceedings under the principal Act (whether to be determined by the LG Commissioner, the Licensing Court, the Supreme Court or any other court).

5—Insertion of Part 9 Division 3 Subdivision 1 and heading to Subdivision 2

It is proposed to divide Division 3 of Part 9 into 4 Subdivisions. The first Subdivision (comprising new section 124A—Interpretation) is to be inserted before section 125 of the principal Act. New section 124A defines 'licensed premises' and 'premises' for the purposes of Division 3. The second Subdivision is to be headed 'Licensee barring orders'. That Subdivision is comprised of section 125.

6—Amendment of section 125—Licensee barring orders

The first amendment proposed to this section deletes words as a consequence of the insertion of new section 124A. The next amendment allows a police officer to provide a licensee with information that may identify a person for the purposes of enabling a licensee to bar a person from licensed premises or to identify a person who has been so barred.

It is also proposed to amend subsection (5) of this section to allow a person to be barred for such period as may be approved by the LG Commissioner that exceeds the period specified in subparagraph (i) or (ii) of subsection (5)(b).

7—Insertion of Part 9 Division 3 Subdivisions 3 and 4

It is proposed to insert new Subdivision 3 after section 125 of the principal Act. That Subdivision will provide for the making of barring orders by the police.

Subdivision 3—Police barring orders

125A—Commissioner of Police barring orders

New section 125A provides that the Commissioner of Police may, by order served on a person, bar the person from entering or remaining on—

- specified licensed premises; or
- licensed premises of a specified class; or
- licensed premises of a specified class within a specified area; or
- all licensed premises within a specified area,

for an indefinite period or a period specified in the order on any reasonable ground.

The Commissioner of Police may—

- revoke an order under this section by subsequent order; and
- delegate his or her power under this section to a Deputy Commissioner or an Assistant Commissioner of Police.

125B—Police officer barring orders

New section 125B provides that a police officer may, on the authorisation of a senior police officer, by order (a *barring order*) served on a person, bar the person from entering or remaining on—

(a) specified licensed premises; or

(b) licensed premises of a specified class; or

(c) licensed premises of a specified class within a specified area; or

(d) all licensed premises within a specified area,

for a specified period not exceeding any applicable limit fixed by this section—

(e) if the police officer is satisfied that the welfare of the person, or the welfare of a person residing with the person, is seriously at risk as a result of the consumption of alcohol by the person; or

(f) if the person commits an offence, or behaves in an offensive or disorderly manner, on, or in an area adjacent to, the licensed premises; or

(g) on any other reasonable ground.

An order under this section may be varied or revoked by subsequent order.

An authorisation to issue a barring order under this section—

- is subject to the provisions set out in proposed subsection (3) that relate to the length of time for which an order will remain in force;
- may be granted orally or in writing (but a written record must be kept of the authorisation and certain details relating to the authorisation and the order).

In this new section, a *senior police officer* is defined to mean—

(a) in the case of a barring order that is to be made on the grounds referred to in subsection (1)(e)—a police officer of or above the rank of Inspector;

(b) in the case of a barring order that is to be made on the grounds referred to in subsection (1)(f) or (g)—

(i) if the order is to be made for a period exceeding 72 hours—a police officer of or above the rank of Inspector; or

(ii) in any other case—a police officer of or above the rank of Sergeant or the officer in charge for the time being of a police station.

125C—Offences

A person who enters or remains on licensed premises from which he or she is barred under this Subdivision is guilty of an offence, the penalty for which is a fine of $1,250.

A licensee, a responsible person for licensed premises, or an employee of the licensee, who knows or ought reasonably to know that a person has been barred from licensed premises under this Subdivision and who allows a person to enter or remain on those premises, is guilty of an offence, the penalty for which is a fine of $1,250.

125D—Evidence

This new section provides for evidentiary matters in relation to orders and authorisations under this new Subdivision.

Subdivision 4—Miscellaneous

125E—Power to require personal details

A police officer may, for the purposes of Division 3, require a person to state all or any of the person's personal details. It is an offence for a person, without reasonable excuse, to refuse or fail to comply with the requirements of this section, the penalty for which is a fine of $1,250.

A police officer who has required a person to state all or any of the person's personal details under this section is required to comply with a request to identify himself or herself, by—

- producing his or her police identification; or
- stating orally or in writing his or her surname, rank and identification number.

8—Amendment of section 126—Orders

It is proposed to insert new subsection (1a) to provide that if a person has been barred from premises by order under Subdivision 3, the relevant licensee must, within 14 days of the service of the order, be provided with a copy of the order and information that identifies the person. Failure to comply with this subsection does not, however, affect the operation of the order.

9—Amendment of section 128—Review of orders

The proposed amendments to this section result from the determination that if the period for which an order made under section 125(5)(b)(i) or (ii) is extended for a period approved by the Liquor and Gambling Commissioner, any application for review of the order must be made to the Licensing Court. Thus the amendments are consequential on substituting the term 'licensing authority' for Commissioner in the section.

10—Insertion of section 128A

128A—Report to Minister on barring orders

The Minister must, each year, table in the Parliament a report of the LG Commissioner specifying the following information in relation to the financial year ending on the preceding 30 June:

- in relation to an order made under Subdivision 2 barring a person from licensed premises for an indefinite period or a period exceeding 6 months—

  (i) in the case of welfare orders (that is, an order made under section 125(1)(aa))—

  - the number of welfare orders made; and
  - the location of the licensed premises from which the persons were barred;

  (ii) in any other case—

  - the number of orders made; and

- statistical information about the type of conduct giving rise to the orders; and
- the location of the licensed premises from which the persons were barred;

- in relation to an order made under Subdivision 3 because of information classified by the Commissioner of Police as criminal intelligence—
  - the number of orders made; and
  - the location of the licensed premises from which the persons were barred; and
- statistical information about—
  - (A) the period for which the orders have effect; and
  - (B) the age, gender, race and residential postcode of the persons barred;
- the number of reviews of orders conducted under section 128 and the outcome of any such review.

Part 3—Amendment of *Casino Act 1997*

11—Amendment of section 3—Interpretation

It is proposed to insert a definition of *criminal intelligence* in this section, consistent with the definition of criminal intelligence in the *Liquor Licensing Act 1997*.

12—Insertion of section 45A

45A—Commissioner of Police's power to bar

New section 45A gives the Commissioner of Police the power to bar a person from the casino for a period specified in the order or for an unlimited period on any reasonable ground. This power mirrors the power of the licensee to bar under section 44 and the LG Commissioner's power to bar under section 45 and is substantially similar in its terms.

Except where the order is made because of information that is classified by the Commissioner of Police as criminal intelligence, the order must—

- state the grounds on which the order is made; and
- set out the rights of the excluded person to have the order reviewed by the Authority; and
- be given to the person against whom it is made personally or by sending it by post addressed to the person at the last known postal address.

Where the order is made because of information that is classified by the Commissioner of Police as criminal intelligence, the order need only state that it would be contrary to the public interest if the person were not so barred.

The section further provides that the licensee must, within 14 days of the service of the order on the excluded person, be given—

- a copy of the order; and
- information that identifies the person,

(but a failure to comply with this requirement does not affect the operation of the order).

It is an offence for an excluded person to enter or remain in the casino while subject to an order under this proposed section (with a penalty of $2,500). It is also an offence if the licensee allows an excluded person to enter or remain in the casino while subject to an order (with a penalty of $10,000).

An order under this section may be revoked by the Commissioner of Police at any time.

The Commissioner of Police may not delegate his or her power under this section except to a Deputy Commissioner or Assistant Commissioner of Police.

13—Amendment of section 65—Review of decisions

This proposed amendment will make provision for a person who is aggrieved by a decision of the Commissioner of Police to bar the person from the casino to apply to the Independent Gambling Authority for a review of the decision.

14—Insertion of section 66A

66A—Procedure in relation to criminal intelligence

This new section provides for the procedure relating to the confidentiality of information classified by the Commissioner of Police as criminal intelligence in any proceedings under Part 8. It makes provision for the maintenance of judicial functions in relation to the classification of information as criminal intelligence and the confidentiality of information that has been so classified in any court proceedings.

15—Substitution of section 69

69—Confidentiality of criminal intelligence and other information provided by Commissioner of Police

This new section provides that information provided by the Commissioner of Police under this Act to the Authority or the Commissioner may not be disclosed to any person other than the Minister, a court or a person to whom the Commissioner of Police authorises its disclosure, if the Commissioner of Police asks for the information to be kept confidential on the ground that its disclosure might create a risk of loss, harm or undue distress.

Information that is classified by the Commissioner of Police as criminal intelligence for the purposes of this Act may not be disclosed to any person other than the Authority, the Commissioner, the Minister, a court or a person to whom the Commissioner of Police authorises its disclosure.

The Commissioner of Police may not delegate the function of classifying information as criminal intelligence for the purposes of this Act except to a Deputy Commissioner or Assistant Commissioner of Police.

The Hon. J.M. RANKINE (Wright—Minister for Families and Communities, Minister for Northern Suburbs, Minister for Housing, Minister for Ageing, Minister for Disability) (12:26): I move:

That standing orders be so far suspended as to enable the bill to pass through all stages without delay.

The DEPUTY SPEAKER: I draw attention to the state of the house.

A quorum having been formed:

Motion carried.

Dr McFETRIDGE (Morphett) (12:28): I indicate that the Liberal Party is supporting the changes to the Statutes Amendment (Power to Bar) Bill 2008. I am the lead speaker but, having said that, I will not keep the house very long at all, because we strongly support this piece of legislation.

The need to be able to give the police the licence to bar patrons from licensed premises is one that not only the Liberal Party and the government but many people in South Australia strongly agree with. I think that there are a few civil libertarians out there who are concerned about the use of the police criminal intelligence powers to decide whether their police are to be given the power to bar somebody. I seek leave to continue my remarks.

Leave granted; debate adjourned.

VISITORS

The DEPUTY SPEAKER: My thanks to the member for Morphett who has given way to enable me to acknowledge the presence in the gallery of the members of the boys' choir from Hackham East Primary School, who have just performed for the Premier in the Balcony Room. Welcome and thank you for your attendance.

STATUTES AMENDMENT (POWER TO BAR) BILL

Adjourned debate on second reading (resumed on motion).

Dr McFETRIDGE (Morphett) (12:30): I congratulate the Hackham East Primary School boys' choir, and I am sorry I missed their performance; it would have been something worth listening to, and I would like that opportunity at some stage. I will now continue my remarks on an important piece of legislation before this house—the Statutes Amendment (Power to Bar) Amendment Bill 2008. I have a lot of faith in the South Australian police and their integrity in conducting their duties not only with the highest rigour but also with judicial acumen. They are not going to run around willy-nilly and bar people from hotels because this legislation has been passed.

The need to bar patrons from licensed premises is something that traditionally has been left up to the licensee. This piece of legislation extends that power to senior police officers, and the reason for that is that, unfortunately, there have been some tragic circumstances where outlaw motorcycle gangs and other people with organised crime connections have gone into licensed premises and committed criminal acts, in one case in Gouger Street with gunfire and violence. There has also been a history of the selling of drugs and other organised crime, and the licensees of a lot of these premises are intimidated by some of these people who are the subject of this piece of legislation.

We need to make sure that the licensees and the employees of licensed premises are not going to be intimidated, and so not being able to ban people from their hotels without fear of retribution is something that I think is completely out of place here in South Australia. So, this

legislation is giving the opportunity for police to use their information—whether it is criminal intelligence or advice from the licensees—to act on behalf of the licensees, and also on their own recourse, to ban people from licensed premises.

We will do whatever we can, whether it is in this place or by general support of the South Australian police and people going about their honest business in South Australia, to make sure that people can have the opportunity to run a business that is going to be not only a good and pleasant business but also one where they are not going to be subject to threats and intimidation by people with ill intent. The legislation is relatively straightforward. The Liberal Party supports it and, with that, I conclude my remarks.

Mr VENNING (Schubert) (12:33): Very briefly, I certainly support this bill, representing an area which is associated with the alcohol industry. I just want to raise one objection, and this is in reaction to the recent shootings in the Gouger Street precinct. I do not believe that it is right that any of us should ever bring legislation into this place as a direct result of an event like that. Yes, it was regrettable, and certainly it may highlight a problem, which it obviously does, but I think it is wrong that we instantly react to a situation. It is either required or it is not, but in this instance I am quite supportive of this being on the authorisation of a police officer of a specified rank—that is not specified here, and I presume it is a senior police officer—having the power to make an order to bar persons from a licensed premises. None of us would have any objection to that. I commend the shadow minister for representing us strongly, and we support the bill.

The Hon. I.F. EVANS (Davenport) (12:34): The shadow minister has given agreement to this bill on behalf of the Liberal Party. I was dealing with this bill formerly as the shadow minister over a period of four or five months prior to the reshuffle. I make the point to the government that this bill was introduced about five months ago, and to come in here two days before Christmas and rush it through on the basis that it is urgent is really a nonsense, indeed. It is really because of the former minister's incompetence and failure to bring it on that we are here rushing it through at a minute's notice two days before Christmas.

Given that it has been rushed on us from the other place today and must be put through within the hour, I have not had a chance to read this bill to see whether it is in exactly the same form as the bill on which I was briefed. However, I seem to recall that within the bill on which I was briefed there was a mechanism for going to court if the barring order was over a certain length of time—three days rings a bell, but I might be wrong about that. The question I raised during the briefing was: 'When the person who is barred appeals to court, on what grounds can they appeal?' The answer was: 'Well, they certainly can't have access to any of the information on which the police have made their decision to bar.'

Now, think that through. If the police are to have the power to bar based on criminal intelligence, the person, in certain circumstances, can appeal to the court but they cannot have access to the information on which the decision was made. As a layman, or as a person not legally qualified, I ask the very simple question: if I am barred (or one of my constituents is barred) and I seek to go to the court and I cannot get access to the information on which the decision was made, how then can I appeal it? If the minister can answer that question for me in her second reading response, we will not need to go into committee, but to me it seems a legal intrigue that someone can make a decision (the Police Commissioner or a senior officer as defined), I can be aggrieved by that and I can seek to appeal to the court. I go to the court and say, 'Well, look, I am not happy with this, but I can't have access to the information on which the Police Commissioner has made the decision.'

Here is the problem the parliament needs to think about and why I think it is very unfortunate this bill is being rushed through this place in less than an hour. What the Police Commissioner is doing, quite rightly, is making a decision based on criminal intelligence. If the person appealing has access to the criminal intelligence, clearly, that will reveal some police information. The summary effect of this bill is that we are giving the police the power to bar people from licensed premises without access to the information on which the decision to bar them has been made.

That was my understanding of the briefing some months ago. Now, if the bill has changed, I apologise to the house. As I say, this matter went through the upper house yesterday (or it might have been only this morning) and it has been walked in here as a matter of urgency. Certainly that was the circumstance to the best of my memory of the briefing that I was given. This bill allows the Police Commissioner to ban a person in every licensed premises in the state forever if the Police

Commissioner so wishes, and, if they wish to appeal that decision, the person can go to the court but not have access to the information on which the barring has occurred.

That is what we are voting for, and I assume that all members know that we are voting for that. As I say, if I am wrong, I apologise to the house, but, if I am right, I would like the minister to confirm it and just explain how any person can appeal the decision if they do not have the information on which the decision was made to appeal against.

The Hon. J.M. RANKINE (Wright—Minister for Families and Communities, Minister for Northern Suburbs, Minister for Housing, Minister for Ageing, Minister for Disability) (12:40): I thank members for their contribution and support for this bill, and I thank the member for Davenport, once again, for his vote of confidence. My understanding of the appeal process—and the Commissioner has come into the chamber and he can correct me if I am wrong—is that people will know that they have been barred by the Police Commissioner and that it is on criminal intelligence, and that when it does go to court, the judge will determine whether the appellant is able to access that information. Ultimately, it is the court that will make the determination about whether or not it is criminal intelligence.

Bill read a second time.

The Hon. J.M. RANKINE (Wright—Minister for Families and Communities, Minister for Northern Suburbs, Minister for Housing, Minister for Ageing, Minister for Disability) (12:41): I move:

That this bill be now read a third time.

The Hon. I.F. EVANS (Davenport) (12:42): Am I allowed to speak to the third reading motion?

The DEPUTY SPEAKER: You are; although you may not raise new matters.

The Hon. I.F. EVANS: Of course, I will not raise new matters. I will just speak to the issue to which the minister responded during the course of the second reading debate. If that is the case, then what we are voting for on the third reading is that members of the public will be forced to go through an expensive legal exercise of appeal, having no basis at all on whether they will get any information on which to appeal.

If you are an average citizen of this state, what can happen under this bill is that you can be barred and then you have to make a judgment about whether you are prepared to go to court to appeal it on the assumption that you might get access to information about the decision that has been made against you. Clearly, that puts that member of the public who has been barred at a significant disadvantage. I would have loved more time to examine that particular matter with my legal colleagues more thoroughly. Unfortunately, that will not be available to us, but I raise it as a matter of legal intrigue because, ultimately, I think that that might be a weakness in the bill.

The Hon. J.M. RANKINE (Wright—Minister for Families and Communities, Minister for Northern Suburbs, Minister for Housing, Minister for Ageing, Minister for Disability) (12:44): I thank members for their contribution. Clearly, the clause in the bill relating to criminal intelligence is aimed at the most unsavoury characters in our community, and I would imagine the Police Commissioner will use that power wisely, cautiously and appropriately.

Bill read a third time and passed.

NATIVE VEGETATION (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 25 November 2008. Page 1014.)

Mr WILLIAMS (MacKillop) (12:45): I indicate to the house that I am, indeed, the lead speaker for the opposition on this matter. I start by remarking that, in speaking with the minister yesterday, I noted that I thought that we would conclude this debate yesterday afternoon. However, I naively overlooked an important fact, which was that many of my colleagues wanted to come into the house and contribute to the second reading of the bill.

I point out to the house that the fact that so many members—particularly from this side of the house—wish to contribute to this debate (bearing in mind that virtually all the regional areas of South Australia are represented by members from this side of the house), indicates to me that there is still quite a bit of angst and that there are still quite a number of issues with regard to native

vegetation, the laws pertaining to native vegetation and the way they are administered in this state. The fact that so many opposition members chose to put on the public record their concerns about the principal act, particularly, having been given this opportunity to debate what is, in itself, a relatively minor and non-controversial piece of legislation, I think sends a pretty clear message that we are still a long way from getting the administration of the Native Vegetation Act and the principal act itself bedded down into something that can serve the long-term benefit of both the environment and the people who interact with the environment on a daily basis, particularly people who live in regional areas.

I think that it is high time that we asked ourselves a couple of first order questions. Principally: what are we trying to achieve; and how do we think that this piece of legislation is delivering on those aspirations? On many occasions I have spoken about native vegetation in this house and virtually on every occasion I have lamented the fact that I do not believe that the Native Vegetation Act and the way it has been administered are serving the long-term benefit of native vegetation in South Australia. It is certainly not serving the people of South Australia who, as I said, on a day-to-day basis come into contact with native vegetation in their business.

I think that it is generally accepted by everybody that there is bipartisan support for protecting native vegetation, and we have to understand that we are not just protecting native vegetation; it is the whole biodiversity of the state's ecosystems that we are trying to protect because, by protecting native vegetation, we are, indeed, protecting habitat. That is a very important thing, that we are protecting habitat, not just one part of the whole ecosystem, that being the floral part of the ecosystem. The species loss that we have seen already since white (European) settlement of this state has largely been as a result of the destruction of habitat.

I think that a number of people believe that protecting native vegetation is only about protecting native vegetation and that is as far as it goes, but that is only a very small part of it. That is why I think that there is probably bipartisan support for protecting habitat and I am unsure whether or not we should have an act on our statute books which actually talks about that. It talks about, rather than it being a native vegetation act, maybe it should be a biodiversity act or a habitat act to more clearly enunciate, I think, that larger goal.

Interestingly, I was recently at a workshop here in Adelaide run by the Conservation Council and the keynote speaker was Hugh Possingham. That is a name that is very well known, certainly in the environmental movement here in South Australia. As I understand it, he now holds an academic position in Brisbane, but he came down and was the keynote speaker at that particular workshop.

One of the very important points that he made, and it rang very true with me, was that the biggest issue on people's lips in our communities today is water, the lack of water, and the drought, obviously, contributing to that, and he made the statement that he thought that as a society we would resolve that problem.

He said that one of the other big issues in the environment movement at the moment, obviously, is greenhouse gas emissions and the impact of that through climate change. He made the statement that he thought that that was solvable too, and that Australia and the rest of the world would resolve that problem. He did suggest that there might be a significant timeframe—I think he mentioned maybe 200 years—but that those were the sorts of issues that we would be able to resolve.

He then very powerfully made the point that every time we lose a species, in two million years we will not have got it back. That is what I mentioned a few minutes ago, about asking ourselves some first order questions about the legislation and the administration thereof in South Australia: what are we trying to do?

The government has, within its State Strategic Plan, a target of having no more species loss. The minister obviously knows the answer to this, and I do not, because the minister is today releasing the EPA's five-year report card on where we have been going with regard to the environment. I understand that some people are in lock-up now who have had access to that report and who are, obviously, being advised, by the minister's spin doctors, about what is in the report and what it means, as I speak.

I will be surprised if that report says that we have done very well. I will be surprised if that report says that the government is going to easily attain its target of no more species loss in South Australia. One of the reasons for that is that we have failed to recognise what we need to do, particularly with regard to native vegetation and habitat.

Something in excess of 20 per cent of the land area of South Australia is already tied up within our parks system. The government agency responsible for maintaining biodiversity and the spread of native vegetation and fauna across the state, already has control of over, I think it is something like 22 per cent or 23 per cent of the state's land area. That is a huge portion of the state's area. Unfortunately, the majority of that area is not necessarily in the spread across the variety of ecosystems that were present in the state prior to white settlement. That is unfortunate, and I recognise that.

The comment I would like to make is that I think in South Australia we are still failing to adequately look after those areas which are under the direct control of government. I think we are failing to put the resources in and I think we are failing to adequately look after those. My colleague the member for Hammond, in his contribution yesterday, spoke about fire management, and I think he referred to the Ngarkat park, which is in both his electorate and my electorate: a very extensive park.

Ngarkat park in the Mallee of South Australia—even before white man knew that Australia was here—would have been subject to fires. Now that we have a portion of that extensive park preserved, I think it is pure negligence that we manage it in a way that allows incredibly hot fires to wipe out large areas of it. Since I have been the member for MacKillop, having a greater interest in that park than I did previously, I am aware of an incredible number of huge fires that have burnt through the park and wiped out large portions of it.

The first fire that was brought to my attention was in the summer of 1999, when a huge portion of the park was subject to a very hot fire. I think I am right in saying that, in the last 20 years, there is probably only one small portion of the park that has not been subject to extensive burning from a very hot fire.

If we go back to the areas that were burned only a few years ago, and in particular the fire to which the member for Hammond referred—I think it was two or three summers ago; it will be three this summer—you can only marvel at the regeneration of the flora, but we really do have to question the ability of the fauna that previously occupied that area to regenerate itself.

I think there is a real issue. We absolutely have to protect those parks, and Ngarkat is one that goes up regularly from lightning strikes. We have to be able to make sure that we protect significant parcels within that park where the fauna can migrate out after such an incident, and we have not done that. I think we have had the wrong attitude.

I think we also have to accept that, when we have the sorts of fires that we have had in those parks burning such a significant percentage of the park, we are actually changing the mix of plant species. I suggest that, across the whole of the Mallee in South Australia, and largely in the seat of Hammond prior to white settlement, there would have been hot burns, but they would have covered only a small percentage of the total area of the Mallee. A couple of the fires that have occurred in the last 10 years have probably covered half the area of that particular park, and that has an incredible impact on the mix of species that regenerate after a fire. So, fire management is a huge issue.

I want to acknowledge some of the improvements that have been made in fire management. A number of members have mentioned the Chairman of the Native Vegetation Council, Dennis Mutton, who also chairs the NRM Council in South Australia. I think everybody in the house has a great deal of respect for Dennis and his ability, and I think it was a good move for the government to put him in charge of both boards.

This bill is somewhat about aligning the two acts: the Native Vegetation Act and the NRM Act. I will discuss the clauses in the bill shortly. I think that is a good move; I acknowledge that, and I congratulate the government on that appointment. I believe that it has, in fact, somewhat improved the administration of the act, but I still think there are some fundamental flaws in the act.

While speaking to the bill yesterday, the member for Davenport highlighted that, when he was the minister for environment—I think it was some time in 2001—he introduced a bill in the house to significantly amend the Native Vegetation Act. As a backbencher in that government, I was fortunate enough to spend a considerable amount of time on the backbench committee that did a lot of work in the development of that bill. I seek leave to continue my remarks.

Leave granted; debate adjourned.

[Sitting suspended from 13:00 to 14:00]

PUBLIC SCHOOLS

Mrs PENFOLD (Flinders): Presented a petition signed by 24 residents of South Australia requesting the house to urge the government to reconsider the proposed new funding model for South Australian schools and to put in place a proper and appropriate agreement on public schoolteachers' pay and conditions within a binding enterprise agreement.

PUBLIC SCHOOLS

Mr GOLDSWORTHY (Kavel): Presented a petition signed by 24 residents of South Australia requesting the house to urge the government to reconsider the proposed new funding model for South Australian schools and to put in place a proper and appropriate agreement on public schoolteachers' pay and conditions within a binding enterprise agreement.

PAPERS

The following papers were laid on the table:

By the Premier (Hon. M.D. Rann)—

State Emergency Management Committee—Report 2007-08

By the Treasurer (Hon. K.O. Foley)—

Asset Management Corporation, South Australian—Report 2007-08
Defence SA—Report 2007-08
Distribution Lessor Corporation—Report 2007-08
Essential Services Commission of South Australia—Report 2007-08
Financing Authority, South Australian—Report 2007-08
Funds SA—Report 2007-08
Generation Lessor Corporation—Report 2007-08
Motor Accident Commission—Report 2007-08
Motor Sport Board, South Australian—Report 2007-08
Parliamentary Superannuation Board—Report 2007-08
Police Superannuation Board—Report 2007-08
RESI Corporation—Report 2007-08
State Procurement Board—Report 2007-08
Superannuation Board, South Australian—Report 2007-08
TRACsa Trauma and Injury Recovery—Report 2007-08
Transmission Lessor Corporation—Report 2007-08
Treasury and Finance, Department of—Report 2007-08
Venture Capital Board—Report 2007-08

By the Minister for Industry and Trade (Hon. K.O. Foley)—

Department of Trade and Economic Development—Report 2007-08

By the Minister for Transport (Hon. P.F. Conlon)—

South Australian Rail Regulation—Report 2007-08
Tarcoola-Darwin Rail Regulation—Report 2007-08

By the Minister for Infrastructure (Hon. P.F. Conlon)—

Land Management Corporation—Report 2007-08
Stormwater Management Authority—Report 2007-08

By the Minister for Energy (Hon. P.F. Conlon)—

Australian Energy Market Commission—Report 2007-08
Code Registrar for the National Third Party Access Code for Natural Gas Pipeline Systems—Report 2007-08
Electricity Supply Industry Planning Council—Report 2007-08
Energy Consumers' Council—Report 2007-08
Technical Regulator—Electricity—Report 2007-08
Technical Regulator—Gas—Report 2007-08

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

Public Trustee—Report 2007-08

By the Minister for Health (Hon. J.D. Hill)—

Gene Technology Act 2001 (SA) Statutory Review—South Australian Government Response Document
Gene Technology Activities in 2007
Health, Department of—Report 2007-08
Health and Community Services Complaints Commissioner—Report 2007-08

By the Minister for Tourism (Hon. J.D. Lomax-Smith)—

Adelaide Convention Centre—Report 2007-08
Tourism Commission, South Australian—Report 2007-08

By the Minister for Environment and Conservation (Hon. J.W. Weatherill)—

Botanic Gardens and State Herbarium, Board of the—Report 2007-08
Coast Protection Board—Report 2007-08
Dog and Cat Management Board—Report 2007-08
Environment and Heritage, Department for—Report 2007-08
General Reserves Trust—Report 2007-08
South Eastern Water Conservation and Drainage Board—Report 2007-08

By the Minister for Agriculture, Food and Fisheries (Hon. R.J. McEwen)—

Fisheries Council of South Australia—Report 2007-08
ForestrySA—Report 2007-08
Veterinary Surgeons Board of South Australia—Report 2007-08

By the Minister for the River Murray (Hon. K.A. Maywald)—

Save the River Murray Fund—Report 2007-08
Water Corporation, South Australian—Report 2007-08
Water, Land and Biodiversity Conservation, Department of—Report 2007-08

By the Minister for Families and Communities (Hon. J.M. Rankine)—

Care of Children, Council for the—Report 2007-08
Child Death and Serious Injury Review Committee—Report 2007-08
Department for Families and Communities—Report 2007-08
Guardian for Children and Young People—Report 2007-08

By the Minister for Housing (Hon. J.M. Rankine)—

Supported Residential Facilities Advisory Committee—Report 2007-08

MODBURY HOSPITAL ONCOLOGY SERVICE

The Hon. J.D. HILL (Kaurna—Minister for Health, Minister for the Southern Suburbs, Minister Assisting the Premier in the Arts) (14:05): I seek leave to make a ministerial statement.

Leave granted.

The Hon. J.D. HILL: Yesterday the Deputy Leader of the Opposition asked me some questions about oncology services at Modbury. I can now provide additional information to the information I provided yesterday. As members would be aware, in South Australia's Health Care Plan the government is committed to the provision of oncology services at Modbury Hospital. I can confirm that oncology services are still being provided at Modbury now, and it is our plan to continue the provision of services into the future.

Modbury Hospital currently has a small oncology service provided by two medical oncologists, one who works 0.1 full-time equivalent (half a day a week), and the other who works

0.3 full-time equivalent (a day and a half a week), for a total of 0.4 full-time equivalents. The 0.1 medical oncologists is resigning in December, and the 0.3 medical oncologist will retire in the middle of next year. I want to take this opportunity to thank them and wish them the best in their new positions.

SA Health has been embarking on a significant national and international recruitment drive to fill the medical oncologist positions. We have now hired an experienced chemotherapy nurse to undertake the role of clinical nurse on a contract until a permanent candidate is recruited. This will enable chemotherapy services to be provided at the hospital in a similar model to what has been working successfully at Lyell McEwin Hospital for some years.

Under this model, patients will receive ongoing chemotherapy treatment at Modbury after an initial appointment at the RAH. While this model is in development, there will be some chemotherapy treatment delivered at the Royal Adelaide Hospital. SA Health is committed to providing a safe, high-quality service for all cancer patients across the state.

SCHOOL CLOSURES/MERGERS

The Hon. J.D. LOMAX-SMITH (Adelaide—Minister for Education, Minister for Mental Health and Substance Abuse, Minister for Tourism, Minister for the City of Adelaide) (14:07): I seek leave to make a ministerial statement.

Leave granted.

The Hon. J.D. LOMAX-SMITH: I seek to speak about Aberfoyle Hub Junior Primary and Primary schools, Parafield Gardens Junior Primary and Primary schools, Wynn Vale Junior Primary and Primary schools, Morphett Vale High School, Sedan Primary School and the Melrose Early Learning Centre.

The Chief Executive of the Department of Education and Children's Services has received requests from the governing councils of Aberfoyle Hub Junior Primary and Primary schools, Parafield Gardens Junior Primary and Primary schools and Wynn Vale Junior Primary and Primary schools for their schools to be merged and for Morphett Vale High School and Sedan Primary School to be closed. The governing councils have advised that their school communities have voted to close in accordance with section 14(a) of the Education Act 1972.

The Aberfoyle Hub, Parafield Gardens and Wynn Vale Junior Primary and Primary schools will merge from the start of 2009. Morphett Vale High School will close at the end of 2008, with its students transferring to Christies Beach, Reynella East and Wirreanda High schools. Sedan Primary School will also close at the end of 2008 school year, with its students transferring to Angaston.

Declining enrolments due to a demographic shift significantly limited the number of curriculum options available to students at Morphett Vale High School and also at Sedan Primary School. The decision to close their schools was a difficult one for the parents in both school communities, but they are to be applauded for putting students' interests first.

Members interjecting:

The SPEAKER: Order!

The Hon. J.D. LOMAX-SMITH: In addition—

Members interjecting:

The SPEAKER: Order!

The SPEAKER: The house will come to order; that includes the Attorney-General. The Minister for Education.

The Hon. J.D. LOMAX-SMITH: Thank you, sir. In addition, the members of the Melrose Early Learning Centre voted to close the preschool component of the centre. Rural care will continue to be offered at Melrose as well as a playgroup and play centre program. The preschool service for the district will be offered through the Booleroo Centre Preschool. All school and preschool communities are to be thanked for their positive and collaborative approach to determining their schools' future.

STATE OF OUR ENVIRONMENT REPORT

The Hon. J.W. WEATHERILL (Cheltenham—Minister for Environment and Conservation, Minister for Early Childhood Development, Minister for Aboriginal Affairs and Reconciliation, Minister Assisting the Premier in Cabinet Business and Public Sector Management) (14:11): I seek leave to make a ministerial statement.

Leave granted.

The Hon. J.W. WEATHERILL: This is the fifth State of Our Environment report for South Australia. The report is prepared by the independent statutory body, the Environment Protection Authority, overseen by the report steering committee which comprises experts from both within and outside government and is extensively peer reviewed. It is a key diagnostic tool to assess the condition of the environment, identify trends over time and the pressures influencing these trends, and identify emerging environmental issues.

It will come as no surprise to members that the report documents some concerning trends. We are experiencing the effects of both climate change and an acute drought. The report notes that the environment is under significant stress. The report finds that the health of rivers, streams and wetlands of the River Murray flood plain is declining due to over-extractions of water from the river system, increasing salt levels, drought and the non-delivery of environmental flows. The Coorong and Lower Lakes are described as being in the poorest condition ever recorded, and inland waterway ecosystem health is generally declining.

The report sets out some of the steps that the government and the community are taking to tackle these challenges, particularly in respect of water reuse. It shows that our household water consumption per capita is the third-lowest in the nation. There has been a marked increase in the reuse of stormwater and wastewater during the past five years between 2003 and 2006-07. In fact, the report states that greater volumes of wastewater and stormwater are being recycled and reused in South Australia than anywhere else in urban Australia.

The report states that we reuse approximately 3,500 megalitres of stormwater per year. This number is set to increase with the implementation of a range of stormwater initiatives including further wetland and aquifer storage and recovery projects and the plumbing in of rainwater tanks and water-sensitive urban design.

As the Minister for Water Security recently stated in this house, we are on track to increase this to over 21,000 megalitres in the medium term. We reuse 30 per cent of our total wastewater flow, up from only 7.6 per cent in 1995. That is expected to increase to a level in the order of 45 per cent in the coming years. While the report calls for more action, this independent report clearly rebuts the opposition's allegations of failure in respect of water reuse.

The facts in the report also rebut the allegation that we have somehow failed to meet the recommendations of the 2003 SOE report in respect of reuse which I remind members were:

- to give priority to the development of policy that encourages water conservation and efficiency by all users and fosters water recycling and reuse schemes throughout urban areas; and
- to reduce the impact of urban stormwater, treated wastewater and industrial discharges on the marine environment.

We have met both, and we will continue that process. There is no doubt that we need to preserve our coastal and marine environment for future generations. The report shows that on the metropolitan coast seagrass areas continue to decline along with areas of rocky reef. However, the report also shows that we are addressing these issues. The Adelaide Coastal Waters Study led to a development of the Port Waterways Water Quality Improvement Plan, and the water quality in the Port River has significantly improved. Retention of wastewater and stormwater and the reduction of discharges of major pollutants will assist in retaining seagrass health.

Fauna species on the threatened list increased from 256 to 323 between 2002 and 2008. Flora species listed on the threatened list increased from 785 to 814 in the same period. Part of the increases occurred because of new discoveries of previously unrecorded species and through taxonomy changes, but historic loss of habitat, coupled with drought and climate change, have caused increased pressures on these species. Therefore, part of the solution is to increase habitat on a large scale that enables threatened species to adapt to change.

The government has committed that it will establish five landscape scale biodiversity corridors by 2010. These corridors will create vast areas of vital habitat to increase ecosystem resilience and enhance the capacity of species to cope with stresses. Some indicators are mixed. For instance, in respect of land use, soil erosion and dryland salinity are decreasing through better farm management practices, and there has been virtual cessation of land clearing; but, on the other hand, intensity of use and encroachment by urban residential areas is increasing. The report identifies areas of improvement.

South Australia's net greenhouse gas emissions have fallen by around 7 per cent since 1990. This includes the offsets of emission from land use, land use change and forestry. Even gross emissions have been stable since 2001. There have been a number of contributors to this result. In 2007 the state government passed Australia's first climate change legislation committing us to binding emissions targets. The government is committed to reducing its carbon footprint to zero by 2020.

The proportion of electricity sourced from renewable sources has increased from less than 1 per cent of total energy generation in 2002 to 10 per cent in 2007-08, and is expected to increase to 20 per cent by 2010—10 years ahead of the target the commonwealth government is urging on the states.

The Hon. P.F. Conlon: Happy to help!

The Hon. J.W. WEATHERILL: What a magnificent effort from the Minister for Energy, led by the Premier. We have 58 per cent of the nation's wind power, we lead the nation in grid-connected solar power and the vast majority of the nation's geothermal investment is happening in South Australia.

We have made significant improvements in waste management. The amount of solid waste going to landfill has decreased by over 10 per cent since 2003-04 and resource recovery has increased. The report confirms that South Australians are the nation's leading recyclers on a per capita basis.

That is only a snapshot of the report. There are 41 recommendations calling for action. Each of them will be considered fully and next year I will provide a formal response to parliament. The report constitutes an invaluable resource for us as policy makers, for decisions by business and for communities in deciding how to act to preserve our environment and way of life. Above all, it is a reminder to us not to let the global financial crisis divert our attention from these important environmental challenges. I table the report and I commend it to the parliament.

LEGISLATIVE REVIEW COMMITTEE

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

Report received.

NATURAL RESOURCES COMMITTEE

Mr RAU (Enfield) (14:21): I bring up the 25th report of the committee entitled Upper South-East Dryland Salinity and Flood Management Act 2002 Report July 2007 to June 2008: To drain or not to drain, that is the question.

Report received and ordered to be published.

PUBLIC WORKS COMMITTEE

Ms CICCARELLO (Norwood) (14:22): I bring up the 313th report of the committee on the railway car depot relocation.

Report received and ordered to be published.

Ms CICCARELLO: I bring up the 314th report of the committee on the Adelaide desalination plant.

Report received and ordered to be published.

QUESTION TIME

GOULBURN AND MURRAY VALLEY PIPELINE

Mr HAMILTON-SMITH (Waite—Leader of the Opposition) (14:23): My question is—

The Hon. M.J. Atkinson interjecting:

The SPEAKER: Order!

Members interjecting:

The SPEAKER: Members on my right will come to order!

The Hon. M.J. Atkinson interjecting:

The SPEAKER: The Attorney is warned.

Mr HAMILTON-SMITH: My question is to the Premier. Does he support Labor's plan to construct a north-south pipeline in Victoria to extract 75 gigalitres of water per year from the Goulburn and Murray Valley systems to Melbourne?

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) (14:24): I made my position clear on this before, which you are well aware. Not only have I made submissions to the federal government, but let us—

Mr Williams interjecting:

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

The Hon. M.D. RANN: Yes, I am going to adopt the same tactic, because, obviously, the design is for the opposition to shout over the top of you. As soon as that happens, I will sit down: I have all afternoon. The point is that there is a plan in the federal parliament by some South Australian senators that would, if implemented, completely abort the transfer of constitutional powers over the River Murray that we all want. I remember when John Howard—

Mr Hamilton-Smith interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN: Let's go back over the history.

Members interjecting:

The SPEAKER: Order! The Premier has the call.

Ms Chapman: No, he sat down.

The SPEAKER: The Premier has the call.

The Hon. M.D. RANN: Let's just track back in time—because we've all got a lot of time. The fact is that in February 2003 Tim Flannery and I addressed the National Press Club on the River Murray. What we did at that stage was tell the National Press Club—which was, of course, broadcast around the country—that, whilst there had been a special meeting of the premiers (quite rightly, after the Bali bombing) on terrorism, that Howard had called the year before, there needed to be (this was in February 2003) a similar premiers' conference specifically called because of the dire straits of the River Murray; the artery of the nation that was becoming sclerotic.

We talked about massive increases in salinity in Lake Alexandrina, which was at a 20-year low, with salinity levels being twice the World Health Organisation standards. We called for that meeting to be held, but it took nearly four years for John Howard to respond to my plea for a special premiers' conference on the River Murray. I wrote to the Prime Minister—

Ms Chapman interjecting:

The Hon. M.D. RANN: Do you want to talk?

Ms Chapman interjecting:

The SPEAKER: The deputy leader will come to order. The Premier.

The Hon. M.D. RANN: And, of course, what—

Ms Chapman: Mr Speaker, the Premier has resumed his seat, now with this jack-in-the-box type tactic. He's resumed his seat; he's finished answering the question.

Members interjecting:

The SPEAKER: Order! The house will come to order. The Premier is quite within his rights to take his seat to allow me an opportunity to bring the house to order, and I suggest members not engage in a deliberate tactic to disrupt his answer. The Premier.

The Hon. M.D. RANN: Thank you, sir. So, nearly four years passed and then, not anything to do with the River Murray, but about polls, what happened is that John Howard called a special meeting of the premiers, in November 2006 (on Melbourne Cup day), where we were told, by the Murray-Darling Basin Commission, that there was a one in 1,000 year record low inflow into the River Murray. I angered the Prime Minister that day by revealing that to a news conference straight afterwards—even though that is what we had been told.

But the fact of the matter is—and this is interesting because this needs to be expressed very clearly—what happened that day (supported by the Liberal opposition in South Australia), is that the Prime Minister called on all of us to sign over our constitutional powers over the River Murray to the federal government in order to get the $10 billion package. I said, even though we were the downstream state, that we were prepared to do that, but only if there was an independent commission set up to run the River Murray. There was a scathing attack on me as a result of that, by John Howard and by Malcolm Turnbull who then, I think, was Parliamentary Secretary on the River Murray.

I remember an unannounced meeting in my office in Adelaide—and I have not revealed this before—in which Malcolm Turnbull came into my office and read the riot act to me. Really scary! No-one these days listens to merchant bankers; certainly not me. But he came in and I told him, 'Look, I know you've got a ticking clock on your own ambition, as well as the federal election, but this is about the future of the River Murray.' He told me that I was like a shag on a rock, that I was out on a limb, that none of the other premiers would support me on an independent commission.

Then the Liberals in South Australia condemned me and asked me to sign without safeguarding South Australia's interest by having a commission that ran the River Murray on the basis of science, not on the basis of politics. Because what they were asking us to do was to hand over constitutional powers, but without the safeguards put in. We wanted the River Murray to be run on the basis of science, not on the basis of the state's vested interest or, indeed, politicians in the federal parliament under the vested interests of cotton and rice growers. So, the battle for the River Murray began, and we did shuttle diplomacy. The River Murray minister, the member for Chaffey—

Mr Pederick interjecting:

The SPEAKER: The member for Hammond will come to order.

The Hon. M.D. RANN: And one by one we got Peter Beattie, the then premier of Queensland, and Morris Iemma to then support the sign-up for an independent commission, and John Howard said, 'Leave Victoria to me'—to him. Then we went to a meeting—

Mr Williams interjecting:

The Hon. M.D. RANN: Well, he did. We went to a meeting which was called by—

Mr Williams interjecting:

The SPEAKER: The member for MacKillop will come to order.

The Hon. M.D. RANN: We went to a meeting that was again called by the former prime minister John Howard, and I remember what happened, because he left the room. There was a huge blue, because he did not want that independent commission, and he left the room. Eventually we cracked a deal and the deal that we cracked involved the federal government, after Morris Iemma and Peter Beattie had come out, and then John Howard supported the South Australian position.

Then, of course, we had recalcitrance from Victoria under both the federal Liberals and under federal Labor, until we have the deal that we have this year, which sees us—because we passed it through this parliament—hand over our constitutional powers to the commonwealth, because we know that there will be an independent commission that sets the basin cap. We have seen New South Wales pass their legislation.

I urge people to read the contribution in the federal parliament yesterday, because the South Australian Liberals and the federal Liberals are totally at odds with each other over water.

The Leader of the Opposition in this state basically does not know what he says from one day to the next.

Ms CHAPMAN: I rise on a point of order.

The Hon. M.D. RANN: He contradicts himself in the hope and expectation that the media will let him get away with it.

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

Ms CHAPMAN: How long do we have to listen to this, Mr Speaker? The question was very specific: does he support the Goulburn Valley pipeline, or doesn't he? It has nothing to do with what he is talking about.

The SPEAKER: Order! The deputy leader will contain herself or she will find herself out of here. The Premier was engaging in debate.

The Hon. M.D. RANN: So, what happened is that we finally got Victoria to sign the IGA, the intergovernmental agreement on the River Murray. We got them to sign the MOU. We got them to sign up, on national television in front of the prime minister, to the intergovernmental agreement, and the next step is to make sure that they get their legislation through the parliament. If you speak with the Mike Youngs, if you speak with any of the water experts, what is needed is the transfer of powers of the River Murray over to the federal government for the long term, but run by an independent commission. So, if you want to support high jinks in the upper house of the federal parliament that would abort that agreement then you would be responsible for the death knell of the River Murray.

An honourable member: Hear, hear!

Members interjecting:

The SPEAKER: Order!

GOULBURN AND MURRAY VALLEY PIPELINE

Mr HAMILTON-SMITH (Waite—Leader of the Opposition) (14:33): I have a supplementary question, to the Premier. In light of his response, will he then make representations on behalf of South Australians to the Victorian Premier opposing the proposed north-south pipeline at this week's COAG meeting?

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) (14:34): Can I just say this: I remember—

Members interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN: I will answer the question the way I want to answer the question. I remember—

Members interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN: These matters have already been aired publicly. I have already made my position clear. I have written to the federal government. The Leader of the Opposition does not remember because he does not remember what happens the day before. I remember you telling the media that you were going to switch the positions of all your federal Liberal counterparts to get them to support South Australia's position.

Mrs REDMOND: Point of order, Mr Speaker.

The Hon. M.D. RANN: You said you were going to bang on the table—

The SPEAKER: Order! The member for Heysen has a point of order.

Mrs REDMOND: The Premier seems to be engaging in debate, sir.

The SPEAKER: He is. The Premier is engaging in debate. The Premier.

The Hon. M.D. RANN: I remember that you said you would put John Brumby in a headlock, and we saw what your Liberal counterparts thought of you when they told you to nick off.

The SPEAKER: Order!

The Hon. M.D. RANN: This is about a serious—

The SPEAKER: Order! The Premier is now engaging in debate. The member for Light.

GUN LAWS

Mr PICCOLO (Light) (14:35): Will the Premier inform the house about world-first new gun laws that will take effect in South Australia from tonight, as well as a gun amnesty that will begin next week?

Ms Chapman: World-first something.

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) (14:35): Can I just say I want to commend the Deputy Leader of the Opposition for saying that this is a world first. She might have opposed the DNA testing of Bevan Spencer von Einem but, apparently, she supports—

Ms CHAPMAN: Point of order, Mr Speaker—

The Hon. M.D. RANN: —what we are doing on knives and guns.

The SPEAKER: Order!

Ms CHAPMAN: I was asking the questioner to repeat the question; what was said was that we could not hear the question.

Members interjecting:

The SPEAKER: Order! For the benefit of the deputy leader, will the member for Light repeat his question?

Mr PICCOLO: This is a world first too—to be asking the same question twice. The question was: will the Premier inform the house about world-first new gun laws that will take effect in South Australia from tonight, as well as a gun amnesty that will begin next week?

The Hon. M.D. RANN: Earlier this week, I outlined proposed changes to crack down on knives—including a ban on young people buying knives—and the introduction of metal detectors for police to carry out searches. Today, I am pleased to announce that, from midnight tonight, South Australia will have the toughest new gun laws that this country has ever seen. They will arm our police with hard-hitting powers to help them combat gun-related violence and disarm dangerous criminals, including outlaw motorcycle gang members.

Anyone who is slapped with a firearm prohibition order from tonight onwards can be stopped and searched anywhere at any time, in any vehicle, vessel or aircraft—as well as in their home—for any evidence of firearms, gun parts or ammunition. These new laws have been designed to target the unlawful use of firearms to commit violent and criminal acts. Those found guilty of any breach will face a maximum prison sentence of 15 years, not the two years that we have seen for many years.

The message to criminals carrying guns is simple: we are coming after you. Any person issued with a firearms prohibition order can and will be named through an online registry that can be accessed by a firearm clubs, commercial rangers, firearm dealers and the general public.

The new laws create a range of offences, including: possession of a firearm; firearm parts or ammunition in contravention of a prohibition order; residing in premises where a firearm is present in contravention of a prohibition order; bringing a firearm onto a premises where a person subject to a prohibition order resides; suppling firearms to a person subject to a prohibition order; and attendance at any shooting range or firearms dealership by a person subject to a prohibition order.

Basically, what that says is that, if you have a firearm prohibition order, not only are you not allowed to have a gun, you are not allowed to carry a gun; you are not allowed to be with someone carrying a gun; you are not allowed to sleep in a house where a gun is stored or present; and you are not allowed to be in the company of others who might have one. For instance, you cannot buy a gun, and no-one can sell you a gun, in a premises or a club room where there are guns. This is a 15 year maximum sentence. This is what the police asked us for. There is no tougher anti-gun legislation anywhere in Australia or, indeed, according to the police, anywhere in the world.

Members interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN: As I say, the opposition did not want us to DNA test von Einem because they have different values and standards. Today, I also announce jointly with SA Police that a three-month gun amnesty will commence from midnight on 1 December 2008. What that amnesty means is that anyone during that period can hand over their illegal or legal firearms without fear of prosecution. They can hand them over right up until 28 February.

The message is clear: after that date, the full force of our new laws will come down on anyone with illegal firearms. So, the message is: if you have an illegal firearm at home in your shed that is unregistered, if it is a type that has been banned, you had better hand it in over the next three months during this amnesty otherwise the police will come after you with massively increased sentences.

I know that we will get the whines and bleats of the civil libertarians. I am waiting for Henry Mancini and his orchestra of defence lawyers—

Members interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN: I keep seeing these defence lawyers come on and say on TV that these new laws will not impact on the bikie gangs at all, but then they spend a huge amount of money on QCs and lawyers—the best paid in the state—to go into court to try to block our legislation. If these laws are harmless, why do they so bitterly oppose them? My message to those defence lawyers is this: I hope that when you drive your BMWs to the court, you feel proud that you are living off the earnings of those who murder and try to sell drugs to our kids. That is what we are talking about, but no doubt we will see an array of them on television tonight condemning me for doing this. It makes me feel better about myself; it makes me feel better about this government.

Members interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN: But if they want to live—

Mr Hamilton-Smith interjecting:

The SPEAKER: The leader will come to order!

The Hon. M.D. RANN: —off the manufacture and sale of amphetamines, then they can feel proud the next time they are at the Law Society annual dinner. But the message—

Ms Chapman interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN: Obviously, the criminal element within the community is unlikely to take part.

Ms Chapman interjecting:

The Hon. M.D. RANN: What's that?

Ms Chapman: The lawyers that represent him.

The Hon. M.D. RANN: I did not realise that the Attorney-General had unregistered handguns; I am not quite sure of the relevance of what you are saying. Obviously, the criminal element within the community is unlikely to take part in the amnesty, but it is still vital that the effort is made to remove as many guns as possible from our streets and help prevent them from falling into the wrong hands.

Previous amnesties conducted in South Australia have seen 1,490 firearms surrendered. Anyone wanting to hand in firearms can do so from 1 December at any police station. We are serious about this. We are urging South Australians who have illegal firearms to come forward and surrender them otherwise they might face a firearms prohibition notice and end up in gaol for up to 15 years.

TEACHERS DISPUTE

Mr HAMILTON-SMITH (Waite—Leader of the Opposition) (14:43): Is the Premier's media unit being used to conduct a deliberate campaign around its teachers dispute position designed to diminish the public standing and status of the teaching profession in order to create an atmosphere of conflict and public mistrust?

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) (14:44): Can I just say this—

Members interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN: —we have offered the teachers a $526 million pay rise—526 million reasons why this dispute should be solved. We have been prepared to go before the industrial commission and abide by the umpire's decision. We are prepared to do so; why won't the union? Again, I get back to this simple point: teachers can run their classrooms, principals can run their schools, but the Minister for Education—

Members interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN: —is going to run—

Members interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN: —the school system in this state, not the union. I do not care what union it is, this union is not going to run the education of our kids. What we saw in the last week or so is their trying to play politics with the lives of students and the livelihoods of their parents. I think that the union is in danger of causing this wonderful profession severe damage in the community. We are prepared to support teachers. We are prepared to offer them a $526 million pay rise. My message to the union is: rather than the games of last week where you actually compromised and then reversed your compromise and tried to play around in the court and in the commission, pack in the nonsense; do it for the kids. Why do it for the kids? At this critical time of the year the events of last week are simply outrageous.

I have enormous respect for teachers. My wife was a high school teacher, my daughter is training to be a teacher, and I am really proud that she is, but this union is not going to run the education system in South Australia.

Honourable members: Hear, hear!

MARJORIE JACKSON-NELSON HOSPITAL

Ms CICCARELLO (Norwood) (14:46): My question is to the Minister for Health. How will the construction of the Marjorie Jackson-Nelson Hospital provide more open space for South Australians to enjoy?

The Hon. J.D. HILL (Kaurna—Minister for Health, Minister for the Southern Suburbs, Minister Assisting the Premier in the Arts) (14:46): I thank the member for Norwood for her question. Along with the member for Adelaide, the member for Norwood is a very strong advocate for open space in our city, particularly the Adelaide Parklands. The state government, as members would be well aware, is building Australia's most progressive state-of-the-art hospital—the Marjorie Jackson-Nelson Hospital. It will be located on the former site of the rail yards in the city's west—a dilapidated, degraded part of the city. The disused rail yards are heavily contaminated, and as part of the project that site will be completely cleaned up and remediated.

The development of the hospital will also open up that site to the River Torrens, allowing patients, staff and visitors to have access to the river bank. Through this project, three hectares of remediated land will be given back to the people of South Australia on the western end of the site. These three hectares will be incorporated in Adelaide's—

Ms Chapman: They might.

The SPEAKER: The deputy leader is warned.

The Hon. M.J. Wright: She has accused you of misleading the house.

The Hon. J.D. HILL: I did not hear the deputy leader's interjection. She does it so frequently that I have developed a skill—an admirable skill, really—of blocking her out. But, if she suggests that I am misleading the house, I would encourage her to move a motion appropriately. The three hectares will be incorporated into the Adelaide Parklands. Once the Marjorie Jackson-Nelson Hospital is completed, the focus will shift to the Royal Adelaide Hospital site, with plans for the ageing buildings to be demolished.

Heritage buildings, of course, on that site will stay, but a great deal of open space land will be created through that demolition process. So, we will win with extra open space at the railway site and we will have extra open space at the old site as well. That land will either be incorporated into the adjacent Botanic Gardens or become part of the Parklands. We need to work that through.

The Marjorie Jackson-Nelson Hospital project will produce a net gain of open space and parklands for South Australians to enjoy as well as giving us one of the best hospitals in the world. In comparison, the opposition's plans to patch up the Royal Adelaide Hospital, instead of building a new hospital, will result in less open space for South Australians to enjoy. The deputy leader, on radio recently—

Mr WILLIAMS: On a point of order, Mr Speaker, according to your ruling of yesterday, when the minister uses words like 'patch up' is he not entering debate?

The SPEAKER: Sorry; I do not see the member for MacKillop's point.

Mr WILLIAMS: Sir, yesterday when the leader (I think) asked a question and used an adjective to enhance his question you ruled that—

Members interjecting:

The SPEAKER: Members on my right!

Mr WILLIAMS: —that entered debate into his question. I put it to you, sir, that the minister is doing exactly the same now by using terms like 'patch up' with regard to the opposition's plans for the Royal Adelaide Hospital.

Members interjecting:

The SPEAKER: Order!

Members interjecting:

The SPEAKER: Order! I did not exactly hear the context in which the Minister for Health used the words 'patched up'. I presume he was talking about the hospital. I do not see how using it in that context could possibly be described as debate. As to any similarity with my rulings yesterday on the leader's questions, I do not see any parallel there at all. The Minister for Health.

The Hon. J.D. HILL: I am sorry if the word 'patch up' to describe the opposition's plans creates some anxiety for the member for MacKillop. Let me say 'renovate' or 'redo' or 'refurbish' the Royal Adelaide Hospital site. Patch up, I thought, was a reasonable way of describing all that, but whichever way you look at it there are two options here. Let me strip them down to their essentials.

Members interjecting:

The SPEAKER: Order!

The Hon. J.D. HILL: What the government plans to do is to build a brand-new, state-of-the-art hospital on the existing railway site. What the opposition wants to do is a repair job on an old broken-down 1950 set of buildings. I do not mind how you deconstruct that: that is what they want to do.

Getting to the essential kernel of my point, the deputy leader on radio recently referred to a block of land which was 'vacant space behind the hospital before you go into the Botanic Gardens areas'. She hinted that this land would be developed as part of the patching up or rehabilitation or refurbishment of the Royal Adelaide Hospital. This land is currently being rehabilitated to be restored to the Parklands.

In fact, in 1990 the then Bannon government set aside 2 hectares of land which was then used as a car park at the rear of the Royal Adelaide Hospital to be gifted to the people of South

Australia, and I understand that the transfer of title has occurred. It is now controlled by the city council which is in the process of rehabilitating it.

The site is currently being restored and will eventually become open space. It will make a magnificent entrance to the Botanic Gardens from Frome Road. The only inference that one can draw from the deputy leader's comments last week is that the opposition's plan is to use that land as part of their refurbishment or patching up of the Royal Adelaide Hospital.

I would say to those who are interested in open space in the city that they have a very close look at what is being proposed by the opposition, because, contrary to what the government is doing, where we will have more open space at the railway site and at the RAH site, there will be less open space, if the opposition were to be successful. The reality is, of course, that the opposition is making it up as it goes.

STATE OF OUR ENVIRONMENT REPORT

Mr WILLIAMS (MacKillop) (14:53): My question is to the Premier. Does the Premier accept responsibility for the concerns expressed in recommendations in the EPA's report card, 'The State of Our Environment', released today that, under his government, results are not being achieved on a key range of environmental issues? Today the EPA released its five-yearly report card into the state of the environment in South Australia and it documents 'continually declining trends for many indicators of environmental health'.

The Hon. J.W. WEATHERILL (Cheltenham—Minister for Environment and Conservation, Minister for Early Childhood Development, Minister for Aboriginal Affairs and Reconciliation, Minister Assisting the Premier in Cabinet Business and Public Sector Management) (14:53): I love it when the Tories turn green.

Members interjecting:

The Hon. J.W. WEATHERILL: That's right! This is a bloke who thought that climate change was a bad poll. He has no idea, and it is new found. I notice we see in today's *'Tiser* that we need not have waited for the State of Our Environment report. We have the shadow minister for the environment telling us what was in it, and he got it all wrong because he made a few guesses. He made a guess about stormwater and recycling, and said that we had failed on that. Of course, he got that wrong because the independent authority, the EPA, confirm that we actually do this better than anywhere else in Australia.

I thought that the EPA was good. I was prepared to settle for the independent authority saying that we were doing it better than anywhere else, but in fact a Liberal senator goes one step further. Senator Birmingham today on radio was asked about whether he could suggest some things Melbourne could do to replace this water that it wanted to rip out of the River Murray. He said:

> All of the same things that Adelaide's talking about. Increasing the size of Melbourne's desal plant as proposed, looking at stormwater recycling and harvesting, looking at recycling water more which Adelaide is a world leader in—so many options of things that could be done.

What we have here from those opposite is a complete set of disingenuous points they make about the environment, because, when the real tests come (say, for instance, in the lead-up to an election), what do we hear about some of these big issues? What do we hear about the big issues about how we deal with water, the things that take pressure off the River Murray? This was the election policy for the Liberals concerning water at the last election:

> By 2009 a Liberal government will sign off on a strategy and timetable to remove both reliance on the Murray and any future need for lifestyle threatening water restrictions.

A plan for a plan! Then, what was their plan for stormwater reuse and wastewater reuse at the last election? Where was the sophisticated costed plan in the lead-up to this period of government in the last election? You go through 'A Plan for a Sustainable Future'—and it has a lot of pages—

The Hon. M.J. Atkinson: Who was the shadow?

The Hon. J.W. WEATHERILL: I am not sure who the shadow was in those days. There are 27 pages. I was searching for the bit about water in 'Sustainability', especially the bit about stormwater and wastewater reuse, and I found it. It is buried in 'Coast and Marine'. The second to last dot point says this, and it is a very sophisticated policy and I ask members to listen to this carefully:

...encourage the reuse of stormwater and wastewater.

That is the extent—

Members interjecting:

The Hon. J.W. WEATHERILL: That is all there is. It really is difficult to hear members opposite make points about the environment because they really do not care about it. Every now and then they toe in off what they think might be some bad news. They got a bad shock. In many respects we were endorsed for a number of the important steps that we are taking in this area. There is no doubt that our environment is under stress. We are in a period of extreme drought. We are in a period of what appears to be climate change. There is no doubt that our environment is under extreme stress.

The Hon. M.J. Atkinson interjecting:

The Hon. J.W. WEATHERILL: That's right; the climate change—

The Hon. M.J. Atkinson: The member for Hammond.

The Hon. J.W. WEATHERILL: That's right; the climate change deniers have now turned into—

The Hon. M.J. Atkinson interjecting:

The SPEAKER: The Attorney will come to order!

The Hon. J.W. WEATHERILL: There is no doubt that substantial areas identified in the State of the Environment report are of great concern. The Lower Lakes and the Coorong in particular is a source of grave concern to us. The Minister for Water Security has secured an extraordinarily important breakthrough just in recent weeks to ensure that this part of South Australia is managed specifically and managed as part of one river, and not managed just as the responsibility of South Australia but managed under the auspices of the Murray-Darling Authority to ensure that we take urgent steps to deal with the ecological health of that very threatened ecosystem.

We take seriously our commitment to the environment. The report documents a number of respects in which we lead not only Australia but the world. But, of course, there are many other areas about which we need to do substantial work.

STATE OF OUR ENVIRONMENT REPORT

Mr WILLIAMS (MacKillop) (14:59): As a supplementary question: does the Premier not consider the increase in the number of vulnerable and endangered plants, animals and ecological communities (as reported) of critical importance, and what actions are being taken to address the danger to the state's biodiversity?

The SPEAKER: I do not think the question is supplementary: it is a completely separate question. It may be on the same topic but that does not make it a supplementary question. The question is still in order. I am just saying it is not a supplementary question, that is all.

The Hon. J.W. WEATHERILL (Cheltenham—Minister for Environment and Conservation, Minister for Early Childhood Development, Minister for Aboriginal Affairs and Reconciliation, Minister Assisting the Premier in Cabinet Business and Public Sector Management) (15:00): There is no doubt that we have an increase in the number of threatened species that have been identified between 2003 and 2008. I explained in my ministerial statement (if the member had been listening) that that was due to a number of factors, in particular the number of species that have been discovered. There has been an increase in the number of species that have been discovered—and a number of them have then been listed as being endangered—and, of course, changes in taxonomy which have changed the way in which species and sub-species have been categorised. Therefore, additional numbers have gone on the list.

It is true that, increasingly, we are finding a lot of pressure on our native wildlife. The joint effects of drought and climate change are substantial threats. The answer that, in part, this government has proposed includes not only existing measures such as our Native Vegetation Act which protects habitat and other measures to add substantial areas of additional public reserve to the public state but also crucially the nature links initiative by this government; that is, the five landscape scale parks which have been put in place to provide habitat for our rare and endangered plant and animal life.

The reason why it has to be landscape scale is to deal with these threats being caused by climate change. Increasingly, we are seeing more significant fire events and more threatening fire events, which have the capacity to wipe out entire ecosystems. Of course, we are seeing drought and changes in climatic conditions. We are also seeing the pressures that come to bear through further intensification of use of some areas.

The point of landscape scale reserves—the first of which we announced last Friday (the East Meets West Reserve)—is to ensure that plant and animal life has the capacity to roam over a greater area. That is a substantial new initiative. We are the only state in the commonwealth leading this program. Generally, it has been an initiative promoted by non-government organisations in other states. South Australia has a state government framework. We have been ably assisted by The Wilderness Society and other groups in the design of that plan and its implementation. It will involve cooperation between state government, non-government organisations and private landowners as we seek to create biodiversity corridors which guard against these threats to our native wildlife and our plant species.

We do take these threats seriously. There is increasing pressure on our natural wildlife and we have an answer in place, and we are well down the track of establishing those five nature link reserves.

SENATE WATER BILL AMENDMENT

Ms FOX (Bright) (15:03): My question is to the Minister for the River Murray. Will the minister explain the consequences of amendments to the definition of 'critical human water needs' during the Senate debate on the water bill last night?

The Hon. K.A. MAYWALD (Chaffey—Minister for the River Murray, Minister for Water Security) (15:03): I very much thank the member for Bright for her question: it is an extremely important question. In addition to the issue of the amendments that are looking to prohibit projects such as the Sugarloaf pipeline to occur, another amendment was also moved and supported by the Senate to change the definition of 'critical human water needs'. This is quite an extraordinary amendment, particularly given that the Liberal Party in South Australia supported an amendment in our upper house (the Legislative Council) to expand the definition of 'critical human needs' to include permanent plantings.

In the Senate, however, the Liberal Party has done exactly the opposite: it has supported an amendment to limit critical human needs further. That amendment to limit the critical human needs definition will have a substantial impact on South Australia. Under the definition within the act that was put to the Senate, 'critical human water needs' included not only that which is required for drinking water and urban uses but also to provide for water to industry in circumstances where a failure to provide water would cause prohibitively high social, economic or national security costs.

By the Senate amending this and taking out that provision within this legislation it means that companies such as OneSteel, Nyrstar, wineries, abattoirs and GMH no longer have access to water through critical needs provision within the definition of critical human needs.

The Liberal Party in this state supported an amendment in the upper house here to actually expand it, and then in the Senate the Liberal Party supported narrowing it, to the detriment of this state. It is an amendment that I am strongly opposed to and every South Australian should be strongly opposed to. Our critical human needs water underpins water into people's homes and those critical needs for industry to enable this state to continue to employ people and to continue to generate economic wealth.

It is a nonsense to suggest that critical human needs should only include drinking water and that towns such as Dubbo, Wagga and Mildura will not be impacted by this. Their industries will still be able to happen, but it is outside the basin in South Australia that we will not be able to do it.

I think that we need to understand the consequences of your political folly, when the Liberal Party supports these kinds of amendments in the South Australian Legislative Council and upstairs in the Senate in the federal parliament. It may seem like short-term political gain, but putting in place the amendment that was spoken about earlier today (which is to not permit the taking of water for additional uses outside the basin), puts at risk the referral of powers to the commonwealth for the management of the basin in the longer term.

What stupid fool would do that? Why would anyone want to put that at risk as a South Australian? No-one from South Australia would want to put at risk the referral of powers to ensure

that we get a basin-wide approach to the national management of the Murray-Darling Basin. I do not support any action that will be taken to actually reduce water taken for the environment. There is no action across the basin that anyone in South Australia should support that will reduce water for the environment. In fact, the referral of powers to the commonwealth is about getting water back into the environment.

A couple of projects in Victoria are controversial. There is no doubt that they are controversial and I will tell members about those projects. There is one thing that this government in this state is supporting and that is more water for the environment. More water for the environment is what this government is supporting. I will give members a little bit of history; the former water minister, Malcolm Turnbull, went around this nation several times talking about different water projects and one project that he touted as leading nationally in relation to water reform and water infrastructure development.

I remind members opposite that that project happened to be just south of Perth. It was a major irrigation district redevelopment at Harvey Bay and the government in Western Australia paid a considerable amount of money to upgrade the infrastructure of that Western Australian irrigation district. For that investment, they ran a pipeline from the south of Perth, into Perth and took that water that was saved out of that irrigation rehabilitation up to Perth.

The Hon. R.J. McEwen: That was okay.

The Hon. K.A. MAYWALD: That was okay; and that is why, when Malcolm Turnbull put up his water bill last year, before the election, he did not propose that this pipeline should be opposed. What he supported was more water for the environment. He supported investment in infrastructure that would be split 50-50. Fifty per cent of the infrastructure investment would go to the environment and 50 per cent would go to other uses (consumptive uses), to deal with climate change and to deal with the fact that people would have to learn to do more with less in the future. The argument in Victoria is whether that 50 per cent saving should be distributed between irrigators and Melbourne. That is a debate for Victoria. South Australia's focus is on getting more water back into the River Murray.

If the investment of federal money into Victoria results in more water for the river, then that is a good outcome. If Victorians want to debate between themselves whether there should be more water for irrigation or more water for people, that is a debate for them on the water that is available for consumptive purposes. Our only interest in what happens in the River Murray and the Murray-Darling Basin is that there is more water for the environment.

Our Premier has written to the federal minister, who is assessing this under the environment protection biodiversity and conservation act, to seek a guarantee that there will be a significant benefit for the environment in this project, and we have received that guarantee. The fact that the Victorian community is debating whether the water that is saved for consumptive purposes should go to irrigation or to Melbourne is a debate for Victorians.

LAND TAX

Mr GRIFFITHS (Goyder) (15:10): My question is to the Treasurer. What impact is the government's land tax regime having on rents, jobs, retirees, pensioners and working families? One taxpayer from Mount Barker, who has written to the opposition, reports a land tax bill which increased from $1,500 to $7,300 in one year. The constituent states:

> I have learnt that land tax rates are lower in other states and have decided that if rates are not lowered here I shall invest interstate in the future and possibly sell my properties here. I imagine if others do the same the state will have a rental supply problem.

Another constituent from Adelaide, whose land tax bill increased from $45,000 to $145,000, states:

> I also have bank loans to pay on the properties. My question to you is, how is this increase justified? How can a person willing to go out on a limb and invest in South Australia be expected to pay an exorbitant tax?

A third voter from Hillbank, whose ownership includes, 'a run down old shed'—

The SPEAKER: Order! I think the explanation has gone past what is necessary.

Mr GRIFFITHS: There are a variety of instances here, Mr Speaker.

The SPEAKER: They might be examples of a point that the member for Goyder is trying to make but they are not necessary to explain the question. If the member for Goyder wants to use those examples then he would be best advised to do it by way of a grievance.

Mr GRIFFITHS: I am trying to demonstrate the numerous examples that we are receiving.

The SPEAKER: I understand that but that is not what the explanation is meant to do. The Treasurer.

The Hon. K.O. FOLEY (Port Adelaide—Deputy Premier, Treasurer, Minister for Industry and Trade, Minister for Federal/State Relations) (15:12): Nobody likes to pay tax, that is a reality of—

Members interjecting:

The SPEAKER: Order!

The Hon. K.O. FOLEY: Whether people choose to invest in South Australia or elsewhere is a decision each individual will make, but I will say this: when one looks at the property markets around Australia, when one looks at the economic performance and economic prospects around Australia, South Australia stacks up pretty well, if not the best jurisdiction in all of Australia. The reason people are paying more for their land tax bill is because they have clearly enjoyed substantial capital gain.

I would have thought, particularly in the current financial crisis that is engulfing the world, that being able to extract capital gain out of an investment is a very good thing. I wonder how those people would feel if their properties were to devalue to such an extent that they did not have an increase in land tax value but had seen a substantial reduction in capital gain. People invest for capital gain and as long as our economy is able to deliver capital gain then that is a good thing.

Clearly, we are going into an environment where South Australia will be affected by economic conditions, and I guess we will see reduced growth, if not a flat-lining, and perhaps in some areas a softening in land values, as we go through this very difficult period.

The government has its land tax position. I challenge the shadow finance minister. It is easy to pick points where you can demonstrate that people are unhappy about a government decision, but as you count down now to an election you really have to be honest with the people and put your position, because if you wish—

Mr Hamilton-Smith interjecting:

The SPEAKER: Order!

The Hon. K.O. FOLEY: Is that when you will do it?

Mr Hamilton-Smith interjecting:

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

The Hon. K.O. FOLEY: You are talking about your package?

Mr Hamilton-Smith interjecting:

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

The Hon. K.O. FOLEY: The leader is being disingenuous, because the government's land tax position was well known in the lead-up to the last state election. I took a fair bit of heat on it. Remember what the opposition's policy was: we are going to give, I think it was about $70 million of land tax relief. But the genius who has been dumped from the shadow treasury by the leader—the genius in another place—said, 'We can't tell you which rates of land tax we are going to cut; we can't tell you what properties we're going to cut, because we haven't got that information.' The genius from another place who had been a minister for eight years and a treasurer for four would have us believe that he could not work out what to offer a land tax cut on. He just simply said—

Mr Koutsantonis: What's the threshold.

The Hon. K.O. FOLEY: Threshold. It was such a bizarre and pathetically constructed policy, it was laughable.

The Hon. M.J. Atkinson: Is that the same genius who was going to cut 4,000 jobs at the start of the election?

The SPEAKER: Order!

The Hon. K.O. FOLEY: I can accept that the genius in another place, who was such an expert on everything but substantial policy—

Ms CHAPMAN: Point of order, Mr Speaker. This is not only a personal reflection on another member in another place but—

The Hon. M.J. Atkinson interjecting:

The SPEAKER: Order, the Attorney will come to order!

Ms CHAPMAN: —clearly he is also debating the answer.

Members interjecting:

The SPEAKER: Order! I do not think calling someone a genius is a personal reflection.

The Hon. K.O. FOLEY: The genius in another place, of course, enjoys the petty politics of nasty vilification of individuals on this side of the house without actually doing any hard work. As everyone says—arguably the laziest minister and member that this parliament has ever seen. But I say to the shadow finance minister, the easy stuff in politics is to highlight people's concerns with what government is doing. The great challenge of an opposition member is to come up with an alternative policy. If you cut land tax, who will pay more tax, what service will you cut, or are you going to borrow more money?

HAHNDORF SALMONELLA OUTBREAK

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (15:17): My question is to the Minister for Health. What was the final result of the investigation into the cause of the salmonella contamination in the three deaths at the Hahndorf aged care facility in June this year?

The Hon. J.D. HILL (Kaurna—Minister for Health, Minister for the Southern Suburbs, Minister Assisting the Premier in the Arts) (15:17): I am happy to get a report for the member in relation to that matter. I do not think I have that information with me.

HAHNDORF SALMONELLA OUTBREAK

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (15:17): Is the minister aware that an employee of the public health branch of the Department of Health prepared a report identifying the same strain of salmonella in the victims of the Hahndorf salmonella outbreak with eggs sold at retail outlets and imported from Victoria?

The opposition has been informed and provided with the report on salmonella in eggs that was prepared between January and June this year. During the investigation of the salmonella outbreak at Hahndorf, the same employee identified that a strain of Salmonella was present in eggs used in the aged care facility's kitchen. The employee was told by his manager 'not to talk to anyone outside of the food branch about eggs'. At the time, the New South Wales Public Health Unit had requested that salmonella analysis be provided to them for their records and investigation but, again, the employee was told not to provide them with that information.

The Hon. J.D. HILL (Kaurna—Minister for Health, Minister for the Southern Suburbs, Minister Assisting the Premier in the Arts) (15:18): Conspiracy theorists amongst us would obviously be shocked by the accusations and claims made by the deputy leader, but I will take everything she has said with a big grain of salt and have it checked out, as I always do. She asked me a cute question: was I aware of the final outcomes, etc? Of course, she herself had information which she did not give to the house in some sort of clever attempt to trap me, which obviously failed. But, as I said, I will get a report for her.

GLENSIDE HOSPITAL REDEVELOPMENT

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (15:19): My question is to the Minister for Mental Health and Substance Abuse. Is the government now proceeding with the sale of land at the Glenside campus, including the oval, for the construction of a supermarket and other commercial facilities?

Members interjecting:

The SPEAKER: Order!

Ms CHAPMAN: The Burnside council has conducted a survey of local residents resulting in 85 per cent of the respondents (over 2,000) to the survey opposing the extension of the Frewville Shopping Centre—

The Hon. M.J. Atkinson interjecting:

The SPEAKER: Order, the Attorney!

Ms CHAPMAN: —and a further 93 per cent indicating their support for returning the oval. Schools in the area, including Mercedes College, which currently use the oval, have not been provided with any other suitable alternative facilities.

The Hon. J.D. LOMAX-SMITH (Adelaide—Minister for Education, Minister for Mental Health and Substance Abuse, Minister for Tourism, Minister for the City of Adelaide) (15:20): I thank the member for Bragg for her question. I think that she has to understand that this government is committed to investing in mental health within this state and to upgrading our buildings and facilities. I do not think anybody who has visited Glenside campus can be other than shocked by the state of the facilities, which are essentially 19th century buildings. It is impossible to provide current, modern treatment—the sort of treatment that our patients, family members, constituents and community deserve—in those buildings. Much as they are beautiful, and many of them are heritage buildings, they are quite unsuitable for current usage.

It is essential that money is invested, and this government is investing $100 million in upgrading our mental health facilities. We are investing in providing more facilities, more beds and modern facilities at that. We have set in train a process for upgrading the Glenside campus, which I repeat will provide more beds, modern facilities and decent places in which our staff can work and where patients can be treated with respect and in a credible, modern way.

In doing that, the campus will be upgraded and shared with other complementary uses. I know that those opposite do not want us to spend money on Glenside, they do not want us to upgrade the facilities, nor do they want the families and communities to be dealt with respectfully. I know that they are opposed to upgrading our mental health facilities, and the reality is that we are in the middle of a consultation process that will highlight the design of the final layout of those facilities. Until that decision is made, there is no point haranguing us and complaining. Until that decision is made, we cannot debate whether there will be the shape of an oval or the retail sector or the exact layout of the housing.

However, I can commit in this house to continue consultation with the community, the council and the stakeholders because in their hearts they know that this investment is doing the best we can for those patients.

GLENSIDE HOSPITAL REDEVELOPMENT

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (15:23): I ask a supplementary question of the Minister for Mental Health and Substance Abuse. Given her answer that she is still considering these matters, why then did she agree to proceed to sell to the Premier for $2.5 million the historic buildings to build a new film hub?

The Hon. J.D. LOMAX-SMITH (Adelaide—Minister for Education, Minister for Mental Health and Substance Abuse, Minister for Tourism, Minister for the City of Adelaide) (15:23): I really think the member for Bragg has been arguing about the film hub for longer than one can imagine in a completely misdirected way. That building is one of the more unsuitable buildings for a modern facility. It is an exquisite heritage building. It has a beautiful courtyard and it is very elegant, but it is broken up into multiple smallish rooms and—

Ms Chapman interjecting:

The SPEAKER: Order!

The Hon. J.D. LOMAX-SMITH: —frankly, it is not suitable as a modern facility for mental health treatment. In fact, if we were going to be accurate, we would say that patients are not actually using that as a mental health facility. It is for office space. The whole design of the campus in terms of a film hub is to bring on to the campus multiple uses that will destigmatise the management and treatment of mental health patients. I know that some opposite would want to go back to the Victorian model, but that is not our agenda.

EASLING, MR T.

The Hon. I.F. EVANS (Davenport) (15:24): My question is to the Minister for Families and Communities. Given the minister's statement to the house regarding Tom Easling that 'we had people going into that house and finding semi-naked boys in his bed' and a statement to *The Independent Weekly* that in making those comments 'she relied on documentation provided by the department's special investigations unit', can the minister explain how no document provided to

Mr Easling or his representatives by the government has any reference to any suggestion by any person ever that semi-naked boys were found in Mr Easling's bed?

The Hon. J.M. RANKINE (Wright—Minister for Families and Communities, Minister for Northern Suburbs, Minister for Housing, Minister for Ageing, Minister for Disability) (15:25): I thank the member for Davenport for his question. In response to a barrage of interjections whilst the member for Davenport asked the question to which he refers, I used my own words to summarise information that was in my possession in relation to the allegations.

Members interjecting:

The SPEAKER: Order! The member for Davenport.

EASLING, MR T.

The Hon. I.F. EVANS (Davenport) (15:25): I have a supplementary question. Minister, did the government provide all documents subpoenaed by the courts at the request of Mr Easling or his representatives?

Members interjecting:

The SPEAKER: Order! The Minister for Families and Communities.

The Hon. J.M. RANKINE (Wright—Minister for Families and Communities, Minister for Northern Suburbs, Minister for Housing, Minister for Ageing, Minister for Disability) (15:26): As far as I am aware, it was not the Department for Families and Communities that prosecuted Mr Easling. I would imagine that—

The Hon. I.F. Evans interjecting:

The SPEAKER: Order!

The Hon. J.M. RANKINE: That is a question that I could perhaps take on notice. I do not have that information. I was not the minister at the time, and I do not imagine that they were issues that were run past a minister. The crux of the matter here is that the member for Davenport wants an inquiry. Mr Easling's solicitors have written to and put a submission to the Attorney. As I understand it, that is being actively considered by the Crown Solicitor.

EASLING, MR T.

The Hon. I.F. EVANS (Davenport) (15:26): My question is again to the Minister for Families and Communities. Given the minister's statement to the house regarding Tom Easling that 'we had people going into that house and finding semi-naked boys in his bed'—

The Hon. M.J. Atkinson interjecting:

The SPEAKER: Order!

The Hon. I.F. EVANS: —will the minister immediately release to Mr Easling the document she claims she relied upon in making the comments, as requested in a letter to the minister of 14 November; and, if not, why not?

The Hon. J.M. RANKINE (Wright—Minister for Families and Communities, Minister for Northern Suburbs, Minister for Housing, Minister for Ageing, Minister for Disability) (15:27): I have a letter that I have received from Mr Easling's solicitors and I am giving that consideration.

TOUR DOWN UNDER

Mr BIGNELL (Mawson) (15:27): My question is for the Minister for Tourism. Apart from attending the race, how can South Australians celebrate what promises to be the most exciting Tour Down Under to date?

The Hon. J.D. LOMAX-SMITH (Adelaide—Minister for Education, Minister for Mental Health and Substance Abuse, Minister for Tourism, Minister for the City of Adelaide) (15:28): I thank the member for Mawson for his question. He has been a strong supporter of this event and a great campaigner for bringing Lance Armstrong to South Australia; so, I congratulate him on his great efforts coming to fruition.

Of course, aside from attending the race along the roadside, there are many ways that people could enjoy this event. Certainly, in the member for Mawson's electorate I expect them to

be out along the route from Snapper Point to Willunga on Saturday 24 January. There are other ways that the public can be involved. For example, they could join the Skoda Breakaway Series.

This is the official recreational ride along the Tour Down Under route, which includes the Mutual Community Challenge Tour, presented by *The Advertiser*, held over stage 4 on Friday and running from Burnside to Angaston. This is a great opportunity for reasonably fit individuals to join the tour. Younger people can join the mini tour in the Mutual Community Mini Tour for Kids, which is presented by UniSA and held just prior to the Down Under Classic.

For those of you who are up to the challenge—and I am sure that the member for Mawson could manage it—the Burnside Village to Angaston leg of the race is 155 kilometres. Otherwise, one could undertake the Mount Pleasant to Angaston leg, which is 97 kilometres, or the Angaston circuit, which is a mere 32 kilometres beginning at 12 noon. That way you can participate closely.

Failing that, tickets are available for the Tour Down Under Legends' Night Dinner on 24 January. I expect these tickets to sell out soon. It is a great way to get up close to cycling legends. Australia's own Cadel Evans will be honoured at the dinner alongside Lance Armstrong and Adelaide's own Shane Kelly. Shane Kelly is a great cyclist. He has been riding competitively since the age of five and recently competed in his fifth Olympic Games in Beijing. He has twice won the Australian Cyclist of the Year award in 1992 and 1996, he was Athlete of the Year in 1995 and is a four-time world champion.

Cadel Evans is also a great Australian cyclist. He has been runner-up in the Tour de France for the past two years and was the first Australian to win the UCI ProTour season in 2007. All three legends will be interviewed onstage by cycling legends Phil Liggett and Paul Sherwen. To date, over 1,500 people have confirmed their attendance at the Legends' Night Dinner. Tickets can be bought from the Tour Down Under website at www.tourdownunder.com.au and I would certainly encourage fans to get in quick for this unique chance to dine with the stars of the cycling world.

Another way of getting close to the cycling is to be a member of the Touring the Tour official sponsors' coach. This tour line event is being seen as a great way for people to get around the race route without having to drive their own cars, to be taken to the key positions at the finishes and the starts and to be at those fabulous highlights where there are hillclimbs or particular circuits and I would encourage people to be involved in the official coach party.

Two lucky travellers are in a draw daily to join Jim Jacques who is just the most phenomenal race caller, a local treasure and a legend in the cycling world. Jim Jacques' Commentary Stage allows two winners to go to the stage stand and have a priceless view of a stage finish. This is an experience that you just could not buy. Having been close up and personal at those finishes, I say that it is worth joining the Touring the Tour event just to be part of it.

So far, 610 fans have signed up for this opportunity. This is up from 269 in 2008 and just shows the impact of the Lance Armstrong ride on our local numbers. For internet-savvy fans, the TDU also has its own Facebook page and fans can check out photos, videos and make comments on what promises to be the most exciting race yet. It also has an amazing webpage where fans can get even more details on how they can get up close to the action: go to the tourdownunder.com.au website.

There are many opportunities for enthusiasts to get up close to the event and I would encourage those people who are interested to book early, check out the program and, if necessary, take the member for Mawson's advice because he knows better than anyone where the key spots for the public are. I have to say that it goes through many members' electorates—Norwood, my own electorate, Light and Morialta—and I know that many of you will be out there cheering on the squads and enjoying what is tipped to be the most exciting sporting event for 2009 in South Australia.

MATTER OF PRIVILEGE

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (15:33): Mr Speaker, I stand on a question of privilege, and, according to standing order 132, note the interruption of business for you to hear and/or determine the matter of privilege which I now rise to speak on.

Today, in question time, the Minister for Health, in response to a question, informed the house in respect of proposed sites at the future site of the Royal Adelaide Hospital and the land identified as the site for the Marjorie Jackson-Nelson Hospital that, first, in respect of the Royal Adelaide Hospital site, it would be 'restored to the Parklands to become open space' and, secondly,

in respect of the site of the Marjorie Jackson-Nelson Hospital, that three hectares would be returned to parkland.

Yesterday, tabled in this parliament by the Minister for the Environment, pursuant to the requirements of the Adelaide Park Lands Act 2005, the minister tabled two reports. The first was a report pursuant to section 23 of the Adelaide Park Lands Act 2005 titled Future Use of the Royal Adelaide Hospital Site.

The minister tabled a second report—also pursuant to that section in the Adelaide Park Lands Act—titled 'Land Identified as the Site for the Marjorie Jackson-Nelson Hospital'. In respect of the first site, the minister reports to the house. He is obliged, pursuant to that act, to table two reports in this house and in another place when there is a proposal to change the use of any parkland area in South Australia. These two reports were tabled. The first one, in respect of the future use of the Royal Adelaide Hospital site, details the government's proposal to cease health operations there, and I paraphrase that. Importantly, that report states:

> The South Australian government is currently working through the master planning process in order to determine options for the best use of the space and infrastructure post 2016. The exercise involves consultation with the Adelaide City Council, the universities and a wide range of government agencies. In addition, public consultation on any proposals will occur at an appropriate time.

The report further states:

> At this stage, no specific decision has been made as to which buildings will be demolished to return to public space or parkland and consequently what works and contamination issues need to be addressed in order to achieve this and who the land will be vested in.

These matters go on. The second report—not as the Minister for Health said today, but, indeed, in respect of the Marjorie Jackson-Nelson site—does not state that three hectares will be returned. This is an important document (which, by law, must be given to the Adelaide City Council at the same time as being tabled in this house), which states:

> The Marjorie Jackson-Nelson Master Plan has identified a number of key opportunities and guiding principles relevant to the position within the Adelaide Parklands, and in particular the potential opportunity to return approximately three hectares of the site at the western end to parkland to act as a western garden and/or gateway landscape.

I will provide the house with a copy of this document. I will briefly paraphrase it, but the report further states that these investigations have identified both localised and widespread contamination. The report further states:

> There has been no specific decision made as to which areas of the proposed hospital precinct will be made public space or parkland and consequently what specific works and remediated actions are required to achieve...

I ask you, sir, to investigate this matter. One of these ministers is not telling the truth, and we need to know the answer to that. This document is required to be tabled in this house and in another place, and there is the power for it to be referred to the environment committee.

Members interjecting:

The SPEAKER: Order!

Ms CHAPMAN: I will table these and I ask that they be investigated.

The SPEAKER: Order! I will have a close look at the remarks made by the deputy leader and report back to the house. I say at the outset to the deputy leader and to the house generally (the Clerk's ears are pricking up because he is worried I will say something wrong) that because there appears to be an inconsistency between something the minister has said in the house and something that is contained in a report tabled by any minister does not make something a matter of privilege. It may be something that the deputy leader may want to question the minister about and require an explanation of the minister as to why there is an apparent inconsistency; however, just the appearance of an inconsistency does not make something a matter of privilege.

To be a matter of privilege a member has to be able to demonstrate that there appears to be an attempt on the part of another member, or indeed anyone, to somehow pervert the decision making of the house. That is really the threshold. As I say, in case there is something in the member's comments which I have missed, I will report back properly to the house. On the basis of what the deputy leader has said, in a nutshell, her argument is that there appears to be an inconsistency in a report tabled by the minister and what the minister has said in the house. That in

itself does not make something a matter of privilege. However, as I said, I will have a close look in case I have missed something and report back properly to the house.

GRIEVANCE DEBATE

ARMISTICE ANNIVERSARY

The Hon. G.M. GUNN (Stuart) (15:41): I want to express my thanks to the Premier, the Attorney-General and the Minister for Education for making it possible for me to attend the celebrations marking the 90th anniversary of the signing of the armistice at Villers-Bretonneux. I also had the opportunity to attend the rededication of the Australian Corps Memorial at Le Hamel on 8 November by Her Excellency, the Governor-General. To travel through the Somme Valley, that beautiful open French countryside, really makes one reflect on why so many young Australians were sent there and sacrificed. To walk through those cemeteries and see all the names and graves is a very chilling and sobering experience. I think it is a very small price for this parliament to pay each year to send someone to represent the people of South Australia and to pay homage to those young people who gave their lives.

One of the saddest things about this whole exercise is that, for most of the young people who are buried there, their parents or their families were never able to visit their graves and that in itself is a tragedy. I had the privilege of visiting the grave of one of my great uncles from Hallett. I think only one other person has ever visited that grave. As you walk through the rows, you see the names of 19 and 20 year olds, one after the other, and the futility of the exercise is brought to bear on you. When you look at those open fields along the Hindenburg Line, you see concrete bunkers with machine-gun posts set up, and people were expected to advance. The idea was that the artillery would smash the wire and they would advance. Thousands were killed in a short time. I was taken to a small spot where Newfoundland was virtually wiped off the map in about 20 minutes. Might I say that the day I was there it was absolutely freezing.

There is one other matter which I think we should all recognise; that is, the people of France have never forgotten the contribution that Australians made. I had the great privilege (thanks to the Minister for Education) of visiting the school at Dernancourt—and it is named the Adelaide Pavilion—and to meet his worship, the mayor, who was most gracious. He was very keen to drink more than one bottle of champagne, but I am a moderate drinker and I had other things to do that day. The appreciation that he had for the Australians and for the people of Adelaide who provided the funds to rebuild the school have never been forgotten. Of course, a very famous battle took place on that railway bridge when the Australians held the German advance and when they put on one of their last major battles known as Operation Michael—and the Australians performed admirably. Then, of course, I attended the beautiful monument at Villers-Bretonneux. As you look across the French countryside, it is up on a hill and it was a very moving experience. I think the nearly 600 people there were moved by the ceremony.

It is interesting to note that that monument bears the scars of the Second World War where a German ME109 fired rounds into it and they have been left there because my understanding is that Field Marshall Rommel was going past and they thought that there was a sniper up in the tower and, therefore, it was attacked. Fortunately, it was not badly damaged, but as you look across that beautiful French countryside, it is hard to believe, when you see the piles of sugar beet with no fences—it is beautiful country—that hundreds of thousands of people were engaged in what ended up being an absolutely fruitless enterprise.

One of the things that we can be proud of is that the Commonwealth War Graves Society looks after the graves in a magnificent way, and we should be very proud of the way that they do it. Walking along, one of the interesting things to see was some of the messages that have been written by the grandchildren of the people who are buried there. That was quite moving because they obviously did not know them, but they were very moving messages. It was also interesting to look at one of the German cemeteries that we were taken to, where the names of thousands of people are recorded. They have no known graves. One of the other things that struck home was that there was a number of headstones that had written on them 'Known only to God' because they could not identify the people.

I have been given the privilege of attending and I hope that this parliament will send someone each year. I thank the Minister for Education and I sincerely hope that the Mayor of Dernancourt accepts her invitation to come to South Australia for ANZAC Day, because there was a very close affinity. I also gave him a letter from the Mayor of Tea Tree Gully wishing him well and I thank her for it. I thank the house for the privilege of attending.

Time expired.

WHITE RIBBON DAY

Ms BEDFORD (Florey) (15:47): In rising for what is no doubt my last contribution this year, I acknowledge that the house meets on Kaurna land and extend to all my best wishes for a peaceful and happy festive season, but it will not be peaceful and happy for everyone. As members know, yesterday, 25 November, was White Ribbon Day, a day when we focus on the harm and damage caused for all who live in violent relationships. I am grateful that so much is being done these days to expose this unspoken behaviour in all our communities. It is also important that we, as a society, know how to help when we become aware of this problem in our families, in our neighbourhoods and in our wider circle of friends.

Earlier this morning I was privileged to open at the City of Tea Tree Gully a forum on domestic violence and, in particular, the results of it on children. Professor Freda Briggs is leading a list of speakers on the topic 'Where is the child and youth focus in domestic violence?' I commend the YWCA, the MC, Angela de Conno, and all involved in organising the conference, especially the Central Domestic Violence Unit and our own local group in the north-east, the North-East Domestic Violence Action Group (NEDVAG).

I also advise members that two new resources will become available from today. A revised edition of NEDVAG's domestic violence information booklet will by now have been launched by Mayor Miriam Smith. I thank Sharon Marshall for her work on behalf of NEDVAG in compiling the updated information for the new edition. Also, the YWCA's new brochure, 'Relationship Things for Young People', will be launched. I look forward to hearing the outcomes of the conference and thank all speakers and workshop leaders, along with all conference participants, for their important work in the community.

It will also not be a very happy few weeks for students and staff at the Modbury Special School, which is located in the seat of Florey. Early news bulletins this morning advised that a fire had been deliberately lit at the school, destroying a staff room and classroom. Thanks to the fantastic work of the Metropolitan Fire Service, in particular crews, no doubt, from Golden Grove and Oakden—and such was the fire that back-up was required from other stations—I am told that the damage was limited to an area at the front of the school, with the rest of the school, which has been recently refurbished and upgraded, being saved from all but smoke damage. I visited the school earlier this morning, and staff, under principal Julie Aschberger, had settled the students marvellously and the day was progressing on as normal a basis as possible.

They tell me that the department of education has also been out and that its assistance has been fantastic. I would acknowledge that the Minister for Education called me this morning, expressing her concern, and I can assure her that the school was very grateful to hear that she had been in touch with me.

I was at Modbury Special School a week or so ago presenting Premier's Reading Challenge certificates and medallions to some of the 150 or so students who attend there. Library and teaching staff are to be commended for making sure that these students with very special needs are progressing with their reading.

Teachers at Modbury Special School are particularly dedicated and use their skills to make sure that each student achieves their potential, and it will be my honour to return to the Modbury Special School shortly to present awards to graduating students as they move on in their pathways for learning. Modbury Special School has strong support from their parents and the wider community, and a recent hugely successful gala evening proved that.

Before moving on from the work of the MFS, I would acknowledge that it had a busy night. I am also aware of its quick response and prevention work at a fire at the International Linen Service at Torrensville, which is a medium-sized South Australian owned business. Facing perhaps their busiest time of the year, I know that management and staff will be working around the clock to look after their hospitality clients.

A round-the-clock effort will also be required to keep our schools safe over the holiday period. It is a very sad fact of life that some people within our community will cause huge disruption and cost by attacking schools over the holiday period, by breaking windows, stealing equipment, damaging ovals and grounds and deliberately lighting fires. This is without considering the ongoing costs of graffiti.

I ask all people to keep an eye out for their schools from these holidays forward and urge them to call police on 131 444 if they see anything out of the ordinary, and I would ask them to consider being involved in their local Neighbourhood Watch or School Watch programs. I would like to thank all my local Neighbourhood Watch participants for their work on behalf of their communities and I look forward to working with them again in 2009.

Apprehending graffiti vandals is vital so that we can work with them to stop their behaviour, often by enforcing community service orders and removing graffiti. It is a great way to show them that prevention is much easier than clean-up or cure. I would also like to thank the army of people who remove graffiti all over the state. They do a great job in keeping our environment aesthetically pleasing.

We have much to be thankful for here in South Australia and by looking out for each other, stopping domestic violence where we can and preventing property damage wherever possible, we will all have a happy new year.

Time expired.

KANGAROO ISLAND

Mr PENGILLY (Finniss) (15:52): I wish to return to a subject that I have spoken about before in this place. The government is strong on consultation and I would ask that we all consult on this particular issue to do with Kangaroo Island. We have far too many authorities over there. Indeed, it is time we did something about it. I have been concerned for some time.

The minister for primary industries and I discussed the issue of the development board this morning. Let me say that we have a good development board, we have a good CEO and we have an active board, however, there is some streamlining that could go on to make it fall in under the Kangaroo Island Council.

The Kangaroo Island Council needs to be the lead authority, which brings me to the issue that I want to raise today, and that is the ongoing concerns, worries and problems that are being consistently raised on Kangaroo Island over the direction and role of the Kangaroo Island Natural Resource Board. We thought we had thrashed this through earlier this year.

The board gave a commitment that it would consult widely on water and nothing would be done; however, we have found out lately that that is not the case, it is moving in its own mysterious way. I did try to warn the previous minister that the board she was putting in place was not going to be functional or balanced. She failed to listen and we have the outcome that we have now.

I am of the view that it is time that the Kangaroo Island natural resources board was removed. My view is that we need to replace these boards with democratically elected boards from the population, not boards put in place by the minister of the day. We would have to change the act to do that.

More to the point, in a place as small as Kangaroo Island, we should be able to get something going whereby these authorities fall under the council, we have one CEO, we have one administration and we can sort out the job properly. We are going to have ongoing problems with where the board is going over there. The balance is not right. No one would listen, and now we are getting this fighting and instability going on on the island, which we do not need, over water, possible prescription and whatnot.

Kangaroo Island is in a high rainfall area. We have the ability to harvest vast amounts of water on the western end of Kangaroo Island, produce food and fibre, produce economic activity, but the board seems hell bent, wherever possible, on trying to stop this. They want to pick out individual industries such as forestry and try to stop that. There are 10,000 or 13,000 hectares—I am not sure of the exact amount at the moment—so we have to make it work. We have the capacity to produce all sorts of foodstuffs on the wet end of the island in the west. We have a fantastic capacity to grow potatoes, crops, and all sorts of things.

The issue at the moment is that we have the council on one hand saying that it does not want prescription and controls put in place over water, and we have the Kangaroo Island natural resources board running around doing its own thing—a board that has been put in place by the minister of the day. Whether that be on our side or your side, the fact is that the minister is from your side of the house at the moment.

This board is not working properly; it is not acting in the best interests of Kangaroo Island; it is not acting in the best interests of South Australia; and it is inhibiting and stifling production. It is

not listening. It can talk about consultation, but I think it has completely lost the plot. The message that I am getting at the moment is not good, and I fear where this board is taking Kangaroo Island and what it is trying to do.

I would like to sit down with the government of the day. I would like to sit down with the minister for primary industries, the Minister for Environment and Conservation, and a couple of others, and nut this thing out, and put in a special place scenario where, instead of having a multitude of CEOs, boards, committees and dozens of other people running around doing administration, we have one central authority on the island, with these other agencies sitting underneath—whether they are committees of council, or whatever—acting in the best interests of everybody, instead of trying to stifle production and development. I think the time is up, and we need to act. I will be taking this matter further.

On Tuesday, a constituent raised an issue with me about an activity of the board, or certain activities of the natural resources board, and I have written to the appropriate person about that. I understand that the minister is also aware of it. I have also sent a copy to the presiding member of the Natural Resources Committee of parliament. I have had enough, and the people of Kangaroo Island have had enough—all 4,500 of them. It is time for the government to stand up, and it is time for the minister to step in and remove this board; start again and get things rolling properly in the best interests of Kangaroo Island.

I know that there are also problems with boards in other places. I do not have much of a problem on the Fleurieu, but I do have a problem over on Kangaroo Island, and I ask that it be addressed as a matter of urgency.

Time expired.

VOLUNTARY EUTHANASIA

The Hon. S.W. KEY (Ashford) (15:57): Today in my grievance I want to applaud the most recent parliamentary intern who has been assigned to me, Anna-Kate Sutton from Flinders University. I also take the opportunity to thank Dr Clem McIntyre and, more recently, Associate Professor Hayden Manning for their work in the Parliamentary Internships Program. I think members will agree that this is a very useful program for us, particularly for backbenchers and, having been a shadow minister, I know that their work is really important.

It is also very interesting to try to explain to a parliamentary intern how the parliamentary system works. Despite the fact that most of the parliamentary interns that I have had have studied politics or voting behaviour or different topics like that, trying to understand how the Westminster system works in South Australia is really beyond that sort of study.

The work that I asked Anna-Kate Sutton to look into was legislative provisions for achieving a voluntary euthanasia system in South Australia. It was my view that, having looked at the very sad history in this state of trying to introduce progressive legislation of this sort, perhaps one of the ways of looking at the legislation was to build on the very good work that has been done in the past which eventuated in the legislation called the Consent to Medical Treatment and Palliative Care Act 1995.

As I have said, I asked Anna-Kate Sutton to look at this because it seemed to me that, although there have been many attempts to try to introduce legislation—in fact, some five attempts to introduce voluntary euthanasia legislation—in South Australia, they have all come to nought. It is also interesting to note that, since Dr Such's most recent bill, Voluntary Euthanasia Bill 2008—and I think it is the third one that he has introduced—which is bill No. 20 on our *Notice Paper*, Washington has become the second state in the US to allow doctors to prescribe lethal doses of medication for terminally ill patients seeking to hasten their death. Initiative 1,000 is referred to as a 'death with dignity' act and, in some cases, it is also described as an 'assisted suicide' measure.

I-1,000 is modelled on the decade-old Oregon law which permits terminally ill, competent adult residents of Washington, who are medically predicted to have six months or less to live, to request and self-administer lethal medication prescribed by a physician. The measure protects doctors from being prosecuted under the state law forbidding anyone from aiding in the suicide attempt.

Of course, the Washington initiative has quite a history. In 1991, Washington voters rejected again what they called Initiative 119 which would have allowed doctors to write prescriptions to hasten death but, unlike the provision that has actually been introduced, it also

would have allowed physicians to administer lethal injections to terminally ill patients who were not able to take the medication on their own.

Of course, having physicians assist people with a voluntary euthanasia process reflects the Netherlands and Belgian experience where physicians are actually involved as local physicians in the whole process of voluntary euthanasia. This is determined by the patient long before there is a need to make literally deathbed decisions.

I have argued long and hard that we need to have progressive legislation in South Australia, and my understanding is that this is supported by the majority of our community. It would be good to see some of the conservatives both in this place and the Legislative Council start listening to what people want in South Australia.

ROSE PARK PRIMARY SCHOOL

Mr PISONI (Unley) (16:03): Yesterday I gave the Minister for Education an opportunity to dismiss allegations that she used her position to unfairly intervene in the day-to-day running of the Rose Park Primary School and she refused to rule it out. She was given the opportunity to say yes or no and she refused to do it. Why did I ask the question? Because this is what I have been advised by the school community, which is extremely concerned over the minister's actions.

Rose Park Primary has a zoned mainstream school of some 350 students and an unzoned Family Unit of 59 students that uses alternative, and some would say unorthodox, methods to deliver the DECS curriculum. The Family Unit has seen a drop in student numbers and resignations of teachers whilst the successful mainstream school is bursting at the seams as it grows. Incidentally, the school has had seven principals in seven years.

Elements of this unique education approach of the Family Unit include students who start their day later and do not wear uniforms. It is obviously difficult for them to get there at 8.45am, so they start at 9.30am instead. The unit has access to larger classroom spaces and smaller class sizes with better teacher to student ratios than the mainstream school at Rose Park.

In August this year the principal and staff agreed to adjust staffing to match demand in the school, resulting in a reduction of the generous resources of the Family Unit which could no longer be rationally justified. To clarify the principal's decision, Family Unit parent and school chair, Austin White, an ASU official who is used to getting his own way, wrote a letter dated 22 September to Don Mackie, Manager, Legislation and Legal Services at the department of education. Mr Mackie's response was crucial. He wrote:

> If it is the matter of the Principal determining what classes be in place for 2009, it is clear to say—

and the words 'ultimate responsibility' are underlined—

> that the ultimate responsibility for such is a management decision is for the Principal. Obviously this does not mean that the Council should not be consulted etc, but simply the final issue is one of school management.

At about the same time, Margaret Sexton, a parent of the Family Unit and former UTLC president, and a good friend of the Minister for Education, emailed the minister to protest about the proposed changes. Some tell me she was a key player in the minister's campaign for the seat of Adelaide and is deeply embedded in the ALP. People aware of the email have told me that Margaret Sexton threatened an injunction over the principal's decision, warning, 'This will get ugly if you don't do something.'

I am advised that Ms Sexton went on to request that an additional teacher be supplied to the Family Unit and that an extra classroom be placed in the school so that, in effect, the Family Unit could be exempt from the same criteria used by every other state school in Australia for determining teacher numbers and classroom space—a very intimidating email, of course, coming from an industrial relations conciliator with the Industrial Relations Court.

It seems that, as a result of the email, the district director contacted the school and asked for information to be provided for ministerial briefings. On 22 October, Judy Day, the District Duty Director of School Operations at DECS, met with the principal and the governing council. Soon after the meeting started the principal was asked to leave the meeting. The next day the principal was told by Judy Day that the Family Unit would get the extra teacher, a decision that was viewed by the crowded general school community as being unfair and unjustified.

On 28 October Judy Day met with Austin White and the deputy chair, and the principal was once again excluded from the meeting. I understand that DECS then agreed to all terms put to them by Austin White. The principal was then given directions of how he was to run the school for

the benefit of the Family Unit parents. In other words, he was told that the Family Unit would be run by Mr Austin White and Margaret Sexton, including enrolment of students without school approval.

I can assure the house that the staff and parents of Rose Park Primary School are devastated. This is a clear misuse of the minister's power, and the minister must justify her actions. She must explain to parents and teachers why she has been in dispute with the AEU all year for the right for principals to run their own schools, yet at the first opportunity runs roughshod over the principal's right and responsibility to manage his school effectively, when she has abused her power as the minister for the personal benefit of her good friend, Margaret Sexton.

PREGNANCY, ALCOHOL CONSUMPTION

The Hon. L. STEVENS (Little Para) (16:07): On 1 November 2008 Fiona MacRae wrote an article in *The Advertiser* headed, 'Babies better from glass or two mums'. The article begins:

> Pregnant women who have a glass or two of wine a week have brighter, better-behaved babies, research suggests.

The article goes on to describe the results of one study done by University College London involving more than 12,000 children born between 2000 and 2002, purporting to show that mothers who drank one or two units a week of alcohol did not increase the risk of having babies with mental impairment or behavioural problems. It states:

> Three year old boys whose mothers drank lightly in pregnancy were less likely to be hyperactive and threw fewer tantrums than those born to women who stayed off alcohol.

Fiona MacRae writes:

> Similarly, girls whose mothers drank up to two units a week when carrying them had fewer emotional problems. The advantages related to light drinking only...In general, the brightest, best behaved children belong to the light drinkers, the study said.

The article goes on to state:

> But researcher Yvonne Kelly said the apparent benefits of being exposed to small amounts of alcohol in the womb may not actually have had anything to do with drinking. Instead, the phenomenon might be due to the fact that women who drank a little in pregnancy tended to be better educated and wealthier than those who drank heavily or not at all.

The article then went on to quote Dr Peter Ford, the State President of the Australian Medical Association in South Australia, who said there was no established safe level of consumption for pregnant women or breast-feeding mothers. He said:

> Studies have shown that even moderate drinking can reduce adult brain volume.

Indeed, he is correct. I did some work and found another article by John S. Whitehall in the *Medical Journal of Australia* 2007. He states:

> The effects on cognition, learning, behaviour and executive function of human brains exposed to these levels of alcohol have been difficult to quantify because of various confounders, and because of the imprecision of psychological measurement. Nevertheless, a number of longitudinal studies have been conducted in North America. One in Detroit suggested a threshold for foetal toxicity of 0.014% blood alcohol. One in Ottawa found no deficits in language comprehension or attentional problems at doses less than 8.8 g of alcohol a day. One detected no effects on intelligence in 4-year-olds but another found exposure to as little as one drink a week caused children to be three times more likely to have 'delinquent behaviour scores in the clinical range compared with non-exposed children.' A long-running study in Seattle has reported adverse neurobehavioural effects at various ages after moderate prenatal exposure to alcohol, while a review of literature by another centre found the results inconsistent.

The point of all this is that it is quite clear that there does not exist a body of evidence that shows any safe level of alcohol intake to be appropriate during pregnancy.

My point is that the article in *The Advertiser* missed out on putting that whole other side of the question. Instead of going forward with that particular heading—saying that it was safe and even inviting readers, after having read that very biased article, to say whether they thought mothers should drink or not drink during pregnancy—it would have been more appropriate for *The Advertiser* to have given a balanced view and to have put all the facts on the table.

It is really important for pregnant mothers and the community at large to be given consistent and accurate messages, and that is why the health department here in South Australia takes a precautionary approach and makes it quite clear that there is no body of evidence that shows a safe level of alcohol intake during pregnancy and that abstinence is the only advice that can be given to pregnant women.

REPRODUCTIVE TECHNOLOGY (CLINICAL PRACTICES) (MISCELLANEOUS) AMENDMENT BILL

The Hon. J.D. HILL (Kaurna—Minister for Health, Minister for the Southern Suburbs, Minister Assisting the Premier in the Arts) (16:12): Obtained leave and introduced a bill for an act to amend the Reproductive Technology (Clinical Practices) Act 1988. Read a first time.

The Hon. J.D. HILL (Kaurna—Minister for Health, Minister for the Southern Suburbs, Minister Assisting the Premier in the Arts) (16:13): I move:

That this bill be now read a second time.

The purpose of this bill is to amend and update the Reproductive Technology (Clinical Practices) Act 1998 to ensure that it meets the needs of South Australians requiring assisted reproductive treatment into the 21st century.

The Reproductive Technology Act 1988 (RT Act) was drafted in the late 1980s when in-vitro fertilisation (IVF) was a very new area of biomedical science. At that time it was a conscience vote for all members of parliament, and I imagine it will be again this time. It certainly will be on this side of the house.

The current act prescribes the welfare of the child born as the guiding principle, establishes the SA Council on Reproductive Technology (the council) to advise the minister, sets limited eligibility criteria for treatment, provides for clinics to be licensed, and prescribes confidentiality requirements. Assisted reproductive medicine was in its infancy when this act was promulgated. It set a framework for the practice of assisted reproductive medicine and at that time was considered revolutionary. However some aspects are now past their 'use by' date.

The act required the council to develop detailed regulations for ethical clinical practice. The Code of Ethical Clinical Practice (the code) was developed in the early 1990s by the council and established as a regulation under the act in 1995.

The detailed and highly prescriptive Code of Ethical Clinical Practice regulates and details requirements for eligibility for treatment and for donation of reproductive material and specific prohibited practices and makes provisions for consent and record-keeping, most of which is now duplicated by the NHMRC ethical guidelines and the Reproductive Technology Accreditation Committee (RTAC) national standards. This robust national regulatory scheme allows South Australia's legislation to be simplified, thereby reducing unnecessary duplication.

Assisted reproductive treatment (ART) is no longer considered novel. It is now an accepted means of family formation. South Australia's legislation does not accommodate or respond to advances in infertility treatment, emerging public health challenges or shifts in social attitudes. The act has constrained assisted reproductive medicine services and the code has further complicated practice. Advances and discoveries in assisted reproductive treatment since the 1980s have made the present legislative scheme difficult to interpret and apply.

National regulation of assisted reproductive treatment

ART is now highly regulated through a strict national accreditation and licensing scheme and comprehensive ethical guidelines, which have both evolved since the passage of the RT act in 1988 and the code in 1995. The Department of Health has contributed significantly to the regular review and revision of these national guidelines and standards over the years.

This national framework includes the Reproductive Technology Accreditation Committee (RTAC) Code of Practice and accreditation standards and the extensive and recently revised NHMRC *Ethical guidelines on the use of assisted reproductive technology in clinical practice and research 2007*. Clinics must comply with these national standards, are inspected annually, and must maintain their accreditation to access Medicare funding.

The current South Australian legislation requires clinics to maintain their national accreditation and comply with the NHMRC ethical guidelines which will continue under the proposed amendments. There is now significant duplication and direct conflict in some areas between the South Australian legislation and the NHMRC ethical guidelines, and this currently poses problems for clinical practice and the provision of ART. If these amendments are passed, the legislation would be consistent with the national regulatory scheme.

Other states

South Australia, Victoria, Western Australia and recently New South Wales have legislation regulating assisted reproductive treatment to varying extents. Assisted reproductive treatment in the jurisdictions without specific legislation is regulated solely by the national accreditation and licensing scheme and the NHMRC ethical guidelines, that is, reproductive treatment in those states is not subject to additional prescriptive legislation that is not imposed on other medical specialities.

Legislation and practice in other states allow access to new treatments, introduced since the 1980s, which the current act does not permit South Australian clinics to provide to their clients.

The current act's shortcomings

The shortcomings of the current act and the code include:

- inconsistency with national standards and guidelines
- non-compliance with National Competition Policy principles
- eligibility requirements that are more limited than other jurisdictions and so drive 'reproductive tourism'
- an inability to accommodate new treatments and emerging issues
- legal barriers to donor registration schemes.

The Amendment Bill

The proposed bill will amend the Reproductive Technology (Clinical Practices) Act 1988 by:

- renaming the Reproductive Technology (Clinical Practices) Act 1988 as the Assisted Reproductive Treatment Act 1988
- ensuring that the welfare of the woman and the 'best interests of the child' are of fundamental importance in the application of the act and in the provision of assisted reproductive treatment
- requiring clinics to continue to comply with the national accreditation and licensing scheme and the NHMRC Ethical Guidelines
- removing anti-competitive licensing conditions
- replacing the current licensing scheme with a registration scheme
- dissolving the SA Council on Reproductive Technology
- deleting the marital requirement for access to ART, to ensure consistency with the Pearce judgment in 1996
- continuing to allow medical practitioners to provide assisted insemination, but extending ability to provide assisted insemination to other defined health professionals provided they are authorised by the minister to do so
- extending access to ART to those at risk of transmitting serious infective conditions such as HIV
- providing for the posthumous use of sperm under limited prescribed circumstances
- allowing for the establishment of a donor conception register
- providing for a review of the act after five years.

Renaming the Act

The amendment bill proposes to rename the Reproductive Technology (Clinical Practices) Act 1988 as the Assisted Reproductive Treatment Act 1988. This change is to differentiate assisted reproductive treatment from reproductive technology, which is the focus of the Research Involving Human Embryos Act 2003. It will also make terminology consistent with other jurisdictions. Updating the terms

The amendment bill proposes to change the term 'artificial fertilisation procedures' to 'assisted reproductive treatment', but retain the current definition. It also proposes to change 'artificial insemination' to 'assisted insemination', but retain the current definition. This would ensure terminology is consistent with clinical practice and with other jurisdictions.

Best interests of the child

Currently the functions of the SA Council of Reproductive Technology include a clause which requires the council to keep the welfare of the child as paramount when developing the code of ethical clinical practice. This bill proposes to dissolve parts 2 and 3 of the RT Act, which contains this provision.

Therefore, it is proposed to retain and strengthen the 'best interests of the child' principle and extend it to include both the child to be born and the welfare of the woman undergoing treatment as of fundamental importance in the application of the act and the provision of ART. This would mean that clinics must ensure that the welfare of the woman receiving treatment and the best interests of the child to be born are fundamental when providing assisted reproductive treatment.

Compliance with the national regulatory scheme

Current legislation requires reproductive medicine clinics to comply with the NHMRC ethical guidelines. These undergo extensive consultation, are reviewed every five years and are regularly updated. They recognise the respect due to human embryos, the welfare of the child born from ART and the interests of donors of gametes.

The NHMRC ethical guidelines provide a national ethical framework for clinical practice including details regarding:

- unacceptable and prohibited practices;
- use and storage of gametes and embryos;
- posthumous use of gametes and embryos;
- consent and counselling;
- preimplantation genetic diagnosis and sex selection;
- donor conception and surrogacy;
- innovations, training and quality assurance; and
- record keeping.

It is proposed that the new South Australian legislation continue to require clinics to comply with national NHMRC ethical guidelines, enabling duplication between legislation and national guidelines to be reduced

Replacing state licensing with state registration

South Australia introduced licensing in the 1980s to protect emerging innovative enterprises before national regulatory and oversight mechanisms were developed. It was intended to limit the number of providers in a new area, rather than control their activities. As a result, South Australia is now served by only two providers: Repromed, which accounts for the majority of activity; and a smaller facility, Flinders Reproductive Medicine. Assisted reproductive treatment is now considered mainstream and such restrictions are no longer justified.

Under the current act, new providers wanting to establish clinics in South Australia must demonstrate that there is an unmet social need which cannot be met by existing licensees, as well as establishing their practice—even before they apply for a licence. The current licensing scheme and its provisions have resulted in a duopoly of service provision in this state. There are other providers wishing to enter the SA market, but currently the law constrains them from doing so.

RTAC issues a licence to reproductive medicine clinics that achieve accreditation, and it is this RTAC licence that permits clients to access Medicare funding. This national system makes the South Australian licensing provisions under the Reproductive Technology Act redundant. In its place, to monitor activity in this area, the bill requires that established clinics register with the Minister for Health. This bill provides for a registration scheme which will impose conditions on registrants seeking to practise ART in South Australia, in addition to the national scheme. This will provide accountability and transparency for those providing assisted reproductive treatment services in South Australia. Compliance will be managed by regulations.

This bill also provides for a once off registration fee to be set. Currently clinics, when applying for a licence, do not have to pay any fees for a licence to practise in South Australia.

Initially it is proposed that the fee will be set at zero, but be assessed if, down the track, more providers enter the market, which would result in an increase in workload to manage the register of clinics.

Clinics would be able to be deregistered, and therefore unable to practice in South Australia, for breach of any conditions of their registration, or for non-compliance with the act or its regulations. The bill also includes appeals and reinstatement provisions which uphold the principles of natural justice.

Rather than duplicate existing comprehensive national data reporting systems, it is proposed to require clinics to provide copies of their annual national data reports to the Minister for Health and the department, the requirements of which will be detailed in the regulations.

I will outline the conditions which will be required for registrants in South Australia further on in my speech. I will now turn to the SA Council on Reproductive Technology.

Dissolve the SA Council on Reproductive Technology

The SA Council on Reproductive Technology was given the task, under the newly established Reproductive Technology Act in 1988, to develop a code of ethical clinical practice and research. The council also had a number of other statutory functions under the act, some of which are duplicated in South Australia's embryo research legislation and so are no longer relevant.

Since its inception, the council has played an important role in developing the code, advising various ministers of health on issues that relate to ART as they arise, mediating between clinics and negotiating a consensus on policies to guide the practice of ART in South Australia The council fulfilled a much needed role at that time. I would like to take this opportunity to thank the council, its current and previous members, for their dedication and hard work in laying important foundations for a well functioning, cohesive and ethical ART sector in SA. If the proposed amendments are successful, many of the council's functions will no longer be necessary.

The Health Care Act 2008 makes provision for the establishment of Health Advisory Councils (HACs) to advise the Minister for Health. An ethics HAC will be able to provide the type of advice currently provided by the council. The ethics HAC will also be supported by a number of expert advisory panels, and it is envisaged that one specifically for ART will be established to provide expert advice on ART to the ethics HAC when needed. The ART expert advisory panel will consist of experts across a range of areas including research, clinical practice, welfare of children born through ART, infertility counselling, ethics, law, and child development, and so on. The number of experts on this panel would not be limited. If extra advice is needed, additional expert advice could be sought from the assisted reproductive treatment sector itself.

Marital requirement

The current act restricts access to ART to married couples. However, this clause is in direct contravention of the Commonwealth Sex Discrimination Act 1984. Furthermore, it has not been applied since 1996, when the South Australian Supreme Court determined that the marital provisions in the act should be read down in accordance with the Sex Discrimination Act. The marital requirements have not been applied since that decision, and the bill includes provisions to remove this redundant criterion. In other words, clinics have, since 1996, been providing treatment to infertile women, regardless of marital status or sexuality.

Access to assisted reproductive treatment

Currently, people may only access ART at a licensed clinic in South Australia if they appear to be infertile, or if there is a risk of passing on a serious genetic defect to a child born naturally. These criteria for access to ART will be retained as a condition of registration. However, I propose to extend access to ART for other conditions which I will now outline.

For several years, assisted reproductive medicine clinics in South Australia have been seeking legislative change to permit them to offer sperm washing to fertile men at risk of passing on a serious infection, such as HIV, to their partner and offspring. This can be (and is) available to infertile couples in South Australia, but currently fertile couples have to travel interstate to access such procedures.

The bill therefore extends eligibility to include cases where there is a risk of transmitting serious infective conditions to a child conceived naturally, eg HIV. This will permit access where there is a risk of transmission of serious infective conditions to a child or mother as well as the risk of a genetic defect which is currently contained in the act.

Posthumous Use of Sperm

Most recently in a widely publicised case a young widow, Ms Sheree Blake (who I acknowledge is in the chamber today), was denied access to sperm stored prior to her husband's death. Both her husband and she had received expert counselling through a reproductive medicine clinic and Mr Blake had provided specific written consent for his wife to use his sperm to achieve a pregnancy after his death. The couple had met all the criteria specified in the national NHMRC ethical guidelines (once subsequent counselling ensured that an adequate time had passed for her to recover from her bereavement and she was making a considered decision).

However, the widow was distressed to discover after her husband's death that South Australian clinics cannot assist her to become pregnant, despite the consent from her husband. She may legally inseminate herself with her husband's sperm at home, and she could take the sperm interstate to be inseminated by a clinic, but she cannot be medically-assisted in her home state because she is fertile.

This bill makes provision for this scenario, but subject to strict controls. For example, the ART must be performed on the deceased person's partner, provided he had given an express direction to that effect. The sperm must have been collected prior to the man's death and they must meet the criteria set out in the NHMRC ethical guidelines on the posthumous use of gametes, which recognise the profound significance for the person born. These include that:

- a deceased person has left clearly expressed and witnessed directions consenting to the use of his sperm by his partner after his death;
- the prospective parent receives counselling about the consequences of such use;
- the use does not diminish the fulfilment of the right of any child born to knowledge of his or her biological parents;
- advice is sought from a clinical ethics committee on the ethical issues raised in these circumstances; and
- an appropriate period of time has passed before attempting conception and that counselling is available to work through these issues.

Clinics must comply with these guidelines as part of their registration, under this bill, and also as part of their national accreditation. It is a condition of their licence issued under the national regulatory scheme. I seek leave to have the remainder of the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Access to ART for future infertility

The Amendment Bill provides for other conditions of registration regarding access to treatment to be included in the regulations. One such issue under consideration is the ability to access treatment in the case of future infertility. For example, there have been cases where, a serious medical condition such as cancer may render a person infertile in the future, either due to the treatment for the disease or the cancer itself. There are other medical conditions or diseases which also could affect a person's future fertility. To be clear, this does not mean age, where reduced fertility is a natural part of the ageing process, but would be limited specifically to a medical condition, disease (or medical treatment), as defined or described in the regulations.

However as the current Act limits access to either infertility or risk of passing on a genetic defect— this has limited clinical practice to providing treatment only in these circumstances. This in effect has meant that for a person who may become infertile in the future due to a medical condition or treatment, clinics are not even allowed to harvest eggs or create embryos before that person becomes infertile. So not only do they have to face the seriousness of their illness, but they also have to deal with the potential that they may never be able to have children as well.

As a result it is proposed that the regulations allow for other conditions to be prescribed. Further consideration will be given on the details regarding the types of medical conditions, treatments etc which may render a person infertile in the future. Consultation with the sector will be useful in determining these details.

Donor conception register

In 2005, the Social Development Committee (SDC) and the Council raised concerns about the current lack of access to identifying information about gamete or embryo donors and recommended that donor registration be addressed. In 2007, the SDC again recommended that the legislation be amended to ensure that people conceived through donor conception have access to information about their genetic parentage should they request it.

Currently the Act's confidentiality provisions restrict the provision of information by clinics to a third party, a donor conception register or Births Deaths and Marriages for example. In addition expectations have been raised

about a national donor register, which is being considered by the Standing Committee of Attorney's General (SCAG) in the context of a nationally consistent policy framework.

The Bill proposes to remove any impediments and allow South Australia to participate in a donor registration program approved by the Minister for Health. This could be set up as a state register or a national register.

The details of such a register such as how it would work, the information to be kept on the register and who would have access would be detailed in regulations and developed in conjunction with the stakeholders. This would ensure that consideration has been given to the model for such a register, and if a national register is established in the meantime, that there would be no regulatory impediments for SA to participate in a national scheme.

Regulations

There are a number of areas which necessitate the development of regulations. The Reproductive Technology (Code of Ethical Clinical Practice) Regulations (the Code) will expire in September 2009 and cannot be extended. This will provide an excellent opportunity to update the current Code which is outdated and constrains clinical practice to include corresponding regulations for any changes to the current Act, supported by the Parliament and in line with national guidelines.

Regulations and/or guidelines would be required for successful amendments to the RT Act including:

- continue to require clinics to comply with the RTAC accreditation and licensing scheme and NHMRC ethical guidelines on the use of ART in clinical practice
- outlining conditions under which registration or authorisation to carry out assisted reproductive treatments can be granted
- providing for registration of new clinics with provisional accreditation
- setting registration fees
- detailing the access requirements for those at risk of transmitting serious infective conditions such as HIV and persons who are likely, for medical reasons, such as chemotherapy for cancer, to become infertile in the future
- allowing for administrative aspects such as provision for records when a clinic closes and for other emerging issues
- detailing the requirements for the posthumous use of sperm and embryos, under limited circumstance
- detailing requirements for the donor conception register including information required and access provisions.

Records

Currently, there are only limited protections for patients' and donors' records when clinics are closed or a licence is cancelled. The Bill allows for other conditions to be set on registrants, therefore I am proposing that the regulations set procedures to be followed to ensure that records are safely and appropriately stored, transferred and/or destroyed when clinics or other providers of ART cease to practice.

Penalties

The Bill also increases penalties for breaches of the Act. Penalties set twenty years ago are outdated and have been increased to reflect the nature of the industry and current expectations.

Conclusion

I urge members to support the Bill, to ensure that ART meets the needs of the South Australian community now and into the 21st century. I believe that the Amendments proposed here are not radical shifts in policy, but reflect nationally accepted clinical practice. Access to treatment is still restricted to people who appear to be infertile or at risk of transmitting a genetic defect, but now includes those at risk of passing on a serious condition, such as HIV to a child conceived naturally and to those who, for medical reasons, are likely to become infertile in the future.

The Bill will ensure that the regulation of ART in SA is responsive to emerging issues and improved treatments, thereby benefiting those in need of ART for safe family formation.

I appreciate that these matters raise many ethical questions for some members, which is why the Government has agreed that Labor Party members can vote according to their conscience.

I commend the Bill to the House.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Reproductive Technology (Clinical Practices) Act 1988*

4—Amendment of long title

This clause amends the long title of the principal Act to reflect the amendments made by this measure.

5—Amendment of section 1—Short title

This clause amends the short title of the principal Act so that it becomes the *Assisted Reproductive Treatment Act 1988*.

6—Amendment of section 3—Interpretation

This clause amends section 3 of the principal Act, changing current terms 'artificial fertilisation procedure' and 'artificial insemination' to 'assisted reproductive treatment' and 'assisted insemination' respectively. These changes reflect current national terminology and better reflect the scope of the procedures.

The clause also makes further amendments consequential upon the amendments made by this measure.

7—Insertion of section 4A

This clause inserts new section 4A into the principal Act, a section that provides that the welfare of a woman to whom assisted reproductive treatment is provided in accordance with this Act, and that of any child to be born in consequence of such treatment, must be treated as being of fundamental importance in respect of the operation of this Act, and in assisted reproductive treatment provided in accordance with this Act.

8—Repeal of Parts 2 and 3

This clause repeals Parts 2 and 3 of the current Act. The effect of the substitution is the abolition of the current South Australian Council on Reproductive Technology (current Part 2) and the licensing scheme for providers of artificial fertilisation procedures (current Part 3), and the institution of a system of registration for providers of assisted reproductive technology. The new Parts 2 and 3 are as follows:

Part 2—Registration

5—Authorisation and registration required to provide assisted reproductive treatment

This clause creates an offence if a person provides assisted reproductive treatment and the person is not authorised to do so in accordance with the regulations or is not registered under this proposed Part.

The penalty for an offence is a maximum fine of $120,000.

The clause sets out an exemption to proposed subsection (1), in that assisted insemination provided by a health professional (a term defined in proposed subsection (6)) approved by the Minister, or assisted insemination provided at no cost, may be provided without such authorisation or registration. An offence is also created in respect of an approved health professional contravening or failing to comply with a condition of his or her approval.

The clause also makes procedural provision in respect of approvals.

6—Eligibility for registration

This clause sets out when a person is eligible for registration under the proposed Part.

7—Application for registration

This clause sets out how an application for registration under the proposed Part must be made.

8—Registration

This clause provides for the registration of persons who are authorised to provide assisted reproductive treatment. Registration is required before the person can actually provide such treatment in this State.

Subclause (2) sets out the information that must be included on the Register, which is to be kept by the Minister.

9—Conditions of registration

This clause provides that the Minister must impose certain conditions on a person's registration under this Part. The kind of conditions that must be so imposed are as follows:

(a) a condition requiring the person to hold, while the person is registered under this Part, a specified licence, accreditation or other qualification that is in force;

(b) a condition setting out the kinds of assisted reproductive treatment the person may provide and any requirements that must be complied with in the provision of such treatment;

(c) a condition preventing the provision of assisted reproductive treatment except in the specified circumstances, those circumstances being—

(i) if a woman who would be the mother of any child born as a consequence of the assisted reproductive treatment is, or appears to be, infertile;

(ii) if a man who is living with a woman (on a genuine domestic basis as her husband) who would be the mother of any child born as a consequence of the assisted reproductive treatment is, or appears to be, infertile;

(iii) if there appears to be a risk that a serious genetic defect, serious disease or serious illness would be transmitted to a child conceived naturally;

(iv) if—

(A) the donor of the relevant human semen has died; and

(B) before the donor died, either—

- the donor's semen was collected; or
- a human ovum (being the ovum of a woman who, immediately before the death of the deceased, was living with the donor on a genuine domestic basis) was fertilised by means of assisted reproductive treatment using the donor's semen; or
- an embryo had been created as a consequence of such assisted reproductive treatment; and

(C) before the donor died, the donor consented to the use of the semen, fertilised ovum or embryo (as the case requires) after his death in the provision of the proposed assisted reproductive treatment; and

(D) if the donor gave any directions in relation to the use of the semen, ovum or embryo (as the case requires)—the directions have, as far as is reasonably practicable, been complied with; and

(E) the assisted reproductive treatment is provided for the benefit of a woman who, immediately before the death of the donor, was living with the donor on a genuine domestic basis;

(v) in any other circumstances prescribed by the regulations;

(d) a condition requiring the person to ensure that the regulations are complied with;

(e) any other condition required by the regulations.

The clause provides for the variation of a person's conditions by the Minister, and creates an offence for a person who contravenes or fails to comply with a condition of the person's registration, with a maximum fine of $120,000.

10—Suspension or cancellation of registration

This clause provides that, if the Minister is satisfied that a person has contravened, or failed to comply with, a condition of the person's registration, the Minister may suspend or cancel the person's registration. In such a case though, the person must first be given a reasonable opportunity to make submissions in relation to the matter.

11—Removal from Register

This clause provides that the Minister must remove a person from the Register in the specified circumstances.

12—Reinstatement on register

This clause provides that a person who has been removed from the Register under proposed section 11 can be reinstated to the Register on application, and makes procedural provision in relation to such reinstatement.

13—Appeals

This clause provides that a person can appeal to the Supreme Court against certain decisions made under the proposed Part.

14—Related matters

This clause makes procedural provision relating to access to, and evidentiary matters arising from, the Register.

Part 3—Donor conception register

15—Donor conception register

This clause enables the Minister to keep a register that identifies the donor of human reproductive material used in assisted reproductive treatment, where the treatment results in the birth of a child.

The clause sets out the information required to be kept if the donor conception register is, in fact, kept, and also provides that the register may only be accessed in accordance with the regulations.

The clause also empowers the Minister to require a person to provide the Minister with specified information, where the Minister requires that information for the purpose of preparing and maintaining the donor conception register. A person who, without having a reasonable excuse, refuses or fails to comply with such a requirement is guilty of an offence.

The clause also provides that the proposed section does not apply to assisted reproductive treatment provided before the commencement of this section.

9—Insertion of section 16

This clause inserts a new section 16, providing that specified persons must keep the records etc required by the regulations, and must retain them in accordance with the regulations.

10—Amendment of section 17—Powers of authorised persons

This clause makes consequential amendments, and increases the penalty for an offence against subsection (2) to a maximum fine of $10,000.

11—Amendment of section 18—Confidentiality

This clause makes consequential amendments, and increases the penalties for an offence against the section to a maximum fine of $10,000 or imprisonment for 6 months.

12—Amendment of section 20—Regulations

This clause makes consequential amendments, and increases the maximum penalty for an offence against the regulations to a fine of $10,000.

13—Insertion of section 21

This clause requires the Minister to conduct a review of the operation and effectiveness of the principal Act as amended by this measure. The review must be conducted as soon as is practicable after the fifth anniversary of the commencement of this proposed section, and a report laid before each House of Parliament.

14—Repeal of Schedule

This clause repeals the spent Schedule to the principal Act.

Schedule 1—Transitional provisions

1—Existing licensees

This clause provides that a person who is licensed to provide artificial fertilisation procedures under the current Act will be taken to be registered under Part 2 of that Act, as enacted by this measure.

2—Record keeping

This clause requires a person licensed to provide artificial fertilisation procedures under the current Act to continue to keep records etc that they are currently required to keep, despite the amendments enacted by this measure.

Debate adjourned on motion of Mr Williams.

CROWN LAND MANAGEMENT BILL

The Hon. J.W. WEATHERILL (Cheltenham—Minister for Environment and Conservation, Minister for Early Childhood Development, Minister for Aboriginal Affairs and Reconciliation, Minister Assisting the Premier in Cabinet Business and Public Sector Management) (16:30): Obtained leave and introduced a bill for an act to make provision for the disposal, management and conservation of crown land; to make related amendments to certain other acts; to repeal the Crown Lands Act 1929, the Discharged Soldiers Settlement Act 1934, the Irrigation (Land Tenure) Act 1930, the Marginal Lands Act 1940, the Monarto Legislation Repeal Act 1980, the Port Pirie Laboratory Site Act 1922 and the War Service Land Settlement Agreement Act 1945; and for other purposes. Read a first time.

The Hon. J.W. WEATHERILL (Cheltenham—Minister for Environment and Conservation, Minister for Early Childhood Development, Minister for Aboriginal Affairs and Reconciliation, Minister Assisting the Premier in Cabinet Business and Public Sector Management) (16:32): I move:

That this bill be now read a second time.

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

Leave granted.

The *Crown Lands Act 1929* is the primary legislation for the management and allocation of various interests in Crown land in this State. It is also the oldest Crown lands legislation currently operating in Australia.

A key purpose of the current Act was to assist land settlement. However, this key purpose has long since been fulfilled. As a consequence, almost two thirds of the provisions are no longer used. In addition, the statutory provisions for dealing with ongoing management of Crown land and leases are now outmoded and inhibit the development and application of new and improved processes and technologies. The offence and penalty provisions are also outdated.

The need for reform has been acknowledged for a long time by successive administrations. In addition, a National Competition Policy review in 2000 recommended that the Act be rewritten to suit modern conditions and that some related Acts dealing with irrigation and soldier settlements be repealed, with remaining leases managed under a new Act.

The Crown Land Management Bill had its genesis following the National Competition Policy review. It has been subjected to considerable development and consultation, both within Government and with stakeholders over the last few years. In particular, public consultation was undertaken late in 2006. Stakeholders consulted included the Natural Resource Council, Regional Natural Resource Management Boards, the Local Government Association and local government bodies, the Farmer's Federation, the Law Society of SA and leaseholder representative bodies among others.

Resolution of concerns or attention to comments has been negotiated with all the stakeholders concerned. As a consequence, this Bill is a complete rewrite and replacement of not only the *Crown Lands Act 1929*, but also six other minor Acts dealing with Crown lands.

In particular, the Crown Land Management Bill will:

- deliver more efficient processes for Crown leasing and licensing and facilitate adoption of national best practice for Crown land administration, with measures which include authorising the Minister, rather than the Governor, to grant land on behalf of the Crown;
- remove the current legislative barriers to implementing an automated registration process for Crown leases within the Lands Titles Registration Office;
- facilitate more active and improved management of Crown land;
- ensure open and transparent processes, with accountable reporting and fair and equitable appeal mechanisms;
- improve the administration of risk in the areas of contamination and native title, although nothing in the Bill diminishes the State's obligations under the *Native Title Act 1993* (Commonwealth);
- provide more contemporary offence and penalty provisions, including expiable offences, for misuse of Crown land, and even provide for use of the offence provisions of the *National Parks and Wildlife Act 1972* in specified circumstances;
- implement the National Competition Policy review recommendations in relation to the *Crown Lands Act 1929*, the *Discharged Soldiers Settlement Act 1930* and the *Irrigation (Land Tenure) Act 1930*; and
- repeal and replace the *Marginal Lands Act 1940*, the *Monarto Legislation Repeal Act 1980*, the *Port Pirie Laboratory Site Act 1922*, and the *War Service Land Settlement Agreement Act 1945*.

The title, Crown Land Management, has been chosen to reflect the change of focus for Crown land legislation from the role of allocating land for the development of the State to one of maintaining, protecting and actively managing Crown land for future generations.

The objects of the Bill include the provision of efficient processes, fair and transparent decision making with appropriate appeal mechanisms, and active management of Crown land to provide balanced social, economic and environmental outcomes for the community. In addition, decision making will be guided by a set of principles for ecologically sustainable land management.

The Bill will oblige the Minister to exercise control over Crown land, monitor the efficiency of processes, manage land, grant interests and monitor the condition of land held under lease or licence. It will also empower the Minister to establish advisory bodies and management committees and devise management plans for the development and use of Crown land. The Land Board, constituted under the *Crown Lands Act 1929,* will be discontinued.

The Minister will be empowered to compulsorily acquire land for the purposes of the Act and dispose of land declared to be surplus to the requirements of government. The Minister may appoint authorised compliance officers and may delegate any of the powers contained in the Act to a person or body.

Provisions in the *Crown Lands Act 1929* relating to dedication of Crown land for a public purpose and placing that land under the care, control and management of a custodian, will be preserved, along with the power to revoke dedications. Evidence that land has been dedicated will be witnessed by an endorsement on publicly searchable Crown titles rather than by notice in the government Gazette. A special provision will require custodians to seek the consent of the Minister before entering into agreements for exclusive use of dedicated land.

The Bill will empower the Minister to dispose of Crown land, once declared surplus, by way of an open and competitive process. Some exceptions are prescribed for direct sale or sale at less than market value together with provisions for transparency, concurrence and disclosure.

The Minister will be empowered to grant freehold title over Crown land on behalf of the Crown. Under the *Crown Lands Act 1929* that power vested in the Governor. The Minister will also be empowered to grant freehold title subject to special management conditions that will be registered on the title. The current system of Trust Grants will be discontinued.

The Bill will provide for the grant of easements over Crown land; the issue, surrender, resumption and cancellation of Crown leases; the issue, renewal and cancellation of licences to occupy Crown land; and provisions for dealing with abandoned land.

Nothing in the Bill will empower the Minister to increase lease rentals other than as specified in lease agreements. The past practice of selling Crown land using agreements to purchase (vendor finance) will be discontinued.

Proclamation of Crown land or acquired land under the *National Parks and Wildlife Act 1972* can sometimes be delayed by negotiations and preliminary works. While that land is managed in the meantime, as though it was already part of the formal conservation estate, the offence and penalty provisions of that legislation cannot be legally enforced. Provision is made in the Bill for the Minister to declare, in the government Gazette and by advertising and notice on site, that certain provisions of the *National Parks and Wildlife Act 1972* apply to that land for a period of up to two years.

The Bill will empower the Minister to serve notice on a lessee, licensee or custodian to remediate the condition of any land that presents a risk to the environment, public health or safety or to the property. In the event that the notice is not complied with, the Minister may remediate the site and recover any costs. Certain exceptions are outlined and may be added to by regulation. This power is in addition to any site contamination provisions contained in the *Environment Protection Act 1993*.

The Bill will provide for lodgement of a bond or financial assurance, by a person or body to be granted any interest in Crown land, to be available for eventual remediation, if required, in situations where the Minister is satisfied that the proposed use of the land may lead to environmental risk to the land or surrounding Crown land.

In order to ensure that environmentally valuable waterfront land is not alienated from the Crown without public scrutiny, provision is made in the Bill for any leasing or disposal of waterfront Crown land to be the subject of a public consultation process.

The Bill will provide for penalties of up to $20,000 for defined offences on Crown land. In addition, authorised officers will be empowered to issue expiation notices in the case of minor offences. Authorised officers will be granted powers for investigation, arrest and seizure in relation to offences on Crown land. The Bill also protects officers from personal liability when engaged in the administration of the Act in good faith.

The Bill will provide for review by the Minister of certain decisions. A dissatisfied review applicant will then be given the opportunity to appeal to the Administrative and Disciplinary Division of the District Court.

Lessees dissatisfied with a determination of rental will be able to seek review, firstly by the Minister and then by either the Valuer-General or a peer panel of valuers to be set up as required. Appellants will then be given the opportunity to appeal to the Land and Valuation Court if still dissatisfied.

Provision is made in the Bill for: reverted land; preservation of public maps; constitution of counties, hundreds and towns; duties of the Registrar General; and service and evidence clauses. The Bill will also give legislative status to the Crown land register of publicly searchable Crown land records.

The Bill will empower the Minister to dispose of chattels left behind on vacated property. It also retains current arrangements in relation to liability for injury or damage occurring on land under this Act and some other Acts.

While nothing in the Bill relieves the Crown from its obligations under the *Native Title Act 1993* (Commonwealth), provision will be made for the Crown to recover from a custodian or lessee, any compensation or damages payable by the Crown arising from actions in contravention of that Act by the custodian or lessee.

The Bill will provide for the making of regulations as required for the management and protection of Crown land.

The Bill includes amendments, relating to definitions, to the following Acts: the *National Parks and Wildlife Act 1972*; the *Petroleum Act 2000*; the *Rates and Land Tax Remission Act 1986*; the *Real Property Act 1886*; and the *Upper South East Dryland Salinity and Flood Management Act 2002*.

Finally, with the repeal of seven Acts, the Bill includes transitional provisions to provide for the discontinuance of the Land Board and the preservation of rights contained in existing leases and grants. These provisions include the transfer of the assets and liabilities of the Lyrup Village Association (constituted under the repealed *Crown Lands Act 1929*) to the Lyrup Village Settlement Trust Incorporated (constituted under the *Irrigation Act 1994*).

The development and introduction of the Crown Land Management Bill represents a long overdue reform of the tenure and management system for Crown land in this State.

I commend this Bill to members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal.

3—Interpretation

This clause defines certain terms used in the measure. In particular, *Crown land* is defined as unalienated Crown land, dedicated land, Crown leasehold land and land owned by, or under the control of, the Minister; *land under the control of the Minister* is defined as land placed under the care, control and management of the Minister under this or any other Act, land of a Crown agency if the agency has requested the Minister to assume, or has consented to the Minister assuming, control of the land and dedicated land not under the care, control and management of some other person or body; *unalienated Crown land* is defined as all the land of the State other than land granted, or contracted to be granted, in fee simple, dedicated land, Crown leasehold land, land owned by, or under the control of, the Minister and land owned by, or under the control of, a Crown agency and unalienated Crown land includes land that has reverted to the status of unalienated Crown land in accordance with the measure.

4—Objects

This clause sets out the objects of the measure.

5—Principles of Crown land management

This clause sets out principles of Crown land management applicable to the exercise of discretions under the measure. This requires that principles of ecologically sustainable land management (defined in subclause (2)) be observed in the management and administration of Crown land, that the objects and objectives of other relevant legislation be given due weight and that Crown land be occupied, used, sold, leased, licensed or otherwise dealt with in the best interests of the State consistent with these principles.

6—Act does not derogate from Mining Act, Opal Mining Act or Petroleum Act

The measure does not derogate from the operation of the *Mining Act 1971*, the *Opal Mining Act 1995* or the *Petroleum Act 2000* or of a lease or licence granted under any of those Acts.

7—Inconsistency with *Real Property Act 1886*

This clause provides that this measure will prevail over any inconsistent provisions in the *Real Property Act 1886* (to the extent of the inconsistency).

8—Application of Act to pastoral leases

Except where specifically provided (see clauses 27 and 45), the measure does not apply to pastoral leases (ie. leases under the *Pastoral Land Management and Conservation Act 1989*).

Part 2—Functions and powers of Minister

9—Functions of Minister

This clause sets out the functions of the Minister under the measure.

10—Advisory committees

This clause allows the Minister to establish advisory committees.

11—Management committees

This clause allows the Minister to establish a management committee to undertake the management of any Crown land. A management committee must not, however, be constituted to undertake the management of Crown leasehold land or dedicated land that has a custodian other than the Minister without the consent of the lessee or custodian.

12—Management plans

This clause provides for the development of management plans. Such plans may only be developed after appropriate public consultation, should seek to promote the principles of ecologically sustainable land management and must be consistent with any relevant regional NRM plan. A management plan may only relate to Crown leasehold land or dedicated land that has a custodian other than the Minister with the consent of the lessee or custodian.

13—Minister's powers of acquisition

This clause provides for the Minister to acquire land by agreement or compulsorily.

14—Minister's power to dispose of surplus lands of Crown agency

The Minister may dispose of land owned by or under the control of a Crown agency if the land has been declared surplus (see clause 3(2)).

15—Authorised officers

This clause provides for the appointment of authorised officers for the purposes of the measure.

16—Delegation of Ministerial powers

This clause provides a delegation power for the Minister.

Part 3—Dealing with Crown land

Division 1—Minister's land

17—Land owned by Minister

Except as provided (see, for example, clause 23), the Part does not derogate from or affect the Minister's power to deal with land owned by the Minister.

Division 2—Dedication

18—Dedicated land

This clause allows the Minister to effect a dedication of unalienated Crown land or to alter the purpose for which land has been dedicated. The provision also protects a dedication by providing that the Minister must not grant an interest or rights in relation to dedicated land if that would have the effect of preventing the land being used for the purpose for which it has been dedicated.

19—Revocation of dedication

This clause provides for the revocation of a dedication and reversion of the land to the status of unalienated Crown land (see clause 3(3)).

20—Care, control and management of dedicated land

This clause allows the Minister to place dedicated land under the care, control and management of a person or body (whether subject to conditions or not), to vary or revoke conditions and to withdraw dedicated land from the care, control and management of a person or body.

21—Notice of instruments

Notice must be given in the Gazette of instruments under the Division.

22—Lease of dedicated land

This clause requires the consent of the Minister to a lease of dedicated land (where the lease is granted by a person other than the Minister).

Division 3—Disposal of land

23—Application of Division

This Division applies to Crown land owned by the Minister and unalienated Crown land.

24—Minister may dispose of Crown land to which Division applies

The Minister may dispose of Crown land to which this Division applies by grant in fee simple (whether on the payment of consideration or not). However, the land must have been declared surplus unless the disposal is to a Crown agency.

25—Disposal by transfer or grant of fee simple

This clause sets out requirements relating to a disposal of land by transfer or grant in fee simple. Generally, the disposal must be by open, competitive process, except in circumstances set out in the provision. The provision also specifies the circumstances in which the fee simple may be disposed of for less than market value or for no consideration and sets out certain reporting obligations.

26—Disposal subject to Crown condition agreement

This clause allows the Minister to dispose of the fee simple in land on condition that the purchaser or donee enters into a Crown condition agreement, which is registered on the title to the land and is binding on the owner, for the time being, of the land. The provision also provides for variation or revocation of conditions and sets out provisions for enforcement of the conditions.

Division 4—Easements

27—Application of Division

This clause extends the application of the Division to—

(a) land subject to a pastoral lease; and

(b) land that has been dedicated otherwise than under this measure, if the land is under the care, control and management of a Crown agency or is land of a kind prescribed by regulation (however the Minister can only exercise the powers if the relevant Crown agency or other person or body with care, control and management of the land requests the Minister to exercise the powers).

28—Minister may grant easements

This clause allows the Minister to grant easements in or over Crown land and makes provision in relation to such easements.

29—Short form of grant

This clause would allow an easement to be granted using a short form of easement set out in Schedule 6 of the *Real Property Act 1886* and provides for an easement to incorporate the matters set out in Schedule 5 of that Act where the easement grants 'a free and unrestricted right-of-way'.

30—Creation of easement by deposit of plan

This provision allows the creation of service easements and other easements by deposit of a plan in the Lands Titles Registration Office.

31—Effect of grant of easement

Easements granted under the Division have effect as if created under the *Real Property Act 1886*.

Division 5—Leases

32—Leases granted by Minister

The Minister may grant leases of unalienated Crown land.

33—Interaction between Division and lease

Powers under the Act are in addition to any powers under the lease and if the lease and the Act are inconsistent, the Act will prevail.

34—Minister to fix terms and conditions

The Minister will fix the terms and conditions on which leases are granted under the measure. The rent payable must be based on the current market rent unless the Minister is satisfied special circumstances exist justifying a lesser rent. The provision also allows for the regulations to prescribe a minimum rent to be paid in relation to leases, or leases of a specified class and to fix a common date for the payment of rent under leases or leases of a particular class. A regulation prescribing minimum rents may not apply to a lease granted before commencement of the provision (ie. one which, under the transitional provisions in the Schedule is brought under the measure).

35—Waiver of conditions etc

The Minister may waive a breach of, or compliance with, a condition of a lease unconditionally or subject to conditions or waive, reduce or remit an instalment of rent payable under a lease or allow an instalment, or part of an instalment, to be paid at a time other than that fixed by regulation or under the lease.

36—Dealing with lease

The interest of a lessee cannot be assigned, transferred, mortgaged, sublet or otherwise dealt with without the consent of the Minister. The exception to this is that the consent of the Minister is not required for a mortgage over the lessee's interest under a perpetual lease, unless the Minister holds a mortgage over such interest. The provision also provides for the transfer of accrued and accruing liabilities on transfer or assignment of an interest under a lease and for enforcement of such liabilities.

37—Surrenders

This clause provides for whole or partial surrenders of a lease. Such surrenders may be absolute or may be conditional on the granting of a lease or a fee simple title to the lessee or another person.

38—Resumption of land

The Minister may resume Crown leasehold land (in whole or in part) by notice in the Gazette given at least 3 months prior to the resumption taking effect. The clause also provides for the payment of compensation to a lessee on such a resumption.

39—Abandonment

The Minister may cancel a lease if the land is abandoned by the lessee. The provision sets out certain notification requirements that must be followed by the Minister before cancelling a lease under the provision.

40—Penalties for late payment of instalments

This clause allows the Minister to fix, by notice in the Gazette, a scale of penalties to be paid by lessees for late payment of instalments of rent under the lease.

41—Cancellation of lease on breach of conditions

This clause allows the Minister to cancel a lease on breach of a condition (if cancellation is necessary in order to prevent or arrest serious damage to, or deterioration of, the land or if the lessee has been given a reasonable opportunity to make good the breach but has failed to do so) and provides for the making of an application for the payment of compensation.

42—Cancellation of lease obtained by false statement

The Minister may cancel a lease if satisfied that it was obtained by false statement.

43—Notification of proposed cancellation

The Minister must not cancel a lease unless written notice of the proposed cancellation has been given to all persons who have a registered interest in, or caveat over, the lease.

44—Effect of cancellation

On cancellation of the lease the land reverts to the status of unalienated Crown land (see clause 3(3)).

Division 6—Licences

45—Application of Division to pastoral land

This Division applies to land subject to a pastoral lease.

46—Minister may grant licences

This clause specifies that the Minister may grant licences in relation to Crown land.

47—Interaction between Division and licence

Powers under the Act are in addition to any powers under the licence and if the licence and the Act are inconsistent, the Act will prevail.

48—Minister to fix terms and conditions

The Minister will fix the terms and conditions on which licences are granted and renewed under the measure and may vary the terms and conditions. A licence may not be granted or renewed for a term exceeding 10 years (unless it is granted to a Crown agency). The licence fees must not take into account the value of work carried out by the licensee or other improvements on the land that do not belong to the Crown. The provision also allows for the regulations to fix a common date for the payment of licence fees for licences generally or for licences of a particular class.

49—Waiver of conditions etc

The Minister may waive compliance with a condition of a licence (either unconditionally or subject to conditions) and may waive, reduce or remit fees payable or allow a licence fee, or part of a licence fee, to be paid at a time other than that fixed by regulation or specified in the licence.

50—Dealing with licence

This clause requires the consent of the Minister for any dealing with a licence. The provision also provides for the transfer of accrued and accruing liabilities on transfer of a licence and for enforcement of such liabilities.

51—Cancellation of licences

This clause provides for cancellation of a licence and specifies that no compensation is payable by the Crown in respect of the cancellation.

52—Renewal of licence without application or on late application

This clause allows the Minister to renew a licence without application where a licensee continues to exercise rights under an expired licence or to renew a licence on a late application.

53—Exemption from stamp duty

This clause provides an exemption from stamp duty for licences.

54—Special provisions relating to Murray-Darling Basin and River Murray Protection Areas

This clause requires the Minister, in granting and renewing certain licences, to take into account the objects of the *River Murray Act 2003* and the *Objectives for a Healthy River Murray* under that Act, and requires consultation with the Minister to whom administration of that Act is committed, and compliance with any directions of that Minister, in relation to prescribed classes of licences.

Part 4—Protection of land

Division 1—Application of Part

55—Minister may make declaration in relation to land

This clause allows the Minister to declare that provisions of this Part will not apply to specified Crown land for a specified period (of less than 2 years) and that, instead, specified provisions of the *National Parks and Wildlife Act 1972* apply to the land, during the specified period. The provision also provides for variation or revocation of such a notice and publication of its contents.

Division 2—General Ministerial responsibilities

56—General Ministerial responsibilities

This clause requires the Minister, to the extent allowed by available financial resources, to carry out work, or cause work to be carried out, for the conservation, protection and rehabilitation of unalienated Crown land.

Division 3—Remediation of land and financial assurances

57—Minister's power to require remediation of land

This clause allows the Minister to serve a remediation notice on a person granted an interest in, or right in relation to, Crown land. The notice may relate to a condition on or of the land that—

- is unsightly or offensive; or
- presents a risk to the environment, the health or safety of any person or any property; or
- is likely to have the effect of reducing the market value of the land.

The notice must specify the action to be taken to remediate the condition and the time within which the action must be taken (which must be reasonable). Failure to comply with the notice is an offence punishable by a maximum penalty of $50,000. In addition, if a person fails to comply with the notice, the Minister may take any action required by the notice and may recover the reasonable costs of taking such action as a debt from the person. The notice is reviewable under Part 5.

58—Power to require payment of financial assurance

This clause allows the Minister, by conditions imposed on the grant of an interest in, or right in relation to, Crown land, to require lodgement of a financial assurance in the form of a bond or a specified pecuniary sum, the discharge or repayment of which is conditional on the grantee not committing a contravention of specified conditions of the grant during a particular period or taking particular action within a particular period to achieve compliance with conditions of the grant.

The Minister must be satisfied that the imposition of the conditions is justified in view of the degree of risk of remediation being required and must not require lodgment of a bond or pecuniary sum that is greater than the amount that, in the opinion of the Minister, represents the likely costs remediation if there were a failure by the grantee to satisfy the conditions imposed.

The clause also provides for forfeiture of the bond or sum where the grantee fails to satisfy the conditions of discharge or repayment.

Division 4—Waterfront land

59—Waterfront land cannot be leased or disposed of without public consultation

This clause imposes special public consultation requirements where the Minister proposes to lease or dispose of waterfront land (other than where the lease or disposal is made to a Crown agency for the purposes of another Act or law or where the lease or disposal is, in the subject to adequate consultation requirements under some other Act or law).

Division 5—Offences and powers of authorised officers

60—Application of Division

The Division does not apply to Crown leasehold land or to dedicated land that has a custodian (except where the custodian has requested that it apply and the Minister has made a declaration to that effect).

61—Misuse of Crown land

This clause sets out offences relating to the misuse of Crown land.

62—Policing powers

This clause gives authorised officers power to issue certain requirements for the purpose of policing Crown land. Failure to comply with a requirement is an offence punishable by a maximum fine of $2,500.

63—Power of arrest

This clause gives authorised officers a power of arrest.

64—Powers of entry, seizure etc

This clause gives authorised officers various powers of entry and seizure.

Part 5—Appeals and reviews

Division 1—Ministerial review

65—Applications to Minister for review

This clause sets out matters which may be the subject of an application for a review by the Minister and provides that the Minister may establish an advisory committee to provide advice in relation to the subject matter of any review. A review must be determined within 28 days, but if it is not determined within that period, the decision the subject of the review is taken to have been confirmed (which then triggers further appeal rights detailed below).

Division 2—Valuation reviews and appeals

66—Valuation reviews

This clause allows a lessee who has applied for a review under clause 65(1)(a) and who is dissatisfied with the determination made, or taken to have been made, on the review to apply for a valuation review, to be conducted either by the Valuer-General or by a specialist review panel constituted by the Minister.

67—Valuation appeals

This clause provides for an appeal to the Land and Valuation Court from a decision of the Minister under clause 65(1)(a) or a decision on a review under clause 66.

Division 3—Other appeals

68—Other appeals to Court

This clause provides for other appeals to the District Court.

Part 6—Miscellaneous

69—Minister may determine that land reverts to unalienated Crown land in certain circumstances

This clause allows the Minister to determine that land that has reverted to the Crown (but has not vested in a particular Crown agency) will, if the Minister so determines, revert to the status of unalienated Crown land.

70—Public maps

This clause provides for the deposit of public maps and for the recognition of allotments and public roads shown on public maps.

71—Constitution, alteration and abolition of counties, hundreds and towns

Under subclause (1) of this clause the Minister may, by lodging a plan with the Registrar-General, constitute a county, hundred or town, alter the boundaries of a county, hundred or town or abolish a county, hundred or town. The Minister must consult with the Surveyor-General before lodging the plan and the plan only has effect on its deposit in the Lands Titles Registration Office. The provision also allows the Minister to take various other measures (such as closing roads and merging allotments), consequentially to the lodging of a plan under subclause (1) under which any land ceased to be comprised in a town.

72—Duties of Registrar-General

This clause requires the Registrar-General to maintain registers for the purpose of the measure and to take other necessary or expedient action, at the request of the Minister, in relation to the issue, alteration, correction or cancellation of certificates or other documents of title, the deposit of any plan in the Lands Titles Registration Office and the making, recording, alteration, correction or cancellation of entries or endorsements in the Crown land register or in the Register Books.

73—Failure to execute documents

This clause allows the Minister to cancel a person's entitlement to be granted a lease or other right, and for the person to forfeit any money paid to the Minister in connection with the proposed lease or other right, if—

- the person fails to return the documents issued in respect of the grant of the lease or right, duly executed and with any necessary fees, to the Minister within 30 days (or such longer period as the Minister may allow); or
- delivery of the documents has not been effected because the whereabouts of the person are unknown.

74—Disposal of property etc on vacated land

If a person granted an interest in, or right in relation to, Crown land vacates the land leaving behind property or fixtures that were not on the land at the time the interest or right was so granted, the Minister may, under this clause, take possession of, or require removal of, the property or fixtures.

75—Service

This clause sets out the manner of serving documents for the measure.

76—Evidentiary provision

This clause provides for evidentiary certificates for the measure and for the certification of maps and plans.

77—Protection from personal liability

A person engaged in the administration of the measure incurs no civil liability for an act or omission in good faith in the exercise or discharge, or purported exercise or discharge, of a power, function or duty under this Act (and such liability lies instead against the Crown).

78—Liability of the Crown

This clause is an equivalent of section 271F of the current *Crown Lands Act 1929* and limits the liability of the Crown in relation to unoccupied Crown land.

79—Recovery of native title compensation

This clause specifically allows the Crown to recover native title compensation from a custodian or other person whose acts or omissions have resulted in the compensation being payable.

80—Offence of hindering or obstructing administration of this Act etc

This clause sets out various offences relating to authorised officers and others acting in the exercise of powers conferred by the measure.

81—Regulations

This clause sets out a regulation making power for the measure.

Schedule 1—Related amendments, repeals and transitional provisions

Part 1—Preliminary

1—Amendment provisions

This clause is formal.

Part 2—Related amendment to the *National Parks and Wildlife Act 1972*

2—Amendment of section 44—Establishment of sanctuaries

This clause amends the definition of *owner* in section 44(3) to make sure it includes a lessee of land subject to a lease under this measure as well as a lessee of land subject to a lease under the *Pastoral Land Management and Conservation Act 1989*. In addition, the clause ensures that declarations made under section 44 before the amendment that relate to land subject to a lease under the repealed *Crown Lands Act 1929* or under the *Pastoral Land Management and Conservation Act 1989* will not be found to be invalid solely on the ground that the consent of the 'owner' (as defined before the amendment) was not obtained before the declaration (provided that the consent of the lessee was obtained before the declaration).

Part 3—Related amendment to the *Petroleum Act 2000*

3—Amendment of section 80—Grant, resumption etc of Crown and pastoral land

This clause makes a consequential amendment to section 80 of the *Petroleum Act 2000* to reflect the fact that, under this measure, land grants will be issued by the Minister rather than by the Governor.

Part 4—Related amendment to the *Rates and Land Tax Remission Act 1986*

4—Amendment of section 3—Interpretation

This clause makes a consequential amendment to the definition of *rates* in section 3 of the *Rates and Land Tax Remission Act 1986*.

Part 5—Related amendment to *Real Property Act 1886*

5—Amendment of section 93—Execution and registration of Crown Lease

This clause provides for the registration of dealings with a Crown lease in the Register of Crown Leases maintained under the *Real Property Act 1886*.

Part 6—Related amendment to the *Upper South East Dryland Salinity and Flood Management Act 2002*

6—Amendment of section 3—Interpretation

This clause makes a consequential amendment to the definition of *Crown land* in section 3 of the *Upper South East Dryland Salinity and Flood Management Act 2002*.

Part 7—Repeals

7—Repeals

This clause repeals the *Crown Lands Act 1929*, the *Discharged Soldiers Settlement Act 1934*, the *Irrigation (Land Tenure) Act 1930*, the *Marginal Lands Act 1940*, the *Monarto Legislation Repeal Act 1980*, the *Port Pirie Laboratory Site Act 1922* and the *War Service Land Settlement Agreement Act 1945*.

Part 8—Transitional provisions

This Part sets out transitional provisions for the measure.

Debate adjourned on motion of Mr Williams.

PUBLIC SECTOR BILL

The Hon. J.W. WEATHERILL (Cheltenham—Minister for Environment and Conservation, Minister for Early Childhood Development, Minister for Aboriginal Affairs and Reconciliation, Minister Assisting the Premier in Cabinet Business and Public Sector Management) (16:33): Obtained leave and introduced a bill for an act to make provision for employment, management and governance matters relating to the public sector of the state; to repeal the Public Sector Management Act 1995; and for other purposes. Read a first time.

The Hon. J.W. WEATHERILL (Cheltenham—Minister for Environment and Conservation, Minister for Early Childhood Development, Minister for Aboriginal Affairs and Reconciliation, Minister Assisting the Premier in Cabinet Business and Public Sector Management) (16:34): I move:

That this bill be now read a second time.

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

Leave granted.

The Public Sector is the Government's means of acting. It is the main vehicle for designing and then implementing our agenda. It is an important asset, the value of which must be realised if we are to meet the challenges facing our community in the 21st century.

The public sector must deliver services the community needs, and in ways that make people's interaction with government as easy and consistent as possible. The public sector must be able to respond quickly to changes in communities' needs, and government's priorities. It must be able to tackle complex problems requiring multi agency and even multi jurisdictional solutions. The public sector must attract and retain talented staff and enable them to provide frank, impartial advice to government without fear or favour. The *Public Sector Bill 2008* allows all of these things to happen, modernising the institutions and processes of government.

The new Bill is designed to provide a new, modern, flexible employment framework for managing the public sector and will enable the government's strategic agenda to be more effectively pursued.

This is enabling legislation. It is not rigid, and as the employment framework for the public sector it permits public servants to respond to change.

The Bill will:

- encourage an innovative, high performing, customer focussed public sector with a strong sense of purpose and values
- establish the South Australian Executive Service with enhanced opportunities for training and development of leadership and management skills
- promote the public sector as an employer of first choice by increasing the breadth of employment and career opportunities within it
- provide for high quality working environments, strengthening flexible working arrangements
- maintain employment protections but streamline rights of review
- facilitate the development of positive workplace cultures.

The Bill contains a set of public sector principles which will be the foundation of the new Act. They reflect the aspirations and demands of the South Australian Government for the public sector. In particular they emphasise excellence, responsiveness, public focus, collaboration and employer of choice principles that attract people to a career in the public sector. Adopting a principle based approach is about allowing the public sector to more readily achieve outcomes, create freedoms, yet ensures maximum effectiveness, and allows creativity whilst maintaining certainty and confidence about the underlying reliability and prudent management of public resources.

The Bill requires chief executives to ensure that the principles are observed in the management and day-to-day operations of their agencies. Employee behaviour must accord with the principles. The Commissioner for Public Sector Employment will have oversight of the principles in so far as they relate to public sector employment and will reflect them in a Code of Conduct covering all public sector employees.

The Bill is designed to enhance collaboration between all public sector agencies and to ensure that they develop the best solutions possible in meeting their responsibilities and the government's priorities. The Premier is provided with a new capacity to give directions to public sector agencies to attain specified whole-of-government objectives and can direct that agencies collaborate with each other and share information. The priorities of the government are made clear for the whole public sector. The adoption of whole-of-government objectives by public sector agencies will benefit customers of public services and the community as a result of increased co-operation.

The Bill also addresses public sector governance, making provision for the Premier to give directions to public sector agencies relating to structural arrangements in the public sector and the formation of new entities. This new capacity will be used to raise the standard and consistency of governance across the public sector.

The Bill enhances the attractiveness of a career in the public sector. A key focus of the Bill is greater flexibility in deployment across the whole public sector. New provisions streamline transfer processes without compromising the notion of ongoing employment for non-executives and a career in the public sector. Attraction and retention of employees to the public sector is an important objective behind the legislation. The Bill enables the public sector to promote itself as an employer of first choice. The processes for recruitment are streamlined and conditions of engagement are simplified. The focus will be on appointing people to carry out duties at a remuneration level. The Bill creates wider opportunities, encourages acknowledgment of extra effort and enshrines the principles that attract people to a career in the public sector. These provisions enable the public sector to respond more quickly to the ever changing needs and priorities of the South Australian community.

Changes have been made to leave provisions to more closely reflect modern employment conditions. The provisions for flexible leave and working arrangements have been reorganised and are strengthened. Administration of sick leave has been made simpler. And the manner in which leave is calculated has been standardised so that all leave can accrue on the same basis.

The government is committed to a public sector that is modern, high performing and efficient in order to meet both the challenges of today and those of the future. Essential elements of public sector employment are both quality of service and the capacity to provide independent advice without fear or favour.

The government wants to build on the strong executive leadership within the public sector. The Bill therefore establishes the South Australian Executive Service for the development and recognition of executive employees across the public sector. The aim is to improve leadership and encourage a connected sense of vision and purpose. The Minister will approve a charter setting out rules governing membership, functions, mobility, competencies expected of members and other matters such as training and development applying to the South Australian Executive Service.

The government has made leadership one of the first priorities for the Public Sector Performance Commission with a focus on the South Australian Executive Service in facilitating performance and executive leadership. Another priority for the Public Sector Performance Commission will be lifting performance with a focus on performance management and development.

The government acknowledges that South Australian public servants already deliver high quality services in many areas, sometimes in challenging circumstances. The Bill reinforces the professionalism of the public sector by requiring all public sector agencies to have in place effective performance management and development systems. The aim is to promote and acknowledge outstanding performance, improve satisfactory performance, and bring unsatisfactory performance up to standard. Chief executives must drive performance management and development in their agencies and will be expected to acknowledge success and deal with performance issues early.

The Bill provides a legislative basis for the structure of the public service. As well as establishing traditional departments, the Bill allows for the establishment of a new type of public service organisation, an 'attached office'. This new capacity provides greater flexibility in administrative structures, allowing offices to be established quickly to deliver a specific function or outcome for a given period of time or ongoing. 'Attached offices' allow the creation of flexible administrative structures to respond to the emerging demands on a modern public service. The chief executive of an 'attached office' reports to a Minister on matters of policy and to the chief executive of a department on administrative matters.

Under the Bill, responsibilities relating to the appointment, transfer and termination of employees will be given to chief executives making them fully accountable for human resource management within their agency. Chief executives will be required to exercise these powers in accordance with the public sector principles, and the Commissioner for Public Sector Employment's determinations.

In driving chief executive accountability for management of their workforces, one of the major changes contemplated in the Bill is that the power to terminate employees is given to chief executives. Chief executives must have the capacity to take action particularly in respect of misconduct warranting termination; indeed it is the capacity to act rather than the need to exercise the power that may be the deterrent to misconduct. The powers to terminate are similar to those currently divided between the chief executive and the Governor under the *Public Sector Management Act 1995*. The Bill retains the existing *Public Sector Management Act 1995* power to terminate employment on the grounds that the employee is excess to requirements, however, there is no intention to interfere with the long-standing government policy of no forced redundancy.

Employees can take an action for unfair dismissal to the Industrial Relations Commission of South Australia. The provisions of the *Fair Work Act 1994* will then apply. The Industrial Relations Commission of South Australia may, in circumstances where it orders the re-employment of the employee, direct an agency to take alternative disciplinary action against an employee.

The review of employment decisions has been updated and modernised. The new arrangements set out in the Bill will increase effectiveness and transparency. Review is now a two-step process. An employee aggrieved by an employment decision may apply for an internal review by the agency of the decision. The internal review mechanisms will provide a speedy opportunity for chief executives to remedy poor decisions. Agencies will be required to undertake conciliation prior to, and potentially as part of, the internal review. The quick resolution, by the agency itself, of any grievance will be in the interests of the employee concerned, his or her colleagues, and the government.

The Industrial Relations Commission of South Australia will undertake reviews of disciplinary actions and decisions to reduce an employee's remuneration and any associated transfers. Reviews of all other employment decisions will be by a new body, the Public Sector Grievance Review Commission. It is a streamlined body convened by a single presiding commissioner. There is capacity for assistant commissioners who may sit contemporaneously. Both review bodies will determine whether the decision, the subject of the review, is 'harsh, unjust or unreasonable'. This will ensure that employees' rights will be determined by reference to an objective, well-known standard.

The Industrial Relations Commission has the capacity to rescind a decision and substitute a new decision that will bind the chief executive and the employee. Both review bodies may remit a matter back to the agency for further consideration in accordance with any directions or recommendations. The benefits of these new arrangements will include improved clarity in rights of review and greater efficiency of review processes.

The Commissioner for Public Sector Employment's functions are designed to ensure observance of the public sector employment principles as they relate to employment matters. The Commissioner will issue the code of conduct and employment determinations plus provide guidelines relating to public sector employment matters. The Commissioner may provide advice or conduct reviews of public sector employment or industrial relations practices as required by the Premier or the Minister. The Premier or a public sector agency may also request the Commissioner investigate matters in connection with public sector employee conduct or discipline. The

Commissioner will continue to report annually on the extent of observance of the public sector principles in so far as they relate to public sector employment and measures taken to ensure observance of the principles.

The Bill brings together the public service and the broader public sector as a more unified entity by extending the parts of the Bill that apply to the public sector. Parts that apply to the Public Sector include: public sector principles and the code of conduct, governance arrangements, whole-of-Government objectives, transfer of employees, performance management, and the South Australian Executive Service. Standardising these approaches will lead to more opportunities for employees, and enable the public sector to respond more effectively to changing needs.

The Bill enables the Commissioner's employment determinations to be applied to government agencies outside the public service and for public service employment conditions to be applied to the employees of such agencies. This will be achieved through regulations under the Bill, or changes to the specific legislation governing those agencies.

The aim of developing this new legislation is to provide a contemporary employment framework:

- to encourage an innovative, high performing, public sector with a strong sense of purpose and values;
- to maintain employment protections but streamline rights of review;
- to facilitate the development of a more positive workplace culture;
- to allow for an appropriate work life balance through flexible working arrangements; and
- to ultimately create a more efficient and effective public sector in terms of the service delivery to the South Australian community.

In summary, the new legislation is designed to enhance careers in the public sector, to reflect the move to a citizen centred approach to service provision, and the desire to operate as one government.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal.

3—Interpretation

This clause sets out definitions for the purposes of the measure. New definitions are necessary in relation to—

- attached offices—a new type of administrative unit of the Public Service designed to provide a greater level of flexibility and accountability through a second tier of chief executives;
- the Industrial Relations Commission—is defined to mean the Industrial Relations Commission of South Australia under the *Fair Work Act 1994*. The measure confers jurisdiction on the Industrial Relations Commission to hear applications by public sector employees for relief under the unfair dismissal provisions of the *Fair Work Act 1994* (subject to that Act) and applications for review of disciplinary decisions and decisions to reduce an employee's remuneration level (see Part 7 Division 4 of the measure);
- the Public Sector Grievance Review Commission—a new body to review other employment decisions (see Schedule 2);
- the South Australian Executive Service (SAES)—a new arrangement for the development and recognition of executive employees.

The definition of public sector agency includes the chief executive of an administrative unit as it is the chief executive who will employ the staff of the unit and who should be subject to the obligations of a public sector agency.

Part 2—Objects of Act

4—Objects of Act

This clause sets out the objects of the measure, namely:

- to promote a high performing public sector that—
    - focuses on the delivery of services to the public; and
    - is responsive to Government priorities;
- to establish—
    - general principles to guide public sector operations; and
    - a code of conduct to enforce ethical behaviour and professional integrity in the public sector;

- to ensure the public sector is viewed as an employer of choice;
- to encourage public sector agencies and employees to apply a public sector-wide perspective in the performance of their functions;
- to make performance management and development a priority in the public sector;
- to ensure accountability in the public sector;
- to facilitate the integration of employment and management practices across the public sector;
- to promote uniformity and transparency in governance arrangements for the public sector;
- to provide the framework for the State's Public Service and the effective and fair employment and management of Public Service and other public sector employees.

Part 3—Public sector principles and practices

5—Public sector principles

This clause sets out the public sector principles as follows:

Public focus

The public sector is to—

- focus on the provision of services to the public;
- recognise the diversity of public needs and respond to changing needs;
- consult and involve the public, where appropriate, to improve services and outcomes on an ongoing basis.

Responsiveness

The public sector is to—

- implement the Government's policies in a timely manner and regardless of the political party forming Government;
- provide accurate, timely and comprehensive advice;
- align structures and systems to achieve major strategies while continuing to deliver core services.

Collaboration

The public sector is to—

- ensure there is ongoing collaboration between public sector agencies;
- focus on whole-of-Government, as well as agency-specific, services and outcomes.

Excellence

The public sector is to—

- provide services with a high level of efficiency and effectiveness;
- move resources rapidly in response to changing needs;
- devolve decision-making authority to the lowest appropriate level;
- manage resources effectively, prudently and in a fully accountable manner;
- maintain and enhance the value of public assets.

Employer of choice

Public sector agencies are to—

- treat public sector employees fairly, justly and reasonably;
- prevent unlawful discrimination against public sector employees or persons seeking employment in the public sector;
- ensure that public sector employees may give frank advice without fear of reprisal;
- encourage public sector employees to undertake professional development and to pursue opportunities throughout the public sector;
- set clear objectives for public sector employees and make them known;
- acknowledge employee successes and achievements and address under performance;
- ensure that public sector employees may join, or choose not to join, organisations that represent their interests;

- consult public sector employees and public sector representative organisations on matters that affect public sector employment.

Ethical behaviour and professional integrity

Public sector employees are to—

- be honest;
- promptly report and deal with improper conduct;
- avoid conflicts of interest, nepotism and patronage;
- treat the public and public sector employees with respect and courtesy;
- make decisions and provide advice fairly and without bias, caprice, favouritism or self interest;
- deal with agency information in accordance with law and agency requirements;
- avoid conduct that will reflect adversely on the public sector;
- accept responsibility for decisions and actions;
- submit to appropriate scrutiny.

Legal requirements

Public sector agencies are to—

- implement all legislative requirements relevant to the agencies;
- properly administer and keep under review legislation for which the agencies are responsible.

The approach in this clause replaces that taken in the provisions of the *Public Sector Management Act 1995* on aims and standards, personnel management standards and employee conduct standards (see sections 4 to 6). It improves on the more modern approach of the Victorian *Public Administration Act 2004* and the Commonwealth *Public Service Act 1999*.

6—Public sector code of conduct

All public sector employees are required to observe the public sector code of conduct (issued by the Commissioner for Public Sector Employment).

Section 6(ea) of the *Public Sector Management Act 1995* currently provides that public sector employees are expected to comply with such a code but this clause elevates the requirement and a breach of the code is made a specific ground for disciplinary action.

7—Public sector performance management and development

Public sector agencies are required to establish and administer effective performance management and development systems which must be directed towards advancement of the objects of this Act and observance of the public sector principles and code of conduct.

It is further required that performance management and development must be integrated with the agency's employment practices and inform its employment decisions relating to particular employees and that information about the performance management and development system must be made available to employees.

8—Flexible arrangements for transfer within public sector

The provisions in this clause are designed to simplify arrangements for the transfer of employees across the whole of the public sector.

Under subclause (1), the Premier may effect employee transfers between public sector agencies in order to reorganise public sector operations. The transfer is to be effected by notice in the Gazette. If the transfer is part of a restructuring of administrative units, the notice will be accompanied by a proclamation under Part 6 Division 2. However, the transfer is not limited to the Public Service—it may relate to any part of the public sector.

Such transfers are currently carried out in relation to the Public Service by the Governor by proclamation under section 7 of the *Public Sector Management Act 1995*.

Under subclause (3), a public sector agency may effect the transfer of an employee within the public sector with the agreement of other agencies affected, on conditions that maintain the substantive remuneration level (as defined) of the employee or on conditions that are agreed to by the employee.

This is a broader and more flexible approach than in the current Act. Under section 44 of the *Public Sector Management Act 1995* an employee may be assigned from a position in 1 administrative unit to a position in another administrative unit by the Commissioner for Public Employment in consultation with the chief executives. Section 68 of the *Public Sector Management Act 1995* provides the mechanism for transfer between the Public Service and public sector agencies outside the Public Service. The new clause empowers chief executives to act directly and applies across the public sector.

Subclause (5) provides that the regulations may prescribe rules relating to movement of employees between public sector agencies. This provides a mechanism for providing for employees' rights of return following temporary transfers or temporary appointments.

Subclause (6) is a machinery provision making it clear that a transfer of an employee under the Part does not constitute a breach of the person's contract of employment or termination of the person's employment, or affect the continuity of the person's employment for any purpose.

9—Agencies to pursue whole-of-Government objectives

The Premier is given power to direct public sector agencies to endeavour to attain specified whole-of-Government objectives. The directions may contemplate particular requirements relating to the sharing of information and collaboration. This expands the power in section 15 of the *Public Sector Management Act 1995* which is limited to the Public Service. A direction will not be binding to the extent (if any) to which it would impede or affect the performance of a quasi-judicial or statutorily independent function of a public sector agency.

10—Uniform and transparent governance arrangements

The Premier may give directions to guide agencies, in preparing proposals and making decisions, on the question of whether a Government activity should be assigned to a Public Service body or some other form of public sector agency. The Premier may also give directions to otherwise deal with matters relating to structural arrangements in the public sector and the formation of new entities.

Any directions given by the Premier and any information relating to the various structural arrangements in the public sector and the formation of new entities must be published in the Gazette and on a website determined by the Premier.

The requirement is new. It is designed to ensure transparency.

11—Agencies to report annually

Public sector agencies are required to present annual reports. The requirement is the same as that currently set out in section 6A of the *Public Sector Management Act 1995*.

Furthermore, the regulations may specify information to be contained in the report. The power of the Premier to issue directions about information to be contained in annual reports, currently set out in the regulations, is elevated to the Act.

Part 4—Commissioner for Public Sector Employment

12—Office of Commissioner

The title of the Commissioner is to be changed from Commissioner for Public Employment to Commissioner for Public Sector Employment.

This clause effectively substitutes sections 20 and 21 of the *Public Sector Management Act 1995*.

The role and function of a Deputy Commissioner has been abolished (see section 19 of the *Public Sector Management Act 1995*). However, if no person is appointed or the Commissioner is absent or unable to discharge official duties, the Minister may assign a public sector employee to act as the Commissioner.

13—Functions of Commissioner

The Commissioner has the function of advancing the objects of the measure, and promoting observance of the public sector principles, in so far as they relate to public sector employment and for that purpose is to—

- issue the public sector code of conduct (see section 14); and
- issue public sector employment determinations (see section 15); and
- monitor and report to the Minister on observance of the public sector principles, code of conduct and employment determinations; and
- issue guidelines relating to public sector employment matters; and
- provide advice on public sector employment matters at the request of public sector agencies; and
- provide advice on and conduct reviews of public sector employment or industrial relations matters as required by the Premier or the Minister; and
- investigate or assist in the investigation of matters in connection with public sector employee conduct or discipline as required by the Premier or at the request of a public sector agency.

The Commissioner has any other functions assigned to the Commissioner under the measure or by the Minister.

14—Public sector code of conduct

The requirement to issue a code of conduct is elevated from a general function (see section 6(ea) of the *Public Sector Management Act 1995*) to a special provision and the obligation to review the code spelt out. A breach of a provision of the code that is expressed to be a disciplinary provision is a ground for discipline, termination or reduction of an employee's remuneration. The regulations may preserve employee rights relating to the disclosure of

information and the making of public comment and impose other limitations on the contents of the code (compare regulation 15 of the *Public Sector Management Regulations 1995*).

15—Public sector employment determinations

Under this clause, the Commissioner has the power to make determinations relating to employment in the Public Service and public sector employment outside the Public Service that is declared by another Act or the regulations to be employment to which the clause applies.

These binding determinations may determine—

- classification structures in accordance with which remuneration levels must be fixed for employees; and
- conditions of employment other than remuneration; and
- processes that must be followed in fixing remuneration levels and other employment conditions; and
- allowances payable to employees and the circumstances in which they are payable; and
- charges payable by employees in respect of accommodation, services, goods or other benefits provided to them in connection with their employment; and
- any other matter of a class prescribed by the regulations.

16—Extent to which Commissioner is subject to Ministerial direction

The Commissioner is subject to Ministerial direction, except that no direction may be given to the Commissioner requiring that material be included in, or excluded from, a report that is to be laid before Parliament.

This provision is similar to section 23 of the *Public Sector Management Act 1995*, with adjustments resulting from the changing role of the Commissioner.

17—Investigative powers

The investigative powers set out in this clause differ from those set out in the *Public Sector Management Act 1995* as the Commissioner is no longer to have powers to investigate matters of his or her own volition, rather investigations are limited to those that are required by the Premier or a public sector agency (clause 13).

18—Power to require statistical information

The Commissioner may, by notice in writing, require public sector agencies to provide statistical reports to the Commissioner relating to public sector employment matters at intervals specified by the Commissioner.

19—Delegation by Commissioner

This clause effectively substitutes section 26 of the *Public Sector Management Act 1995* but includes power to delegate functions or powers given to the Commissioner under any other Act.

20—Annual report of Commissioner

This clause effectively substitutes section 28 of the *Public Sector Management Act 1995*, with adjustments resulting from the changing role of the Commissioner.

Part 5—South Australian Executive Service

21—Purpose of SAES

This clause sets out the purpose of the South Australian Executive Service.

SAES is established to provide the public sector with high performing leaders who have a shared sense of purpose and direction and who together will actively engage the public sector in the pursuit of the objects of the measure and the public sector principles.

22—SAES Charter

The Minister is required to approve a SAES charter and keep it under review.

The charter is to specify or elaborate on:

- rules governing membership of SAES;
- functions of SAES;
- rules and arrangements to facilitate mobility within the public sector of SAES members;
- employment contracts and performance management and development systems for SAES members;
- competencies expected of SAES members;
- any other matter affecting SAES.

Part 6—Public service

Division 1—Composition of Public Service

23—Public Service administrative units

As under the current Act, the Public Service is to consist of administrative units. The new measure provides that administrative units may take the form of departments or attached offices. A department is essentially the same as a current administrative unit. An attached office is assigned a title and attached to a department or departments. An attached office has a chief executive who employs the staff of the office.

This structure is designed to provide flexibility in relation to portfolio structures and relationships between units within a portfolio. It may also be appropriate for semi-autonomous offices that rely on a department for personnel and financial management support. It does not replace the current arrangements for offices or sections within departments.

24—Public Service employees

All persons employed by or on behalf of the Crown are to be employed in the Public Service, subject to the exceptions set out in subclause (2).

Note in particular that an employee who is remunerated at hourly, daily, weekly or piece-work rates of payment is excluded from the Public Service unless expressly engaged by writing as a casual employee in the Public Service.

This provision equates to section 8 and Schedule 1 of the *Public Sector Management Act 1995*.

Division 2—Administrative units

25—Establishment of departments

26—Establishment of attached offices

As under the current Act, the Public Service structure is to be imposed by proclamations. This provides an evidentiary mechanism and a clear public record.

Administrative units may be established, abolished or renamed.

27—Minister responsible for administrative unit

This clause introduces a new concept of a proclamation linking an administrative unit to a particular Minister and is necessary because the measure involves a person being responsible to a unit's Minister for the performance of certain obligations. This will be particularly important where a unit administers an Act committed to a particular Minister, but is located in a portfolio under another Minister.

Division 3—Chief executives

28—Administrative units to have chief executives

Each administrative unit (ie department or attached office) is to have a chief executive.

29—Chief executive may employ persons for administrative unit

The chief executive may employ staff for the purposes of the unit and those persons become employees in the administrative unit unless excluded from the Public Service under clause 24.

30—General duties of chief executive

The chief executive of a department is responsible to the Premier and the department's Minister for—

- making an effective contribution to the attainment of the whole-of-Government objectives that are communicated in writing by the Premier or the department's Minister and relate to the functions or operations of the department; and
- the attainment of the performance objectives set from time to time by the Premier and the department's Minister under the contract relating to the chief executive's employment; and
- the effective management of the department and the general conduct of its employees.

The chief executive of an office that is an attached office to a department or departments is responsible—

- to the Premier and the office's Minister for—
  - making an effective contribution to the attainment of the whole-of-Government objectives that are communicated in writing by the Premier or the office's Minister and relate to the functions or operations of the office; and
  - the attainment of the performance objectives set from time to time by the Premier and that Minister under the contract relating to the chief executive's employment; and
- to the chief executive of the department, or the chief executives of the departments, for—
  - any specific matters relating to the attainment of whole-of-Government objectives; and
  - the effective management of the office and the general conduct of its employees.

31—Duties with respect to objects of Act and public sector principles and code of conduct

The chief executive of an administrative unit is to ensure, as far as practicable, that the objects of the measure are advanced and the public sector principles and code of conduct are observed in the management and day-to-day operations of the unit.

32—Protection of independence in certain matters

The chief executive of an administrative unit is not subject to direction in respect of—

- the performance of a quasi-judicial or statutorily independent function of the chief executive; or
- the making of an employment decision relating to a particular person.

33—Employment or assignment of persons as chief executives

The Premier is to engage chief executives. Currently, section 9 of the *Public Sector Management Act 1995* provides for these appointments to be made by the Governor.

The clause provides a mechanism for acting appointments which is similar to the current arrangements except that the person appointed may be from any part of the public sector, not just the Public Service.

34—Conditions of chief executive's employment

The employment of a chief executive is to continue to be subject to a contract with a maximum term of 5 years.

35—Transfer of chief executives

This is a new clause empowering the Premier to transfer a chief executive to other duties in the public sector, whether or not as chief executive of another administrative unit, on conditions that maintain the remuneration of the chief executive.

36—Resignation of chief executive

This clause provides the same arrangements for resignation as set out in section 12 of the *Public Sector Management Act 1995*.

37—Termination of chief executive's employment

This clause provides for termination of a chief executive's employment by the Premier (rather than the Governor)—

- on the ground that the chief executive has become bankrupt or has applied to take the benefit of a law for the relief of insolvent debtors;
- on any ground on which the employment of an employee of a public sector agency may be terminated;
- without specifying any grounds (in which case improved arrangements for termination payments are set out).

38—Delegation by chief executive

This clause provides for delegation by a chief executive and is to the same effect as section 17 of the *Public Sector Management Act 1995*.

39—Provision for statutory office holder to have powers etc of chief executive

This clause equates to section 13 of the *Public Sector Management Act 1995* and enables a Minister to declare that a statutory office holder is to have the powers of a chief executive of an administrative unit.

Part 7—Public sector employment

Note—

This Part replaces Parts 7 and 8 of the *Public Sector Management Act 1995*, other than the provisions relating to chief executives already dealt with in Part 6.

Division 1—Application of Part

40—Public Service and declared public sector employment

Greater emphasis is placed on achieving uniform employment arrangements across the public sector. This clause provides that while Part 7 applies to the Public Service, it can be extended by another Act or by the regulations to other public sector employment, subject to exclusions and modifications.

This resembles section 71 of the current Act which allows a proclamation to be made applying Public Service provisions of the current Act to other public sector employment.

Division 2—Executives

41—Conditions of executive's employment

The employment of an executive is to continue to be a matter for a contract with a maximum term of 5 years. However, under this measure, subject to clause 3(3) of Schedule 2 (Transitional provisions), there is no right to a fall-back position in the event that an executive is not re-appointed or is terminated with notice.

42—Resignation of executives

This clause sets out an executive's right to resign with notice. The period of notice required has been shortened compared to that required by section 34(2)(f) of the *Public Sector Management Act 1995* in recognition of the executive's role as a SAES member.

43—Termination of executive's employment by notice

The provision for termination without grounds is similar to that in section 36 of the *Public Sector Management Act 1995* except that the period of notice that must be given to the executive employee has been extended from at least 3 to at least 4 months in recognition of the executive's role as a SAES member.

Division 3—General employment processes and conditions

Note—

The measure endeavours to simplify the provisions dealing with employment processes.

In particular, in order to promote flexibility in Public Service arrangements, the concept of positions in administrative units is abandoned (compare section 31 of the *Public Sector Management Act 1995*). Instead employees are assigned duties and may be assigned to different duties by the chief executive of the administrative unit.

The administrative processes for dealing with employees are streamlined through provisions that focus on the actions of termination, reduction of remuneration and disciplinary action rather than on the grounds for taking such action and the required administrative steps. A number of Divisions within Part 8 of the *Public Sector Management Act 1995* (Division 4—Excess employees, Division 5—Mental or physical incapacity, Division 6—Unsatisfactory performance, Division 8—Conduct and discipline) have been collapsed down and substituted by clauses 52 to 56.

The provisions for transfer of employees to other duties within an agency, to a different agency or outside the Public Service are scattered in the *Public Sector Management Act 1995*. In this measure they are brought together in clause 8 and the scheme simplified.

44—Engagement of employees

This clause sets out the 3 possible forms of engagement of a person as an employee: ongoing, term or casual employment. It also sets out the rules about maximum periods of employment as a term employee. The clause effectively substitutes section 40 of the *Public Sector Management Act 1995*.

The only circumstances in which a person may be engaged as a term employee are set out in clause 44:

- for the duration of a project not exceeding 5 years and the engagement may be extended (including beyond a total of 5 years) but not so that the term extends beyond the duration of the project;
- for performing duties in the absence of another employee or while selection processes are conducted and the engagement may be extended but not so that the term extends beyond the absence of the employee or the completion of the selection processes;
- for up to 5 years in prescribed circumstances;
- for up to 2 years for duties otherwise of a temporary nature.

The concept of contractual employment (see section 40 of the *Public Sector Management Act 1995*) is not retained and has been subsumed by the concept of term employment (see definition of term employee in clause 3(1)).

45—Merit-based selection processes

Selection processes conducted on the basis of merit in accordance with the regulations are required for engagement of an employee, and promotion of an employee, of a public sector agency and changing the basis on which a person is engaged as an employee of a public sector agency to engagement as an ongoing employee, with the exception of those categories of engagement and promotion specified by the clause, namely, reclassification or engagement of casual employees or engagement of employees under employment opportunity programs or in prescribed circumstances.

Exceptions to the requirement for competitive or merit-based selection processes are dealt with differently under the *Public Sector Management Act 1995*. Section 39(2) provides a general exemption for appointment to a temporary or casual position and contemplates other exemptions by determination of the Commissioner. Section 44(3) deals with temporary promotions.

46—Assignment of duties

This clause provides for determination of the duties of employees and the places of employment by the relevant public sector agency.

The clause removes the rules in section 44 of the *Public Sector Management Act 1995* that currently govern assignments. Transfers of employees within the Public Service by the Commissioner that took place under the section are dealt with by clause 8, with the transfer being a matter for the chief executives concerned. The process of assignment to a higher remuneration level is no longer set out in the section relating to assignment of

duties but is instead dealt with in clause 45 (Merit-based selection processes). Assignment to a lower remuneration level is dealt with in clause 52 (Reduction in remuneration level).

47—Probation

This clause effectively substitutes section 41 of the *Public Sector Management Act 1995*. Subclause (2) enables a public sector agency to determine a period of probation that is less than 12 months. Subclause (4) provides a more flexible arrangement, enabling confirmation of employment after at least half of the period of probation has been served.

48—Remuneration

This clause effectively substitutes section 45 of the *Public Sector Management Act 1995* with modifications necessary because of the current references to positions.

49—Additional duties allowance

This clause effectively substitutes section 46 of the *Public Sector Management Act 1995*. It leaves the matter of an allowance to the discretion of the agency, removing the arbitrary limit imposed by the current section.

50—Hours of duty and leave

This clause effectively substitutes section 49 of the *Public Sector Management Act 1995*. Relevant details are set out in Schedule 1.

51—Resignation (other than executives)

This clause effectively substitutes section 53 of the *Public Sector Management Act 1995*. It continues to require 14 days written notice of resignation.

52—Reduction in remuneration level

This clause determines the grounds on which a public sector agency may reduce the remuneration level of an employee without the employee's consent, as follows:

- the employee is excess to the requirements of the agency at the higher remuneration level; or
- the employee's physical or mental incapacity to perform duties or satisfactorily at the higher remuneration level; or
- the employee's unsatisfactory performance of duties at the higher remuneration level; or
- the employee's misconduct; or
- the employee's lack of an essential qualification for performing duties at the higher remuneration level; or
- any other ground prescribed by the regulations.

The agency must first endeavour to find suitable alternative employment on conditions that maintain the employee's current substantive remuneration level if the proposed reduction is a result of the employee being an excess employee or the employee's mental or physical incapacity. The requirement relates to employment in the public sector to which the Part applies and not just the Public Service as under the current Act.

Under the *Public Sector Management Act 1995* the obligation to endeavour to find suitable alternative employment relates only to employment in the Public Service and is dealt with in the separate divisions dealing with different grounds.

Subclause (3) sets out income maintenance rights for excess employees and equates to section 50(4) of the *Public Sector Management Act 1995*.

Subclause (4) specifically contemplates—

- an agency reducing an employee's remuneration level to a remuneration level from a classification structure including a structure not applicable to that agency; and
- an agency reducing an employee's remuneration level as a preliminary step to assigning or transferring the employee to other duties in the agency or elsewhere in the public sector.

53—Termination

A public sector agency is empowered to terminate the employment of an employee on the following grounds:

- the employee is excess to the requirements of the agency;
- the employee's physical or mental incapacity to perform his or her duties satisfactorily;
- the employee's unsatisfactory performance of his or her duties;
- the employee's misconduct;
- the employee's lack of an essential qualification for performing his or her duties;
- any other ground prescribed by the regulations.

The grounds set out above may also lead to a decision by the public sector agency to reduce the remuneration level of the employee (see clause 52).

As with reduction in remuneration, the agency must first endeavour to find suitable alternative employment on conditions that maintain the employee's current substantive remuneration level if the proposed termination is a result of the employee being an excess employee or the employee's mental or physical incapacity.

54—Disciplinary action

If a public sector agency is satisfied that an employee is guilty of misconduct, the agency may—

- reprimand the employee;
- suspend the employee from duty without remuneration or accrual of leave rights for a specified period.

This power is in addition to the power to reduce an employee's remuneration under clause 52 and to terminate the employee's employment under clause 53.

In conjunction with disciplinary action, a public sector employee may be transferred or assigned to different duties or a different place.

55—Power to require medical examination

This clause effectively substitutes section 51 of the *Public Sector Management Act 1995* and provides for the obtaining of medical reports about an employee if it appears to a public sector agency that the employee's unsatisfactory performance is caused by physical or mental incapacity.

56—Power to suspend from duty

A public sector agency is given power to suspend an employee of the agency from duty pending the completion of any investigation, process or proceedings in respect of alleged misconduct by the employee if the agency decides that it is in the public or agency's interest to do so. Suspension can be without remuneration in certain circumstances.

Division 4—Review of employment decisions

Note—

The measure is designed to provide streamlined rights of review and a greater level of consistency. It contains significant differences to the *Public Sector Management Act 1995*.

Subdivision 1—Review of dismissal

57—Application of unfair dismissal provisions of Fair Work Act

An employee to whom Part 7 applies and who has been dismissed by a public sector agency may apply to the Industrial Relations Commission for relief under Chapter 3 Part 6 of the *Fair Work Act 1994* (subject to that Act). This clause contemplates that the employee may take an action for unfair dismissal under the ordinary provisions of the *Fair Work Act 1994* (subject to that Act). The approach means that public sector employees are placed in a similar position to private sector employees. Exclusions that apply under that Act (for example, in relation to non-award employees who earn more than a specified salary) will apply to public sector employees covered by Part 7.

This clause provides the Industrial Relations Commission with additional powers if an application for relief for unfair dismissal is upheld. If the Commission orders that the applicant be re-employed but is satisfied, on the application of the public sector agency, that it is appropriate that the agency take action to deal with misconduct of the employee, the Industrial Relations Commission may make an order that the agency take specified action to deal with the misconduct.

Subdivision 2—Review of employment decisions (other than dismissal)

58—Right of review

This clause provides an employee with a right to have an employment decision (not extending to a dismissal, a decision to select a person who is not a public sector employee as a consequence of selection processes conducted on the basis of merit or other circumstances prescribed by the regulations) reviewed.

59—Conciliation

This clause sets out a requirement for a public sector agency to endeavour to resolve an employee's grievance by conciliation (regardless of the fact that an employee may apply for a review of its decision).

60—Internal review

An employee aggrieved by an employment decision of a public sector agency directly affecting the employee may apply for an internal review of the decision by the public sector agency. It is contemplated that the regulations will contain details about the process.

61—External review

This clause sets out the right of an employee who is aggrieved by an employment decision of a public sector agency directly affecting the employee to apply to the appropriate review body for a review of the decision.

The Industrial Relations Commission is to hear reviews of decisions to take disciplinary action, to reduce an employee's remuneration level and associated transfers or reassignments.

The Public Sector Grievance Review Commission is to hear all other reviews.

Before the matter can be taken to external review, the employee must have applied for an internal review pursuant to clause 60 and the review completed or not commenced as required by the regulations. Exceptions can be spelt out in the regulations.

The review body may decline to conduct a review—

- if the application for review is frivolous or vexatious; or
- if the applicant for review has made a complaint under the *Equal Opportunity Act 1984* in respect of the decision; or
- in circumstances prescribed by the regulations.

On a review, the appropriate review body must determine whether, on the balance of probabilities, the decision is harsh, unjust or unreasonable. The review body has the power to—

- affirm the decision;
- in the case of a prescribed decision, rescind the decision and substitute a decision that the review body considers appropriate;
- remit matters to the agency for consideration or further consideration in accordance with any directions or recommendations of the review body.

The parties to a review are not to be legally represented unless the review body considers that either party would be at a significant disadvantage in the absence of legal representation.

The regulations may exclude this right of review.

The different avenues of appeal that are triggered in the *Public Sector Management Act 1995* by section 43 (Promotion appeals), section 61 (Disciplinary appeals) and section 64 (Grievance appeals) are effectively substituted by the processes set out in this clause. The Industrial Relations Commission and Public Sector Grievance Review Commission are to undertake the roles currently performed by the Disciplinary Appeals Tribunal and the Grievance Appeals Tribunal.

62—Special provision for review of selection processes

A review of a decision to select an employee as a consequence of selection processes conducted on the basis of merit must be limited to considering whether the processes should be recommenced from the beginning or some later stage on a number of grounds specified by the clause.

This clause substantially reflects section 43 of the *Public Sector Management Act 1995*.

63—Application of Fair Work Act 1994

This clause enables the application of the *Fair Work Act 1994* to be modified by the regulations.

Part 8—Miscellaneous

64—Employment opportunity programs

This clause is similar to section 67 of the *Public Sector Management Act 1995* and ensures that employment opportunity programs can be offered without breaching the provisions of the Act.

65—Re-engagement of employee who resigns to contest election

This clause substitutes section 54 of the *Public Sector Management Act 1995* and is extended to public sector employment generally.

66—Multiple appointments etc

This clause effectively substitutes section 70A of the *Public Sector Management Act 1995*.

67—Payment of remuneration on death

This clause effectively substitutes section 48 of the *Public Sector Management Act 1995*, but leaves the matter to the agency rather than the Commissioner.

68—Reduction in remuneration arising from refusal or failure to carry out duties

Subclause (1) provides that if an employee of a public sector agency is absent from his or her duties without lawful authority, the agency may direct that the employee not be paid salary for the period of the absence.

Subclauses (2) and (3) effectively substitute section 47 of the *Public Sector Management Act 1995*.

69—Action where overpayment or liability to Crown

This clause provides for recovery of amounts overpaid or in satisfaction of liabilities and effectively substitutes section 62 of the *Public Sector Management Act 1995*.

70—Employment of Ministerial staff

This clause effectively substitutes section 69 of the *Public Sector Management Act 1995*.

71—Appointment of other special staff

This clause enables a Minister to engage (outside the Public Service)—

- a person as a member of the staff of a Member of Parliament; or
- a person in employment of a class prescribed by the regulations.

This will simplify the current processes.

72—Operation of Fair Work Act 1994

This clause effectively substitutes section 72 of the *Public Sector Management Act 1995*.

73—Immunity relating to official powers or functions

This clause effectively substitutes section 74 of the *Public Sector Management Act 1995*. It applies the immunity to a public sector employee, a public official (as defined), a person to whom a function or power of a public sector agency, public sector employee or public official is delegated in accordance with an Act and a person who is, in accordance with an Act, assisting a public sector employee or public official in the enforcement of the Act.

74—Delegation by Minister

This clause is new. It provides the Minister with the power to delegate a power or function of the Minister under the measure.

75—Temporary exercise of statutory powers

This clause effectively substitutes section 75 of the *Public Sector Management Act 1995*.

76—Designation of positions

This clause is new. It deals with the need to identify a person performing specified duties in a position with a specified title. The need for this provision is most obviously highlighted by the requirement to make a legal delegation under an Act to a person who can be identified by a specific position with a specific title. It is not a provision that is intended to be used for the wholesale creation of positions across the public sector. The clause attempts to make this clear with the use of the words 'but is not required to'.

77—Obsolete references

This clause effectively substitutes section 76 of the *Public Sector Management Act 1995*.

78—Evidentiary provision

This clause effectively substitutes section 77 of the *Public Sector Management Act 1995*.

79—Service of notices

This clause effectively substitutes section 79 of the *Public Sector Management Act 1995*.

80—Regulations

This clause provides general regulation making power.

Schedule 1—Leave and working arrangements

Schedule 1 is similar to Schedule 2 of the *Public Sector Management Act 1995* but contains some improvements.

Part 1 gives the Commissioner power to make determinations relating to a range of flexible leave and working arrangements. The Commissioner may make determinations about leave (with or without pay) for reasons that include study leave, parental leave and family carer's leave, for example. The Commissioner may determine voluntary flexible working arrangements for employees that include part-time employment, flexible working hours, purchased leave and compressed working weeks. This substitutes and broadens existing categories of leave that are currently dealt with by the clause dealing with special leave under Part 5 of Schedule 2 of the *Public Sector Management Act 1995*.

Part 5 provides that sick leave is to accrue per month of service, rather than per year as currently provided in the *Public Sector Management Act 1995*. This brings the accrual of sick leave into line with the accrual of recreation leave and will simplify the administration of leave.

Part 6 provides for the continuation of the accrual of long service leave in calendar days for each completed year of effective service but empowers the Commissioner to make a determination to enable the accrual of long service leave in working hours for each completed month of effective service.

Schedule 2—Public Sector Grievance Review Commission

This Schedule establishes the Commission. The Commission is to consist of a presiding commissioner appointed by the Governor and assistant commissioners appointed by the Governor. The Commission will be constituted of the presiding commissioner or, at the direction of the presiding commissioner, an assistant

commissioner. The Commission is given power to require public sector employees or former public sector employees to appear before it and to produce records or objects.

Schedule 3—Repeal and transitional provisions

This Schedule repeals the *Public Sector Management Act 1995* and contains transitional arrangements for the implementation of the measure.

Clause 3 of the Schedule sets out transitional provisions that apply to the various categories of executive employment that exist under the *Public Sector Management Act 1995*.

The categories of executive employment that the transitional provisions in clause 3apply to can be characterised as follows:

- employees who were not, immediately before the commencement of the clause, subject to a contract under the *Public Sector Management Act 1995*;
- employees who were, immediately before the commencement of the clause, subject to a contract under the *Public Sector Management Act 1995* and the employee was, if not reappointed, entitled to some other appointment in the Public Service on an ongoing basis;
- employees who were, immediately before the commencement of the clause, subject to a contract under the *Public Sector Management Act 1995* and the employee was, if not reappointed, entitled to some other appointment in the Public Service on a contractual basis;
- employees who were, immediately before the commencement of the clause, subject to a contract under the *Public Sector Management Act 1995* and the employee was not, if not reappointed, entitled to some other appointment in the Public Service.

In each case, current rights are preserved (if a contract is involved it is preserved for the duration of the contract and if a 'fall-back' entitlement exists, that entitlement can be exercised if the executive is not offered a further contract).

Debate adjourned on motion of Mr Williams.

PUBLIC SECTOR MANAGEMENT (CONSEQUENTIAL) AMENDMENT BILL

The Hon. J.W. WEATHERILL (Cheltenham—Minister for Environment and Conservation, Minister for Early Childhood Development, Minister for Aboriginal Affairs and Reconciliation, Minister Assisting the Premier in Cabinet Business and Public Sector Management) (16:34): Obtained leave and introduced a bill for an act to amend the Public Sector Management Act 1995. Read a first time.

The Hon. J.W. WEATHERILL (Cheltenham—Minister for Environment and Conservation, Minister for Early Childhood Development, Minister for Aboriginal Affairs and Reconciliation, Minister Assisting the Premier in Cabinet Business and Public Sector Management) (16:34): I move:

That this bill be now read a second time.

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

Leave granted.

This Bill will maintain the honesty and accountability provisions introduced into the *Public Sector Management Act 1995* in 2003 and is a companion Bill to the *Public Sector Bill 2008*. The government's intent remains to ensure an open, honest and accountable government. This Bill seeks to amend the current *Public Sector Management Act 1995* so that it will only contain honesty and accountability provisions, while the companion Bill, the *Public Sector Bill 2008*, will contain the framework for employment, management and governance matters relating to the public sector of the State.

This Bill addresses the duties of corporate agency members, advisory body members, senior officials, corporate agency executives, employees and persons performing contract work. It includes requirements to disclose pecuniary interests and to declare conflicts of interest and to act honestly in performing duties. Having these provisions contained in a single focussed Act allows for ease of use and access.

Non-compliance will continue to be an offence, and will render the offender liable to termination of employment or disciplinary action (which could in turn result in termination of employment).

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Public Sector Management Act 1995*

4—Amendment of long title

5—Amendment of section 1—Short title

The long title and short title are altered to reflect the fact that following amendment the Act will contain only the honesty and accountability provisions.

6—Amendment of section 3—Interpretation

Various definitions are amended to refer to the definitions in the *Public Sector Bill 2008* and to reflect the language used in that Bill. Definitions not relevant to the honesty and accountability provisions are deleted.

7 to 47—Remaining amendments

These amendments ensure that only the honesty and accountability provisions remain in the Act. There is a minor adjustment to the conflict of interest provision for corporate agency members. A provision is included so that a corporate agency member who is an employee of the agency or an employee employed or assigned to assist the agency will not be taken to have a direct or indirect interest in a matter for the purposes of this section by reason only of the fact that the member is such an employee. The amendment removes the need to include such an exemption in the regulations for specific Acts.

Provisions and Divisions are renumbered.

Debate adjourned on motion of Mr Williams.

NATIVE VEGETATION (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 1083.)

Mr WILLIAMS (MacKillop) (16:36): Before lunch, I mentioned that when the member for Davenport was minister way back in, I think, 2001 he brought to the parliament a bill to amend the Native Vegetation Act. I talked about how one of the major clauses in this bill indeed reflects what was in the member for Davenport's bill. I want to speak at least briefly about this because, as I have said, I had the good fortune to be involved in extensive negotiations with the then officers of the department and my colleagues in the then government on significant changes to the Native Vegetation Act.

One of the things that I have personally championed is not just conserving native vegetation in this state but, indeed, increasing the amount of native vegetation and increasing the footprint of native vegetation extensively in the state, particularly in the settled areas where most of the reduction in native vegetation and most of the loss of our biodiversity has occurred. I particularly champion that cause.

One of the key methods by which we can champion that cause is by offering people credits for replanting native vegetation or credits for other work which enhances existing stands of native vegetation or which continues to protect them, things as simple as fencing and getting rid of rabbits and foxes, but particularly replanting.

The reason that I championed this at the time was because I had many constituents who, at the time, were seeking permission to remove the odd red gum, Eucalyptus camaldulensis. This was for the development of vineyards in many of the areas in my electorate, not least in the Coonawarra. They were being obliged to provide offsets. But there were a number of constituents who had a fantastic record and history of planting native vegetation, not only planting native vegetation but planting blocks of native vegetation, and doing it correctly, by making sure that they had the right provenances of seed before they started the exercise and creating blocks on their farms.

The dilemma that they faced was that, when they went before the Native Vegetation Council to seek permission to remove, in some cases, only two or three—or maybe half a dozen—established red gums to allow them to develop a vineyard, there was no credit given to their application for the pre-existing work that those landholders had done.

The message that that sent to landholders across South Australia—and this message is still out there—was that, if you are of a mind to replant native vegetation on your farm for any reason, and you think that there may be a requirement for you at some time in the future to apply to remove some native vegetation, whether it be to establish a vineyard, convert an existing irrigation operation or establish an irrigation operation which would use, say, a centre pivot (where you would

need a cleared area without trees, obviously), you would be unwise to go out and plant native vegetation before making your application to remove one or two (or a handful) trees for some future development on your property.

That is the message that is out there. Farmers talk and they have a deep suspicion of the administration of the Native Vegetation Act in this state, and it is common knowledge in South Australia that, if you were of the mind to plant some native vegetation on your farm, as I have on my farm, but if you thought you might need to apply to remove native vegetation in the future, you would wait until that time because the administration of the Native Vegetation Act—and it is the fault of the act, not the administration—does not allow you to carry credit forward, and that is one of the major changes we wanted to make to the act.

We also wanted those credits to be tradable so that, if one person established some native vegetation, they may be able to realise the value of that by selling their credit to another farmer. Even if I wanted to plant some native vegetation on my farm, I might be able to do that and offset the cost of doing that in the knowledge that, if one of my neighbours (or somebody else in the area, not necessarily an immediate neighbour) wanted to apply to remove a small number of trees and had to provide an offset, I may well be able to sell the credit that I had established.

The thought behind this was that we would put value on people re-establishing native vegetation in the farming areas across the state. As a practising farmer, it is my belief that the productivity of my farm will increase if I can re-establish at least 10 per cent of the total area of my farm to trees. Before I came into this place when I was farming full-time, I had a plan to do that. Some of it was in the form of commercial forestry; some of it was in the form of re-establishing native vegetation.

I think there is an opportunity here in South Australia with proper extension work done by both the Department for Environment and Heritage and the department for primary industries to encourage farmers across the state to re-establish large areas of native vegetation. We can do that in a strategic manner, but we will not do it unless we can show to those farmers that there is a value, a dollar benefit, to their doing that as well as an environmental benefit. There is a cost involved in re-establishing native vegetation and sometimes people are obliged to find offsets. So, that is what was behind large sections of the bill that was proposed in the early part of this century.

The government, in bringing this bill before the house, has picked up in a very small way those ideas. The portion of this bill which will allow out of region offsets is not about, I believe, picking up the idea of enhancing native vegetation across South Australia; unfortunately, the cynic in me says that it is about helping the mining industry. It is about allowing mining companies to apply to clear native vegetation in the north and far north of the state where it would be ridiculous to oblige them to provide an offset because, in many cases, there is plenty of the type of vegetation that they are clearing, and the net benefit of requiring them to provide an offset in that area would be minuscule.

However, giving them the opportunity to provide the offset in a different part of the state where there would be good environmental outcomes by increasing the amount of native vegetation planting, I think is a good idea. I think it is a great idea and I commend the government, but I think the government should look further at the issue that I have just raised and have a good think about the points that I have made, because it is my belief that we will only achieve the right thing by the environment in this state—and this is where I get back to my earlier point of what are we trying to achieve by this legislation—by ensuring that we get a significant increase in the footprint of native vegetation, particularly in the settled areas of South Australia. To my mind, there is a simple way of achieving that, and I have very briefly described it.

Since I was on my feet before the lunch break and before question time, the government has tabled the State of Our Environment report of the EPA into the environment of South Australia. I want to highlight a couple of matters in that report. Earlier, I was talking about the relationship between native vegetation and fauna—the whole gamut of biodiversity. There are a couple of points under 'Threatened Species' which I wish to make. I think this matter came up in question time when I asked the minister about the threatened species and the decline in biodiversity. He tried to qualify the report by saying that there has been an increase in the number of species listed, etc., but, in reality, the report states:

> Recovery efforts have increased significantly across the state but remain less than are required to minimise the potential for species loss.

I think that is the nub. At this stage, despite the increase in the efforts being put in, they are still falling short of what is required to halt species loss in South Australia.

As mentioned earlier, a number of clauses in the bill serve to align this bill more closely with the NRM Act. I want to make a couple of comments about the administration of the NRM Act in South Australia. Recently, I have received many complaints from my constituents and from some outside my immediate area, as the shadow minister for the environment, about the lack of action by our NRM boards in administering their functions, particularly with regard to feral animals. Lo and behold! In the section 'Introduced Species', the report refers to the 'abundance of rabbits increasing'. It states that that is due to the lowering of the effectiveness of, principally, calicivirus. That is probably what has been causing it.

I think that, because of the early and dramatic success of calicivirus when it first got into the environment, this has allowed our NRM boards right across the state not to fulfil their function in that area; it is the same with invasive weeds. Therefore, I think there are some problems with the way the intent of the NRM Act is being administered by boards across the state. All is not well within that area.

The State of Our Environment report is quite damning about where we are going in South Australia. I would argue that we are not unique in South Australia; but it is quite damning. It was obvious to me before I picked it up, if not to everybody else. As the minister again pointed out in question time today it was obvious to me yesterday that I was able to comment that the report was about to be released and that its contents were obvious: that we are not doing enough, that we are way behind the eight ball. I remind the house of the comments I made earlier about what Dr Hugh Possingham said recently on a visit to Adelaide.

With regard to the comments I have just been making, particularly increasing the amount of native vegetation in our landscape, we have to understand that just under 20 per cent of the surface area of the state, excluding the pastoral lands, is utilised by humans for living (towns and urban areas) and farming. It is about only 20 per cent; I think the number is a bit under. That is the 20 per cent of the state upon which we have had the greatest impact, and I think it is the area of the state upon which we really need to concentrate to ensure that we can avoid further biodiversity loss.

I want to again mention a matter that the member for Davenport also raised with regard to clause 5 in the bill. The briefing that I had basically said that this clause more clearly defines and delineates the area in the Mitcham Hills where there is an issue with grey box. It is interesting that the information that the member for Davenport got from the Mitcham council seems to be at odds with the assurance that he and I were given that the new definition does not expand that area and I have a concern about what is going on there—about who is right and who is wrong, in fact, with regard to that.

The Hon. J.W. Weatherill interjecting:

Mr WILLIAMS: We're both wrong? So, the council is wrong and the officers are wrong.

The Hon. J.W. Weatherill: They're both right.

Mr WILLIAMS: The minister may explain. He says they are both right. I find it hard to believe that they could both be right when they are saying different things, but the minister may well explain that. The bill is relatively uncontroversial. It is almost what I would refer to as a 'rats and mice' matter. It tidies up a number of things.

I do not have any concerns. I certainly support the out-of-region offsets, as I said a few moments ago. My colleague the member for Stuart has tabled some amendments that he is proposing for the consideration of the house. The member for Stuart was unavailable for me to talk to about his amendments last week and, therefore, the Liberal Party has not at this stage formed an official opinion on his amendments, so we are going to reserve our rights on those amendments in the upper house.

The member will speak to them shortly. I will be just as interested as everybody else in that part of the debate, and we will obviously consider that in our party room before this matter is debated in the other place. Having said that, I indicate that the opposition is quite happy to support the bill. We believe that the measures in the bill are sensible.

We wish it speed through the parliamentary process and for the implementation of those measures but lament the fact that the Native Vegetation Act is still in need of severe amendment—

certainly I believe so and I think the Liberal Party believes so, as was demonstrated some years ago when we were in government—so that we can actually get onside the people who have the potential to have the greatest impact on native vegetation in this state and get them helping with the function of increasing the amount of native vegetation in our landscape.

The Hon. J.W. WEATHERILL (Cheltenham—Minister for Environment and Conservation, Minister for Early Childhood Development, Minister for Aboriginal Affairs and Reconciliation, Minister Assisting the Premier in Cabinet Business and Public Sector Management) (16:53): I thank all members for their contributions during the debate and their support for the bill. I indicate that, as I have said before, the amendments sought by the bill are relatively minor but support the new directions that we are seeking to take in relation to native vegetation management that were announced by the government in 2007.

Just to remind members, the new directions aim to improve the overall relationship between native vegetation management, NRM management and development and make sure that they are properly integrated. As members have acknowledged, there have already been improvements to the way in which we are managing native vegetation as part of this reform. These have included:

- a new Native Vegetation Council, which now focuses on strategic issues, while an expertise-based Native Vegetation Assessment Panel makes decisions on applications to clear native vegetation;
- the appointment of Dennis Mutton as chair of the Native Vegetation Council in September 2007 to help improve the links between the NRM, given his complementary role as presiding member of the NRM Council; and
- commencement of work in response to the planning review, which will deliver an approved approach to native vegetation through better up-front strategic planning with reference to mapping that identifies the extent and value of native vegetation.

As part of the reform process, the Native Vegetation Regulations will also be reviewed with a view to redrafting where this improves the ease with which they can be understood. With this in mind, I am sure that many of the issues raised by members have been addressed or are being addressed. Nevertheless, I invite members to forward specific details of cases—perhaps outside this chamber—so that we can consider them.

The bill before the house today follows on from consultation with a range of groups with an interest in how native vegetation is managed. Those consulted include: regional NRM boards, the Conservation Council of South Australia, the Local Government Association, the Native Vegetation Council, the NRM Council, the Pastoral Board, the Regional Communities Consultative Council, the South Australian Chamber of Mines and Energy, the South Australian Wine Industry Association, the SA Farmers' Federation and the SA Tourism Commission.

The member for Stuart has indicated his intention to seek some further amendments to the Native Vegetation Act dealing with the clearance of native vegetation associated with bushfire safety and clearance of native vegetation on pastoral lease lands. I indicate that the government will not be supporting those amendments, and perhaps I can just clarify. I think that the member for Stuart has earlier moved these amendments in his own bill. The proposed amendments seek to remove 'burning' as a definition of clearance and to remove the planned approach to clearance of native vegetation associated with achieving bushfire safety.

By including 'burning' as 'clearance', the Native Vegetation Act and the regulations provide a planned framework for the establishment of fire protection works on a region or property whilst balancing the needs of fire protection and biodiversity conservation. Exclusion of 'burning' from the definition of 'clearance', as proposed by the member for Stuart, would allow the potential for the deliberate use of fires as a means of achieving broadscale clearance. Furthermore, I believe that the member for Stuart's proposed amendments have the potential to lead to a piecemeal versus a planned approach to regional fire protection. The clearance of native vegetation, including clearance through burning, is controlled by the Native Vegetation Act and regulations.

In response to a question asked by the member for Davenport, the Native Vegetation Act takes precedence over the Fire and Emergency Services Act, but subject to several exemptions provided by the Native Vegetation Regulations to provide for necessary fire safety measures to protect life and property. The regulations currently allow for the clearance of native vegetation without the need to seek approval for a range of fire risk management works. These include

clearing around houses and associated buildings, the establishment of fuel breaks, clearance for access tracks, fuel reduction burning (including cool burns) and other works involved in the clearance of native vegetation in accordance with endorsed district bushfire prevention plans.

These provisions permit actions to protect life and property while ensuring that unnecessary clearance of native vegetation is avoided. Furthermore, in the event of fire, an officer of the South Australian CFS, or other member of the SA CFS, may take any action that appears to be necessary to protect life, health or safety of any person or animal, or protecting property. With respect to the emphasis on a planned approach to bushfire safety measures, the member for Stuart has stressed the need for quick and local decision making in relation to fire safety. I do not disagree with that need, just the approach the member for Stuart is proposing.

I say, again: the bushfire safety measures should be adequately planned, but decisions should be expedited. To facilitate this, the Native Vegetation Council has established a fire subcommittee, with membership from the CFS, local government and the Native Vegetation Council with delegation to deal with all fire issues. That committee endeavours to deal with matters quickly, and, in many cases, will reach decisions out of session. However, in response to a recommendation of the Deputy Coroner arising out of the inquiry into the 2005 Eyre Peninsula bushfires, a bushfire code of practice is being developed relating to the management of native vegetation as it affects bushfire prevention.

As part of that code of practice, it is intended that most of the decision making regarding clearance of native vegetation for fire safety would be dealt with at a local level with a minimum of administrative process by regional CFS officers. I am sure that the member for Stuart will recognise that this approach is entirely consistent with the aim of his proposed amendments. Accordingly, the government will not support the member for Stuart's amendments relating to fire management.

The member for Stuart also raised some issues relating to the management of pastoral lease lands. I understand that his proposed amendments provide unrestricted clearance associated with grazing stock, constructing a dam or providing water points for stock on pastoral land, noting that the Native Vegetation Act defines 'pastoral land' as land subject to the Pastoral Land Management and Conservation Act 1989. The issue relates to proposals to expand grazing into previously ungrazed areas. In the case of the pastoral lands, areas remote from water are effectively not grazed by domestic stock and, as a result, these areas are important refuges for those native species that usually disappear from a grazed landscape. I understand that it is now practical to use 'poly pipe' relatively easily and cheaply to extend watering points into previously unwatered and therefore ungrazed country.

Such grazing is deemed clearance under the Native Vegetation Act and requires approval. The Native Vegetation Council has delegated responsibility for decision making on clearance by grazing to the Pastoral Board. The current regulations provide an exemption to clearing by grazing provided that the grazing regime is consistent with the previous 10 years and the species of stock is unchanged.

Clearance by grazing the pastoral lands is an important instrument in ensuring conservation of biodiversity in the pastoral lands and, accordingly, the government will not support the member for Stuart's amendments relating to this area. The member for Stuart also proposes unrestricted clearance associated with re-establishing pastoral land for cropping purposes within 15 years. I am advised that no cropping is allowed on pastoral lands without the specific approval of the Pastoral Board, and in this context the intent of this amendment is unclear.

The member for Stuart's amendments would also allow for the clearance of native vegetation within local council areas with a surface area of 10,000 square metres when full. This is a very large dam—20 times the size of the current maximum size exempted by the native vegetation regulations. Provisions exist for the regulations to exempt dams up to 500 square metres when full in regions of the state approved by the Native Vegetation Council. I am advised that the Native Vegetation Council has yet to receive a formal proposal for identifying a region of the state where a larger dam site should be exempt. Accordingly, the government will not support the member for Stuart's amendments relating to dams.

I now turn to some of the issues relating specifically to bill raised by members during the debate. Firstly, I would like to clarify the intent of the bill in relation to the application of the act to parts of the City of Mitcham. Until amended in 2002, I am advised that the act applied to the whole of the City of Mitcham. The 2002 amendment redefined the coverage of the act to exclude the substantially built-up area of the City of Mitcham to the west of the hills face zone. However, there

is some concern in the Mitchell Hills community that the way this is described in the legislation could leave some doubt as to actual area covered by the act. The act refers to the legislation applying to the 'east' of the hills face zone. Doubt may have occurred because there are a number of latitudinal reference points where the eastern boundary of the hills face zone has no unique reference point.

This relates to the question from the member for Davenport about Blackwood, Eden Hills and Bellevue Heights being covered by the Native Vegetation Act. The bill clarifies that the Native Vegetation Act does apply to those particular areas and clarifies the protection accorded to the grey box and other native vegetation. In answer to the question from the member for MacKillop about how can both be right, there is a difference of opinion about whether the current legislation does in fact cover these areas, depending on your view as to its interpretation.

I think the department's view is that it is not necessary, that it is already is covered. The council's view is that it is concerned about that and it is worried about the doubt, and it takes a different view. One holds the view that it does protect this area and the other holds the view that it does not. This legislation is there to avoid doubt. I think what is common ground is that it should protect these areas, and so that is why we are legislating.

The member for Davenport has asked: how does the significant tree legislation impact on the Native Vegetation Act? I am happy to organise a briefing for the member for Davenport (as he suggested) while the bill is between houses. The member for Hammond has asked how an offset is determined. A significant environmental benefit offset may be achieved by on-ground action or by a payment into the native vegetation fund. That money must be used by the Native Vegetation Council to achieve a significant environmental benefit offset.

The level of offset is determined by the Native Vegetation Council in accordance with established policies and may range from 1:1—for native vegetation that may be disturbed, say, for the installation of a pipeline which recovers very quickly—to 10:1 depending on the significance of the native vegetation to be cleared, and that is a matter determined by policy through that process.

As the member for Napier indicated, the Native Vegetation Council is reviewing its current policy with the aim of providing a greater level of consistency and confidence that a significant environmental benefit outcome will be achieved. Guidelines for determining significant environmental benefit offsets in relation to clearance for mining operations, or clearance of scattered trees, have been developed by the Native Vegetation Council following a consultation process prescribed under section 25 of the act. These guidelines are published on the Department of Water, Land and Biodiversity Conservation website and are also available in hard copy upon request.

The member for Flinders also raised the issue of crediting past conservation works undertaken by a landholder as part of a significant environmental benefit offset and I can advise that, for some time, the Native Vegetation Council, as a matter of policy, supported this concept. As you will see, the bill provides for more formal recognition to credit conservation works over and above required offsets.

In summary, the state government has put in place a number of initiatives aimed at protecting our biodiversity. These include the no species loss target, marine parks and climate change legislation and better integrated NRM planning. In this context, this bill is just a further part of the comprehensive approach that we are taking to secure a prosperous and environmentally sustainable future.

Bill read a second time.

In committee.

Clauses 1 to 3 passed.

Clause 4.

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

Page 3 after line 6—After subclause (1) insert:

(1a) Section 3(1), definition of clearance, (d)—delete paragraph.

This is a very simple amendment to delete paragraph (d). It is put forward following a great deal of discussion with none other than the director of the Country Fire Service, who clearly indicated—as the minister would know—that this was an impediment to proper fire control and hazard reduction.

It is a very simple proposition and I say to the minister that I actually know what I am talking about. There are a lot of things that I do not know and, if the minister does not agree, he and his colleagues are going to have to accept the responsibility. You have been warned and it will come back to bite you harder than anything you have ever experienced, because if burning native vegetation cleared it there would be none left in South Australia. There is no native vegetation, Mallee or eucalypt, that has not been burnt. None would be there. You can go and have a look and I have had some experience of this in a previous life. It is a very simple amendment and it is in the interests of the people of South Australia, so that people can sensibly hazard reduce.

I do not know if the minister has ever been in a situation where he has had to attempt to control a very large Mallee fire. I do not know whether he or his advisers have ever been in that position. Every time that I drive home to my farm, I drive past a monument to a person who was burnt—and it is a pretty chilling experience—and other people who nearly lost their lives. We all know what happened on Kangaroo Island. The member for Schubert and myself went down and looked first-hand at what happened at Wanilla. The next member for Flinders will be able to explain chapter and verse better than me; he lost a shearing shed in that fire, so he will know first-hand what happens.

This house has the opportunity to take some sensible measures. We know what has happened around Australia and we know what happens to ministers when they continue to back bureaucracy at the expense of common sense. We know what is happening in New South Wales and in Tasmania, where they are falling over about one a month. Ministers are falling over about one a month. So, you can vote me out and, as usual, the bureaucracy will win, but I put it on the record clearly and precisely so that everyone is aware and everyone knows that you have had a chance to do something about it.

You can accept what I have had to say, you can accept the concerns put forward by the director of the Country Fire Service, and others, or you can accept other advice. It is in your hands. You have the numbers. I believe I have right on my side. I have given the warnings to this house and all those concerned.

I have seen first-hand the danger of what happens. I know what is going to happen. There are huge areas of native vegetation that is going to go up; we know that. The average farmer does not want that to happen. It is a great inconvenience and a great cost. Here is the chance. So, I say to you: just consider the implications of what has happened and the reasons that have been put forward. They have been put forward in the interests of protecting the people of South Australia, not in the interests of clearing native vegetation. They are put forward as a hazard reduction fire containment and control measure: nothing else.

Finally, for many years a lot of us used to burn areas of native vegetation so that we would not get burnt out. We are now not allowed to do that. If you were alongside 10,000 hectares of native vegetation or more, as some are, you would appreciate that. When you have these thunderstorms going through in the middle of the night and you see smoke, and nothing has been done, it is a pretty chilling experience.

It will not be your family, minister, who is going to be out there, but for some of us it will be our families and our neighbours who will have to try to deal with this. We feel very strongly on this. I say to you, to this house and to those around you that, when it happens, and if some of these sensible provisions that we have spoken about are not put into effect, then it is all on the public record and someone will be held responsible.

The Hon. J.W. WEATHERILL: The first thing to say about the member for Stuart's warnings is that they have been taken seriously. The member for Stuart has promoted these amendments before. This issue has been the topic of debate before and there has been a response to it. Mr Ferguson, who appeared before one of the parliamentary committees expressing his concern about the way in which native vegetation legislation was being administered and the terms of it, was heard, as was the member for Stuart, and there was a response. The response includes the matters that I referred to earlier.

Mr Ferguson then gave evidence to a further, subsequent, later committee of the parliament and said that he was satisfied with the changes that had been put in place. The warnings have been made, they have been heard, responses have been made and the head of the CFS has told us that he is satisfied with those responses.

We oppose this amendment for a number of reasons, not least because it actually does not achieve what it intends to achieve. Simply by seeking to remove 'burning' from the definition of

'clearance' would not save other consequences of burning from becoming clearance for the purposes of the act. It would not be effective to achieve the result of your being able to burn and have the effect of destroying and removing native vegetation, or substantially damaging native vegetation, it would still bring it within the terms of the Native Vegetation Act, so it would be ineffective.

The second problem that we have with it is that, assuming that it is effective to achieve the end that the member for Stuart seeks—that is, that burning is not touched by the Native Vegetation Act—that would actually mean that burning would be carried out in an unplanned way whereas, at the moment, it is being planned through the CFS at the local level. That is precisely the way it ought to happen; not in a bureaucratic way, but using local knowledge in a way that the member for Stuart urges upon us, not willy-nilly. If one suggests that things need to happen urgently in a dangerous situation, that is already catered for. Actions can be taken quickly where life and limb are in peril.

Mr VENNING: I support the member for Stuart, as I have always done in every previous incidence in this place. It is not the first time that we have raised incidences like these. As the member for Stuart has said, I am a country person, as is the member for Hammond. It is all very well for us to sit in judgment of people in this place. I just ask: can you be there at the fire front when the fire is racing down the hill towards homes, putting lives at stake? We cannot do enough, because sometimes we just cannot control these fires. The only way we can control them is to find a clearance where we can burn back against the fire. I have had experience in that. I have lit many fires, and it has usually been burning back against clearances, roads, etc.

When you go to a fire today, you cannot do that so much, because there are wild oats and other things two metres high on the break. If you light that, it will go straight across the break and across the other side, and then you can be sued because you lit the fire. So, we have to be very careful nowadays when we light a fire to provide a break in order to put a fire out.

I will give you one instance of that happening. A fire was heading down towards the town of Georgetown some years ago. Nothing could stop the fire. There was a gentleman up there who was an untrained vet, a Mr Frank Landers. He lived in Gladstone, and he was an expert. He was a fire control officer. He said, 'Come on, Ivan, we've got a job to do.' We went down the hill to a track between the fire and the town—a track across the front of the hill, across the face of the fire. It was bare enough, so we took two small fire units with us. I had a firelighter in my hand and he had one. We stood about 200 metres apart. He said, 'When I drop my hand, you light and run the other way.'

This fire was roaring and, sure as eggs, we lit about 400 or 500 metres of fire right across the side of the hill. I thought that it would go back down the hill towards the town, but it did not. The man was an expert. The fire went back towards the oncoming fire, because it was creating its own draught, and it went the other way. The two units that we had with us just mopped up behind us and the fire was put out. Two people and two small farm units put the fire out.

That is an indication of the expertise of fire control officers who have good local knowledge. You have to have a clearance that you can light a fire against so that you do not create more problems than you are trying to solve. I am happy to name that person, because I think he has now passed on. I will never forget that. The honourable member said that we went over and had a look at the Wangary fires. You can see where they eventually put the fire out: it was against a road that had been cleared.

There was another bad fire south of Redhill last year. I went down to inspect it. When you see the roadside down there (these are back roads) with two metre high growth right up against the road—in fact, in the middle of the road, because it is only a track—how are you supposed to put out a fire? You are not legally allowed to go in and slash the side of the road, because of the native vegetation there. So, it is a nonsense.

People need to give a little more thought to what is being said here because, do not forget that the shadow minister, the member for MacKillop, lost family friends in a fire. I am pleased that he is not here to hear this. People need to understand and remember what happened. We need to get out our history books, read about what happened on that day and who lost their lives.

I was five years old when we lost everything, except for the house that we lived in, to a fire. When a fire is really going, there is little you can do to stop it. You cannot throw water on it because it creates its own galeforce winds. When you see a fire at full pelt, the fire has really started 200 or 300 metres in front of the fire. The only way to do it is to put another fire out there against a break

and that way you can control them, and we have some very good experts out there. We need to be able to help the CFS in relation to matters like this, not put these crazy impediments in their way.

I like native vegetation. My wife and I have planted lots of it along our creek lines, and I invite members to come and have a look if they do not believe me; I am happy to show you. However, on critical roads, particularly north-south roads across the fire lines where we know there is a hazard, particularly train lines and main roads, you need to be able to control the fire hazard. We will lose lives this summer. I was told only yesterday how bad it is in the Adelaide Hills this year. We will have some disasters because we live in the driest state in the driest country in the world. We and California have arguably the worst fires in the world and we lose loved ones.

In this instance, I back the member for Stuart absolutely. This is not sensation: this is purely common sense to give the local people the capacity to provide clearances where they see that it can save lives. We are not taking out all the undergrowth. We want to be able to go in there with a slasher, and I have done it before, I am guilty under the old rules. I still slash wherever possible and that can be dangerous, too, at this time of year. You do not do that because you can light a fire very easily. Yes, I bowl over the occasional native tree, although only little ones that have just come up because you have to get them too, and I have also cold burned. I did not do it this year—

The Hon. J.W. Weatherill: No more admissions. As your attorney, I would advise you to make no more admissions.

Mr VENNING: It does not matter because my record is very good. People see it. I ring up the local fire authority and say, 'I am going to do a bit of cold burning tonight.' He said, 'Do it after six and when I see the smoke up, nobody will be concerned,' and they never were. I have a pretty good fire going some nights, but you can have a nice, easy summer knowing that on the northern side of our home, if a fire approaches, you have about a 200-metre break where at least nothing is growing between the trees. The trees are still there and they are natives. My wife is a native nut; she is into everything native in the garden, but between them there is no growth and sometimes the only way to get rid of that growth is to burn it. If you do it early enough, it will not burn all of it. If it takes out 75 per cent, it will get rid of the flammable material. I support the member for Stuart.

I pay tribute to the member for Stuart. We will miss him when he is not here. Who will take up the challenge when he is not here? I will forever remember what a strong campaign he has taken for these people, and that is probably the reason why after all these years he is still here. So, I urge all members to consider the representation that the member for Stuart has given his people and the issues he takes on, because he sticks his neck out whether or not people love him for it, and that is why he is still here. We will certainly miss him. I support the member for Stuart's amendment.

The Hon. G.M. GUNN: I am disappointed with the minister's answer. He wants to dispute what I say but you cannot dispute what is right for the people of South Australia—that is, you cannot dispute. The minister can talk about the local CFS but people who are going to have to do the hazard reductions are the landholders, just remember that. Most of the people in the local CFS have never had any experience in burning off. It is harder to get volunteers—fewer people want to do this work.

The average farmer still burns stubble and grass, and they have had some experience. Prior to these laws coming into this place, at 5 o'clock in the afternoon at the right time of year when it was cold, you would walk along with a box of matches or with a firelighter along the edge of the scrub against the wind and let it burn back 50 metres, and that way you protect yourself. They have done that all their lives but they cannot do that now.

But as sure as we are in this building, all our scrub is going to go up and, as I said earlier, although the minister never responded to it, if you have a lightning strike—and there have already been fires—it will go up. What happens? Go to Kangaroo Island—it cost the taxpayers millions of dollars, but that is okay because the bureaucrats have got their own way. You go to Wanilla—millions of dollars spent and lives lost. You will see it happen again because it is going to happen but, if you let the local landholders use a bit of common sense, you will not have that problem.

You can win today, but you ought to be aware that the winds of change are blowing. Common sense will apply in Western Australia. You read the country newspapers over there, where these mad people in the department were attacking farmers. That is why you got those five people—and they are after them now—who decided who would be in government. See what

happens now when they put a finger on a farmer. I know what will happen, because I know some of them. Read Western Australian country newspapers, which I am pleased to get each week.

I have stated my case; I know what the facts are. I know I am right—it is not often I say that. Mark my words, when a fire starts and someone is injured and those people are being prevented, someone is going to wear it. You have had inquiries and reports, but at the end of the day, you do not want to see the fires contained and controlled. The other week I was watching on the television what is happening in California—it is absolutely appalling.

Why not take a few sensible amendments which are designed to help? I bet I get the same sort of answer. I say to you: I wish it was you and your colleagues who are going to be out there trying to do something about it. As I said in my second reading speech, I saw what happened at Wilmington and the work those people did, and I have seen the others around the state. I know what has happened, and we all know what is going to happen.

When you fly over Eyre Peninsula and places like that and when you fly over the North, have a look out of the window and you will see the huge banks of scrub through Pinkawillinie Conservation Reserve; they will all go up again because nothing has been done. I rest my case. We have not finished with this. You are going to have to fight this out in the other house, let me tell you, and fight it out we will.

Amendment negatived; clause passed.

Clauses 5 to 14 passed.

New clause 14A.

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

Page 6, after line 17—

After clause 14 insert:

14A—Amendment of section 27—Clearance of native vegetation

(1) Section 27(1)—after paragraph (b) insert:

(c) native vegetation may, subject to subsection (5)(c), be cleared without any other restriction under this act if the clearance falls within the ambit of subsection (4a).

(2) Section 27—after subsection (4) insert:

(4a) The clearance of native vegetation falls within the ambit of this subsection if—

(a) the clearance occurs on pastoral land and is for the purposes of grazing stock, constructing a dam or providing watering points for stock; or

(b) the clearance occurs on pastoral land and is for the purpose of re-establishing land for cropping purposes after a break not exceeding 15 years; or

(c) the clearance—

(i) occurs on land situated within the area of a rural council; and

(ii) is undertaken—

(A) by the rural council in whose area the clearance occurs; or

(B) in accordance with the written approval granted by the rural council in whose area the clearance occurs for the purposes of this paragraph; and

(iii) is reasonably required for fire control purposes and involves—

(A) the construction of fire breaks not exceeding 20 metres in width: or

(B) the construction of vehicular tracks not exceeding 15 metres in width to enable or aid access to particular areas; or

(C) the clearance of vegetation within an area not exceeding 100 hectares through the process commonly known as a cold burn; or

(D) the reduction of the fuel load on land,

and, in the case of the clearance of a kind contemplated by subparagraph (iii)(C) or (D), occurs between 1 March and 31 October in any year; or

(d) the clearance occurs on land situated within the area of a local council and is for the purpose of constructing a dam the water surface area of which does not exceed 10,000 square metres.

(3) Section 27(5)—after paragraph (b) insert:

(c) under subsection (1)(c) unless the minister has given his or her consent to the clearance.

(4) Section 27—after subsection (6) insert:

(7) In this section—

fire control purposes—these are purposes associated with preventing or controlling the spread of fires or potential fires;

rural council has the same meaning as the Foreign Emergency Services Act 2005.

Contrary to what the minister said, this amendment is designed to allow people some sensible latitude in a number of areas. The first is in relation to pastoral lands. What the minister said about extending grazing is not correct. The fact is that pastoralists have a limit on the number of stock that they can graze on their lease. It has always been the purpose. This amendment allows people, if they want to, to put in extra watering points so that the stock do not have to walk as far and are not walking long distances cutting up the community.

If you know anything about the grazing industry—if you had any idea at all—you would realise that this is a conservation measure. Stock will walk a considerable distance to water. Instead of having in the corner four troughs all at the one point you can spread them out.

That was not the case until the government reinterpreted the regulations. The bureaucrats got their way. The previous government would never have agreed to it, and it will not happen in the future. It is going to change, and it is an absolute nonsense of the highest order to say that this is going to be damaging.

Let's go to the next point in relation to dams. The department has itself to blame; it has got the dam in. On Kangaroo Island the NRM parliamentary committee went to look at the site where that particular person wanted to put his dam and then, when he was given permission (after Mr Mutton intervened), those inspectors—those people who do not tell the truth—were going out there to harass him again.

I am looking forward to going to Kangaroo Island, and I will endeavour to visit and we will call that person in and ask him to give evidence. I want to know what role Craig Whisson had to play. I refer the minister to the comments about him by former speaker Lewis, because I know how he treated Helen Mahar out there at Coorabie. You can throw bouquets, but bouquets can be thrown back very easily.

In relation to these proposals, firebreaks and access tracks are absolutely essential. I say to the minister if he would like to do back-burning on a five-metre firebreak, I wish him well because he would probably have no one else to go in with him. I ask his advisers whether they have ever been asked to back-burn in the scrub. You cannot turn around. You cannot turn the truck around if the wind changes and gets you.

So I say, what you are doing is endangering the lives of people. I can give you an example of one night where they had to let go about 5,000 acres because the fire was burning in it and the only way they could do it was because there was a road alongside. The person lighting it has to follow trucks. You have to follow up close but you have to have some distance because the heat is too intense. If you are too close to where it is burning, the heat is too intense.

So the prime objective is to protect the people trying to contain the fire. That is the prime objective of anyone involved, and you need experienced people but you have to give them the tools of the trade. I am someone—and I think the only person probably left in this house—who has lit up a thousand acres of scrub in one go and not had a problem. I know exactly what I am talking about. There have been two or three generations of my family involved in agricultural development, and I actually know what I am talking about.

I know this from bitter experience. You have to be prepared. You have to understand what the wind is going to do. You have to light it at the right time of the afternoon when the wind is stabilised. You have to light it as quickly as possible so that you can get it under control quickly, but you have to have a decent break. You have to be able to move around it. If you put a firebreak in, you have to be able to get in there quick and people have to be able to get out.

I say to the minister that that is the purpose of these amendments that I have moved. They are purely in the interests of protecting firefighters and protecting the public. If the local council does not know what is right—they are elected people unlike the Native Vegetation Council who are appointed—and if they make a mistake, they will be removed.

This chamber has responsibility among other things to apply common sense and to make sure that the people of the state are protected, that the people of this state are not endangered by bureaucratic insensitivity, and those who are going to oppose this and are going to stop it are going to have to wear it. The minister is going to have another fight elsewhere over this matter and he has not put forward any alternative to what I have had to say. I put it to him that he is the minister and I expect him to have a better grasp of the situation than his predecessor. I pay the minister that compliment, because I tried to talk to his predecessor and, in my time in this place, I found it one of the most challenging enterprises I have encountered, and that is the nicest way I can put it.

Mr Venning interjecting:

The Hon. G.M. GUNN: It was a challenging enterprise. I feel strongly about these issues because I am concerned. I have seen it first-hand. I have been around for a few years. I know what will happen. I do not want to see that tremendous dislocation to the community—the cost, the danger—when we can take some sensible steps to prevent it and make it a little easier. At the end of the day, I will have a very clear conscience. I have a very clear conscience about what I am doing, but I intend to pursue this matter across the airwaves of this state, make no mistake about it. I intend on Friday to tell the people of the Upper North exactly what is happening and what can happen and give them a chance. We will make sure that the people of Frome understand clearly that the right to protect them is being denied. We will put it across the airwaves of the local TV, make no mistake about that. My colleagues will not forget, because the winds of political change are blowing.

The Hon. J.W. WEATHERILL: I am trying to avoid the provocation of the member for Stuart, which really amounts to suggesting that we have turned our backs on the health and safety of people in the country by simply not agreeing with his propositions. I must say that that is a pretty offensive suggestion. He can warn all he likes, but it does not change the fact that we have taken seriously the bushfire threat in relation to the way in which the Native Vegetation Act operates to make it more difficult or more complex than it should otherwise be to deal with that bushfire threat.

We have listened carefully to those matters and we have responded to them. No amount of fulminating by the member for Stuart about the fact that we will be blamed for any bushfire and that it will be sheeted at our feet will alter those basic facts. It is simply wrong to say that we do not have these matters firmly in the forefront of our mind. I might just add for those members paying any attention that this debate is happening on the very day when we are being criticised by the shadow minister for the environment for an increase in the number of rare and endangered species and threats to our native flora and fauna over the last five years, and much was made of that.

There is an important connection between protecting native vegetation, the habitat for these native plants and wildlife and the relative health of those various species. It is quite bizarre to come in here and be criticised by the member for Stuart for trying to adopt a balanced approach in relation to native vegetation, but also, in the same chamber on the same day, being criticised by the shadow minister for the environment for apparently not taking steps to protect native plants and wildlife which use the very same native vegetation for their habitat. So, there is a massive inconsistency all within the space of one day, but we have come to understand and expect that.

Really, the amendments of the member for Stuart come down to the fact that they are all relatively sensible ideas that can occur at the moment under the existing legislation; it is just that it must happen in a planned way. All these things can be achieved. You can have firebreaks of the distance sought by the member for Stuart, and you can have farm dams of the size sought by the member for Stuart. All these things can be achieved. You can also have separate watering points, as suggested by the member for Stuart. In fact, there may be cases where it is desirable to have a separate watering point if that will reduce the burden on the particular area in question, but it will also bring in stock to an area which potentially has not been grazed before and that will affect the native vegetation in that area.

From a balanced assessment, one may reach the conclusion that that is a sensible thing to do but, nevertheless, it needs a planned approach. What you are suggesting by these amendments is that all these things can occur as of right by a decision of the landholder without any further reference to any body which will attempt to scrutinise that decision. Consequently, we will not know

what effect this is having on native vegetation. We simply will not have that information because it will not fall within the scope of actions which are required to be authorised.

All we are suggesting is for a planned approach to occur. It ought to be the subject of local planning. We are trying to make that as simple as possible. There should be no barrier to people taking the steps necessary to protect their property and their families' safety. One can go no further than the chief of the CFS. He was asked whether the changes to the Native Vegetation Act were satisfactory and whether they addressed the concerns he had told the parliamentary committee about earlier, and he said that they had. I rely upon the head of the CFS and his assessment of these matters. It is unfortunate that the member for Stuart is seeking to introduce these matters in a political way and seeking to make them the subject of the debate in the by-election, but I am more than happy to debate him anywhere at any time on these issues.

The Hon. G.M. GUNN: It is interesting that the minister discussed the need to ensure that native vegetation was available for various species, because the Aboriginal communities, for that very purpose, used to fire very large sections of the country to force regeneration so that the native animals could have fresh grazing. That was a part of their lifestyle. It does not hurt native vegetation to cold burn it. I can tell you, as I pointed out earlier, there would be no native vegetation left in South Australia if burning destroyed it because it has all been burnt in the past.

The unfortunate thing is that large sections will burn again because, over the past 15 years or so, hazard reduction programs have not been put in place. People used to burn it prior to that. It is now going up with bigger areas, with more intensity, unfortunately, so it will happen. I have stated my case. I have done it with a clear conscience. The minister can get cross with me. I am used to ministers getting cross with me. I have had ministers on both sides of politics get cross with me on many occasions and I will wear that. I must have done something right, I have come back here 12 times.

They have got very cross with me and jumped up and down, but that is okay. All I have tried to do is to apply some common sense and have fewer bureaucracies so that people perform these sensible preventative measures without hindrance or without being harassed. At the end of the day, my only concern is the protection of the public of South Australia against the ravages of wildfires and bushfires. If I have upset people, that is not my intention: my intention is to use some common sense. I will continue to fight these issues as long as I am in this place and I look forward to my colleagues doing something about them.

Mr WILLIAMS: I think the minister's advice overlooks exactly what happens on pastoral leases. My colleague the member for Stuart did make the point that the amount of livestock that a pastoralist can run on their lease is determined by the lease and it is monitored. What we have in a lot of the pastoral area is the invasion by woody weeds into grazing areas, and that has occurred principally from overgrazing. Overgrazing occurs because a pastoralist is forced to hold his livestock on a particular section of the lease and not enable them to cover the whole of the lease.

The landscape of Australia and the native species growing here are used to being grazed. Part of their life cycle is being grazed, and that is why sheep and cattle are successfully grazed, raised, grown and fattened to produce meat and fibre in that landscape, but what the member for Stuart is trying to do is to make that system more efficient so that the grazing impact will be less, not more.

I suspect that there are people within the minister's department who do not understand that, and I suspect that there are possibly people in his department who would like to see the pastoral industry closed down, and I suspect that is why the minister gets the advice that he does. I do not expect the minister to change his mind overnight, but I would ask him at some time—hopefully sooner rather than later—to go out and talk to some of the pastoralists about this and get a decent understanding of what the member for Stuart's intention is here. His intent is not to increase the net grazing pressure. His intent is to be able to spread that so the impact is lessened. That is a very important point, and I think it is a sound point that the member for Stuart makes in that amendment.

I will talk a little about fire and in the second reading I alluded to the fires in the Ngarkat Conservation Park. Just before the last election in 2006, the member for Hammond and I attended a number of meetings. We attended a meeting at a farmer's property with a number of farmers and we attended a public meeting a little while later at Lameroo, I think it was. I was absolutely amazed that a CFS officer, who was in the control centre—and I think I am right in saying that he was actually the senior CFS officer at the time and was probably responsible for the effort to control that

fire—when asked why permission was not given to allow back-burning, made a statement that officers of the minister's department, who were in the control room, intimated that permission to back-burn had to come from the minister, that it would take a couple of hours to get that permission and that it would be pointless, because there was a wind change due and there was a small window of opportunity.

Because that CFS officer accepted that advice, the permission to back-burn was not given. As a direct result of that, a considerable amount of private property was lost. More importantly—and this is one of the things that annoys me—generally, when a fire occurs in a national park, we receive a statement from the minister's department saying, 'We've done a good job because no property was lost.' Why do we have national parks? I think that they are property and I think they are valuable, so I do not think that we should differentiate between fire damage caused inside a park or outside a park. If it is inside a park it is probably more devastating, or—depending exactly when the fire is—possibly more devastating than it is outside the park, in certain circumstances. Notwithstanding that, officers of the minister's department, I believe, deliberately misled that particular fire control officer, or person who was responsible for the control effort of that fire in that situation.

As a result of that, significant private loss was incurred. As the member for Hammond pointed out, the loss of fencing still has not been compensated for by the government. Just as importantly, if not more importantly, it caused incredible loss within that park. Whereas a well organised back-burn effort would have resulted in a much cooler fire and potentially the considerable saving of both flora and fauna in that park.

I think, minister, that you are possibly receiving advice from some people who have a particular attitude towards fires, particularly within our parks system, which does not necessarily reflect the absolute best way of managing those parks.

The member for Stuart makes some very sound points in the amendments that he has put before the house about how we can and should be doing more to lessen the impact of fire in our national parks. I think that we should be thinking about the impact of fire within our parks. What always comes out of the department is, 'The fire was contained within the park. It didn't cause any loss of private property.' The point is that it is causing great damage within the parks. We, I believe, to this point in time have failed to protect our parks from fire.

One of the ways that we will protect our parks from fire is to make sure that we have a good workable relationship with the CFS and the farming community because, by and large, when a fire breaks out in a park they are the only people who are going to go in there and try to put it out. If we do not have a good relationship between the management of the park and the CFS and the local farming community (generally the same people), if that relationship continues to break down, the parks will not survive, and I think that is the wrong way to go.

The amendments that the member for Stuart is putting forward are, I think, very sensible and at the end of the day would see us have a much better control of fires, particularly wildfires, in our parks system.

Again, minister, I would ask you to go out and speak with some of the farming communities. If you speak with some of the farmers on the northern edge of the Ngarkat Park (the member for Hammond's electorate), if you speak with some of the farmers who were impacted and who were down fighting the fire on Kangaroo Island, if you speak with some of the farmers near Wanilla and around Port Lincoln, then I think you will get an understanding of what their expectations are of the Native Vegetation Act and how it could be improved to give them a better opportunity to save our national parks.

New clause negatived.

Remaining clauses (15 to 21), schedule and title passed.

Bill reported without amendment.

Bill read a third time and passed.

[Sitting extended beyond 18:00 on motion of Hon. J.W. Weatherill]

UNIVERSITY OF SOUTH AUSTRALIA (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 12 November 2008. Page 909.)

Mr PISONI (Unley) (17:55): This bill has been introduced to address changes to the act sought by the university council and agreed upon by that body. It also brings the University of South Australia Act into line with acts of South Australia's other universities. Importantly, the Liberal Party notes the broad support after consultation for these amendments from groups represented by the university's council.

The opposition is happy to support the bill as a contribution to the efficiency and effectiveness of the university's governance system, delivering greater streamlining of their council processes and providing a focused and businesslike approach and style. In this regard, the changes reflect the ethos of reform and greater efficiency in Australia's tertiary institutions fostered under the previous federal Liberal government. I am heartened to see that both the state and federal Labor governments are picking up on these themes of efficiency, accountability and greater focus on the issues of quality in decision making and leadership in education. The end result will hopefully be improved academic outcomes for students.

The dual objectives of achieving time-honoured high standards of academic achievement and more effective and viable operating practices at universities can, and should, be realised hand in hand. They are not mutually exclusive. Similarly, the university will retain its useful blend of both experts in their field and representatives of the affected interest groups, such as students, staff and the general community with the same proportional representation but in a more manageable and focused format.

The University of South Australia Act was first established in 1991, with the merger of the South Australian Institute of Technology and the three South Australian College of Advanced Education campuses. Prior to that, its long education pedigree reaches back through the Adelaide Technical High School and the South Australian School of Mines and Industries merger in 1960, to origins in the earliest years of the colony and the establishment of the South Australian School of Art in 1856.

As the South Australian School of Art, or by other names it has been known as in the past 150 years—such as the School of Design and School of Arts and Crafts—it has blazed a trail for women in Australian education, appointing the first female teacher of painting, Elizabeth Armstrong, in 1892 and having a majority of talented female staff since. Well over half of the University of South Australia's employees overall are women.

In 2003, the university was named Employer of Choice for Women by the Australian government's Equal Opportunities in the Workplace Agency, and it has continued to receive the award since. The University of South Australia today also trains many of our young teachers. The first South Australian teacher training college, The Training School, was established in 1876—the year, incidentally, of Custer's Last Stand at the Battle of the Little Bighorn.

Surrounded, outnumbered and running low on political ammunition to deal with the state's public school teachers, I imagine that the minister would be able to empathise with General Custer's situation at that time. The point is that, while the School of Education at UniSA continues the tradition of preparing high-quality teaching graduates, these graduates would like to be more appreciated by their employer—the state government—than is currently the case.

The university itself has produced thousands of graduates who have taken their knowledge into the South Australian community and, of course, far beyond, to contribute in a positive way in their chosen careers and, more generally, as educated world citizens.

Without doubt, many students from overseas who have studied at the university and have lived amongst us here, take back to their country of origin not only valuable qualifications, but a positive view of our state and fond memories of their time here. In this way, our educational institutions, such as the University of South Australia, project a contribution far beyond our borders and our shores, positively influencing our integration as a cog in the world community.

On that note, I would like to make mention of David Unaipon College of Indigenous Education and Research, established in 2007, which will play an increasingly integral role in making possible the university's commitment to indigenous education and, in fact, in 1992, the university was the first in Australia to have a faculty of Aboriginal and Torres Strait Islander Studies.

The broader effect of the work of the university in terms of the contribution of its graduates can be gauged by the long list of high achievers, some of whom are household names in South Australia such as the current chair of the Education Adelaide Board, Bill Spurr, and sporting hero Rachel Sporn. The opposition supports these amendments to the University of South Australia as an active contribution to the efficiency and effectiveness of the university's governance system in the hope that it assists the university in its ongoing role of producing quality graduates in the fields of business, education, arts and science, and a full range of endeavours for students to embark on their lives and careers.

The Hon. P. CAICA (Colton—Minister for Industrial Relations, Minister for Employment, Training and Further Education, Minister for Science and Information Economy, Minister for Youth, Minister for Volunteers) (18:01): I will not necessarily respond to some of the more provocative things that were raised by the honourable member but I do thank him in the main for his contribution. I think the debate on this bill has reflected again, in the main, the high degree of bipartisanship. It is an indication of the general recognition that the minor amendments to the University of South Australia Act 1990, which guides that outstanding learning and educational institution, will modernise the legislation and bring it more closely into line with legislation for other universities.

In concluding this debate, I highlight that the consultations conducted with all university staff and students to various members of parliament and their relevant student and education unions about particular aspects of the bill have generally focused on the amendment to the constitution of the university council and the reductions that were highlighted previously in my second reading explanation and again by the honourable member for Unley.

I am not intending to hold the house for any longer than need be but, in coming to the decision, it was certainly the strong view of the majority of university council members, and in particular the community council members who have extensive experience on business industry, community and government boards, that the smaller council will benefit the university.

Sir, you might be interested to know that nine other universities in Australia have similar or smaller numbers on their council or senate as that which is proposed in this amendment. Importantly, these changes maintain representational proportions, as was highlighted amongst community staff and student members. In commending the UniSA Council and its willingness to embrace change and to ensure the ongoing success of the university, I also thank the opposition for its support and our officers for their work that was undertaken in the preparation of this bill.

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

MATTER OF PRIVILEGE

The SPEAKER (18:04): I refer to the matter of privilege raised by the Deputy Leader of the Opposition in relation to an inconsistency between the answer the Minister for Health provided to a question without notice this afternoon and the contents of papers tabled in this house yesterday in relation to the remediation of both the Royal Adelaide Hospital site and the Marjorie Jackson-Nelson Hospital site and the effect that such works will have on the Parklands. First, I make the observation again that an inconsistency in the statements made by members or between the statements of members and documents available to the house is not of itself a matter of privilege. The test for a matter of privilege that this house recognises would require, in this case, that the minister was deliberately seeking to mislead the house and the matter could, to quote McGee in *Parliamentary Practice in New Zealand*, 'generally be regarded as tending to impede or obstruct the house in the discharge of its duties'.

In this instance, some regard needs to be paid to the nature of the question asked of the minister by the member for Norwood. The member for Norwood asked the minister: how will the construction of the Marjorie Jackson-Nelson Hospital provide some more open space for South Australians to enjoy? I do not see that the minister's answer was so different from the content of the tabled papers quoted by the deputy leader as to 'genuinely be regarded as tending to impede or obstruct the house from discharge of its duties'.

It is incumbent upon the deputy leader, the minister, or any other member, to draw to the attention of the house any inconsistency in information provided to the house. There are numerous opportunities available to all members to do so, and such matters are capable of being debated. For these reasons, I do not propose to give the precedence which would enable any member to pursue this matter immediately as a matter of privilege. This decision does not prevent the deputy

leader, or any other member, from proceeding with the motion on the specific matter by giving notice in the usual way.

CIVIL LIABILITY (FOOD DONORS AND DISTRIBUTORS) AMENDMENT BILL

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

No. 1. Clause 1, page 2, line 3—

Delete "*Food Donors and Distributors*" and substitute:

Charitable Donations

No. 2. Clause 4, page 2, line 13 [inserted heading to Division 11A]—

Delete the heading and substitute:

Division 11A—Charitable donations

No. 3. Clause 4, page 3, after line 10—

After inserted section 74A insert:

74B—Provision of other goods and services for charitable or benevolent purpose

(1) A person incurs no civil liability for loss of life or personal injury or damage to property arising from the provision of goods or services to another if, in providing the goods or services, the person acted—

(a) without expectation of payment or other consideration; and

(b) for a charitable or benevolent purpose; and

(c) with the intention that the consumer of the goods or services would not have to pay for them.

(2) The immunity extends to the agents and employees of the person providing the goods or services.

(3) However, the immunity does not operate in the following cases:

(a) in the case of goods—if the person knew or was recklessly indifferent to the fact that when the goods left the possession or control of the person they were in a state likely to cause harm to a consumer of the goods or to the property of a consumer of the goods;

(b) in the case of services—if the person knew or was recklessly indifferent to the fact that the services were provided in a manner likely to cause harm to a consumer of the services or to the property of a consumer of the services;

(c) in respect of a liability that falls within the ambit of a scheme of compulsory third-party motor vehicle insurance;

(d) if the ability of the person who personally provided the goods or services was, at the relevant time, significantly impaired by a drug (including alcohol) consumed voluntarily for non-medicinal purposes.

(4) The Minister must, as soon as practicable after the second anniversary of the commencement of this section—

(a) cause a report to be prepared on the operation of this section; and

(b) cause a copy of the report to be laid before each House of Parliament.

(5) This section does not apply to the donation or distribution of food (see section 74A).

(6) In this section—

goods means substances or articles.

Consideration in committee.

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

That the Legislative Council's amendments be disagreed to.

This bill has been amended in another place. The government opposes these amendments. They would reduce the current legal protection of the most vulnerable people in our society without any evidence that it will produce a corresponding benefit. Before doing such a thing, we should hear what the public has to say about it. We should also find out whether, in exchange for these lost

protections, proposed to be removed by the Liberal Party, we will gain a large increase in donations of goods and services. At this stage, that is a hypothesis.

What these amendments seek to do is protect anyone who provides goods or services to another person without expecting payment for a charitable purpose as long as the person intends that the consumer should not have to pay for the goods or services. The purported protection would extend to property damages as well as injury or death.

This proposal includes the provision of any goods—motor vehicles, power tools, furniture, building supplies (anything at all)—and also any services. The proposal is that the provider of the goods or services should be liable only for reckless indifference, not for negligence.

The government's bill was introduced after carefully weighing the risks and benefits and after much work to satisfy the South Australian Council of Social Service about its merits. What determined us to do this was that we have reason to think that quantities of safe food are being wasted in South Australia because potential donors fear legal liability. Food is perishable. If a restaurant or a caterer prepares more food than is sold on a given day, the options are either to waste the food or to donate it.

The aim of the bill is to tilt the balance in favour of donation. We looked at the interstate experience and the substantial increase in donation of safe food that has resulted there because of similar laws. We believe that, on balance, it is worth adjusting the standard of care in this field because, since most donors will be businesses that are experienced in handling food, the risk of harm appears low even if the standard of care is reduced.

The detriment of this adjustment will be outweighed by the expected large increase in donations, so we believe. The bill, however, proposes a two-year review to see whether we are right about that. We know that SACOSS will monitor the results of the bill. The government would be most concerned, however, at the entrenchment of a lower standard of care towards the poor right across the board, as proposed by the member for Davenport and the Liberal Party. We would like at least some public consultation.

For example, what about services provided by public hospitals? It is entirely possible that such services are covered by these amendments. The provision of gratis medical care to the public is very likely a charitable or benevolent purpose. Does that mean that the public patient should not expect the same standard of medical care as those who can pay? If the public patient is injured by medical negligence, why should the hospital not be liable? Is that what the Liberal Party really wants?

What about the private school that accepts both fee-paying students and also a small number of scholarship students for whom fees are waived? At present, a school owes a duty to take reasonable care for the safety of all its students. Why should it not have to take the same care for scholarship students as for those who pay?

Consider the mechanic who, for no fee, services a vehicle used by a charity. Should he not have to take just the same care as he does for his paying customers? The only justification for creating these risks could be if we were confident that the immunity would lead professionals and traders to donate many more services. As yet, we do not have the evidence that they will.

Do we really expect that public hospitals will provide more medical services if we pass this bill; that schools will offer more scholarships; that plumbers, carpenters, painters and builders will start setting aside more time to provide free services to the disadvantaged? Well, perhaps they might, but we just do not know, because no work has been done to find out. Services, by their very nature, are unlikely to be wasted.

An unfilled appointment is, for most professionals, an opportunity to catch up on other work rather than time likely to be given away or wasted. The shelf life of imperishable goods is indefinite and, if a trader has ordered in a large quantity, it is a matter of waiting for the items to sell or perhaps discounting them or returning them to the supplier, depending on the terms of trade. Where, then, is the evidence that donations of goods and services will increase so substantially that it is worth lowering the standard of care? How do we know that it is fear of legal liability that is the real barrier to donation of these goods?

We just do not know that and, before proceeding with a measure like this, we should take the trouble to find out. That is what good legislating is about. It is not about a smart alec amendment tacked onto a government bill for the purposes of issuing a press release. Keep in

mind that many of these traders will carry insurance that might well cover all of the services they provide in the course of their business, whether or not they are paid for.

For example, the private school's insurance almost certainly covers the fee-paying students and the scholarship students equally. In that case, all this amendment does is shift the loss caused by the service providers' negligence from an insurer, who has taken a premium to assume the risk, to the charity or the poor person receiving the service. Where is the merit in that? What will happen if this parliament passes these amendments and next year an electrician makes a careless mistake in rewiring, say, a women's shelter? Suppose that a child staying in the shelter touches a wire that has carelessly been left live and suffers permanent injury. Unless the child's guardian can prove that the electrician either knew of or was recklessly indifferent to the danger there will be no legal recourse. The parents will bear the loss, even if the tradesman is fully insured for such risk. What will the public of South Australia think of their legislators after that? Will they be satisfied that—as the member for Davenport argues—it seemed like a good idea at the time? There ought to be wide—

The Hon. I.F. Evans: Show me that in *Hansard.*

The Hon. M.J. ATKINSON: Sorry?

The Hon. I.F. Evans: Show me that quote in *Hansard*.

The ACTING CHAIR (Ms Breuer): Order!

The Hon. M.J. ATKINSON: No; I did not quote you: I summarised in layman's terms the effect of your contribution—no quotes around that. There ought to be a wide consultation if the proposal is to go further. The government has, between the houses, invited SACOSS to comment on the opposition amendments in their earlier form, but SACOSS has declined to do so. SACOSS tells us that more investigation by its staff, in consultation with its members and within the wider community sector, would be required before it could form a position. That is an entirely prudent response, and the house should learn from it. As introduced, the bill deals only with donation of food. It seeks to stop the appalling waste of good food that goes on every day at the moment because donors fear legal liability.

The government has reason to believe that the bill as introduced can immediately and substantially reduce that wastage. That is what we have seen happen with similar laws in Victoria. The industry tells us that it will happen here. It would be most unfortunate, especially at this season of the year and with parliament about to rise for the summer recess, if the parliament did not see fit to pass this bill in its present form. That is not to say that the government will not consider extending legal protection to the donors of other things. We are certainly prepared to examine the issue.

The government proposes that the bill should not now be amended. Instead, the government offers that, if the bill is passed unamended, it will, by June 2009, publish a discussion paper inviting comment from any interested person or organisation on any legislative action that could be taken to increase the donation of goods and services and the making available of premises for charitable or benevolent purposes without unacceptably increasing the risk to the safety of recipients. The paper would solicit comment on the effects of such possible amendments on charities and other non-profit organisations, their donors, their insurers and the recipients of charity.

The government further proposes that, after analysing and weighing all submissions received, it should publish a report by the end of October 2009 setting out its conclusions on what reforms should be made and its reasons. If the report proposes reforms, it shall also include the government's proposed timetable for reform. For those reasons, the government opposes the amendments. The opposition amendments might be well meaning, they are also naive and represent a headlong charge in indecent haste. They render irrelevant the views of interested parties.

Worse still, the failure to consult puts at risk the most vulnerable in our society. At the same time it delays a bill that can do enormous immediate good where it is most needed. We know from Foodbank Australia that the time to increase food donations is right now. The global financial crisis has already hit those in need in South Australia. Foodbank Australia also tells us that nationally the July to September quarter is the first quarter on record that it has experienced a reduction in donations.

By comparison, for the past four years they have enjoyed 23 per cent compound growth year on year—and the member for Kavel would know all about that as a banker. Never before has food bank seen such a close and immediate link between economic and social circumstances, and this is the time that the opposition wants to turn our charities and their beneficiaries into laboratory mice.

The Hon. I.F. Evans: That is a lie.

The Hon. M.J. ATKINSON: Madam Acting Chair, I ask that the member for Davenport withdraw the last interjection which was, 'That is a lie.'

The ACTING CHAIR: Member for Davenport, that is unparliamentary. Could you withdraw the comment?

The Hon. I.F. EVANS: Yes, it is. I meant to say, 'That is a deliberate untruth,' and I withdraw the word 'lie'.

The Hon. M.J. ATKINSON: These amendments may have merit, who knows. The opposition certainly does not know—at best it is guessing. It proposes to wing it and make these amendments law without even asking those who will be affected so immediately and directly. They want to foist untried legislation on the vulnerable of our state with a cavalier view that we can fix it as we go along or we can fix it when something goes wrong. Try justifying that stance to the mother of the first child to suffer harm when she finds that her legal recourse has been cut off by the amendment of the member for Davenport.

Other states have adopted similar food donor legislation to what we are proposing. Victoria did so in 2002. Since then, New South Wales, Western Australia, Tasmania and the ACT have all passed similar laws. Food donations have increased and those in need have benefited. No other state has even thought to put forward the untested proposals being suggested by the member for Davenport and the Liberal Party.

The vulnerable in South Australia deserve better: they do not deserve to be made guinea pigs or laboratory mice by the member for Davenport and the Liberal opposition. We have a mere 29 days until Christmas and the opposition looks to delay the legislation that could mean so much for so many. This proposed legislation rightly renders the Liberal opposition as the scrooge who spoilt Christmas.

The Hon. I.F. EVANS: Let me correct the record because what the Attorney just put on the record was rubbish.

The Hon. P.L. White: What are you doing?

The Hon. I.F. EVANS: I will tell you, member for Taylor. I will tell you the history of this so that it is clear for the record. The Liberal opposition supports the government's bill. The bill allows restaurants and food providers to donate food to charitable purposes at no cost for a lesser care. They get the benefit of lesser care. The Attorney makes an impassioned argument about what happens when the first death occurs under the opposition's amendment. Attorney, what happens when the first death occurs through food poisoning and you confront the mother of the child who dies of food poisoning? I refer to the food poisoning in Hahndorf this year when three people died. Food poisoning is a huge risk, a far greater risk than carpentry or plumbing, and arguably—

The Hon. M.J. Atkinson interjecting:

The Hon. I.F. EVANS: Yes, arguably. Both of our solutions have risks. I make it crystal clear to the parliament what the opposition is putting to the Attorney tonight. We seek to cooperate with the government in getting the bill through, and the member for Taylor and others can listen to this. We were contacted by the Attorney's office about three weeks ago (I think it was the Thursday of the last week of sitting) seeking to discuss the opposition's amendments.

I had a meeting with Bill Denny and Katherine O'Neill, and I listened to their argument. I reminded them that I had publicly consulted with the Law Society who put in writing that they had no problem with our amendment. I suggested to them that I would go to parliamentary counsel and get other amendments drafted. I was happy to sit down any time from that day on with the Attorney personally or his officers and work through the issues.

I heard nothing, as the lead speaker for the opposition and the proponent of the amendments, until I rang Bill Denny on Tuesday (yesterday), saying, 'I notice it's on the upper house program for this week to be voted on. Don't you want to talk about any amendments, or any

adjustments, or any solutions to the issues you raise?' So, where was the great, sincere approach from the government to sit down with the opposition to try to work through the issues?

I spoke to Robert Lawson in the other place and had some amendments drafted last night to provide an olive branch to the parliament and to the Attorney, and the amendments are in a new form, as the Attorney knows. The new form of the amendment is this: that the government's provisions in the bill are separated out in different clauses—

The Hon. M.J. Atkinson: There is no olive branch on your beat.

The Hon. I.F. EVANS: Actually, there are lots of olives because the department for the environment does not clean them out of the parks. The government's amendments are put into separate clauses. The opposition's amendments are put into separate clauses. Attorney, I make this offer to you on the record: the opposition will not criticise the government if it passes the legislation in its current form and not proclaim the opposition clauses until the program you outlined in your speech, that is, the discussion paper, the public consultation, is dealt with and then you can come back in and explain why those clauses need to be withdrawn—

The Hon. M.J. Atkinson: That is infantile legislation.

The Hon. I.F. EVANS: Hang on; it is not, because—

The Hon. M.J. Atkinson: Infantile.

The Hon. I.F. EVANS: No; it's not and I will explain why it is not. First, the legislation goes through the night and the food is donated. There is no greater risk in what I am proposing to anyone, but the only difference is this, Attorney: a future parliament would have to take those clauses out, rather than a future parliament having to put them in. The reason I think that is—

The Hon. M.J. Atkinson: So it is advantage Iain.

The Hon. I.F. EVANS: No; the reason for that is simply this: why should the opposition trust the government on a private member's matter when, only two weeks ago, the government chose not to debate my bill on trying to get more money for victims—which I have offered to sit down and talk with you about over the Christmas break, which I understand we are doing—and brought on an issue about Marble Hill? I cannot be more sincere in my offer. I will not criticise you publicly; the bill will go through. My clauses will—

The Hon. M.J. Atkinson: No; you've already done that.

The Hon. I.F. EVANS: I have not criticised you publicly on this at all. There has not been one public statement of criticism on this about you at all. I have deliberately not done it and I have deliberately not done it, Attorney, because for 25 years I have worked in community groups that have sought this type of change. I was national president of a service organisation. I was on the National Service Association Committee, which has always sought this change—

The Hon. M.J. Atkinson: You were in government five years.

The Hon. I.F. EVANS: Yes; and I brought in volunteer protection legislation—

The Hon. M.J. Atkinson: Not this.

The Hon. I.F. EVANS: No; because it had not been thought of and we tried to work it through. Here is an opportunity—

The Hon. M.J. Atkinson interjecting:

The Hon. I.F. EVANS: No; they sought the principle, Attorney, of limiting their risk. This is an evolving debate and all I am saying to the Attorney is that the opposition, in good faith, will support the Attorney's bill; will not criticise the Attorney during the timetable he has set out, if we leave the clauses in. Just do not proclaim them. Do the public consultation and then the government of the day can come back to the parliament and explain why they need to be amended or possibly withdrawn.

I cannot make a fairer offer than that and it is just petty politics to say, 'No, we want to withdraw them, go through the consultation process and then put them back in.' What opposition is going to believe that a government is going to put them back in? Why would we believe that a government is going to put them back in? If you do not accept the offer, all I am saying is take them out at a future date, if the consultation shows that it is unworkable. But I say, Attorney, that I cannot

be more sincere in my offer. I have no wish to have the house sit in a conference tonight or tomorrow—

The Hon. M.J. Atkinson: You will not need a conference if it goes through.

The Hon. I.F. EVANS: Possibly. All I am saying to you is that I make a genuine offer: there will be no criticism of the government, the clauses that cause the Attorney concern will not be proclaimed, the consultation—

The Hon. M.J. Atkinson: I could be so good for you.

The Hon. I.F. EVANS: Honestly, Michael, if I wanted to belt you on this I would have been on radio every day for the past three weeks belting you. I have not done that. Ask Bill Denny and Katherine O'Neill, I offered to meet any day, day and night, in the past two weeks to solve this. This is a matter of great personal interest to me and has been for over 20 years. If you do not take my word for it, fine, but I think, Attorney, that in my 15 years here I have never dudded my word with you. Every time I have made a deal it has stuck.

The Hon. M.J. Atkinson: I seem to recall a Dorothy Dix circa 2001.

The Hon. I.F. EVANS: No, that was not me.

The Hon. M.J. Atkinson: Yes, it was. You were the minister

The Hon. I.F. EVANS: I did not organise the Dorothy Dix.

The Hon. M.J. Atkinson: No, but you answered it just as you were told.

The Hon. I.F. EVANS: No, I answered it how I wanted. You have to answer questions; even your ministers understand that they have to answer questions. Attorney, I make that offer. I do not accept some of the arguments put forward.

Let us walk through some of the Attorney's arguments. The Attorney says that there will be a lower level of care. The Attorney freely says that the restaurant industry is going to get a lower level of care. I argue that if restaurants get a lower level of care food poisoning can occur, and the argument about fronting up to the parents of a child who has died, or a mother who has died, is exactly the same argument. There is a risk in this, we accept that.

Garibaldi is a good example of food poisoning causing deaths, and there is the latest incident in Hahndorf. History is littered with people dying of food poisoning. The Attorney raises the issue of insurance. The restaurant industry can insure for their risk like any other business; there is no difference, and I am not convinced that the principle is not right.

All I am trying to do is offer a solution to the house which I think is reasonable. I see no reason at all why a food business should receive a different level of protection than anyone else who wishes to donate. Just as food is important—and the opposition recognises that food donations are important—so to the provision of emergency shelter is important. Rotary provide shelter boxes all around the world in times of natural disaster and in times of fire. Why is that going to be placed at a higher risk than food donations? The donation of shelter and of a whole range of things are just as important as the donation of food.

The Attorney has previously stated on the record that he supports the principle but there are some issues. Attorney, the only difference you and I have is this: I say leave the amendments in, do not proclaim them, and we will see you at the end of your process and I guarantee the opposition will not publicly criticise the government for that. You say take them out and some day down the track a future parliament might put them in.

The Hon. M.J. Atkinson: Next year.

The Hon. I.F. EVANS: Well, given the government's record on private members' time, why would the opposition believe that?

The Hon. M.J. Atkinson: It is a standing record on private members' time. There is more of it than there ever was under your government.

The Hon. I.F. EVANS: Well, I have made my case. I have made that offer in all sincerity. I have no wish to hold the parliament up tomorrow, before Christmas, or tonight. I am happy to sit here in conference as long as it takes, because I think our offer is reasonable. I say to the Attorney that I am particularly annoyed that your officers contact me, in good faith they say, and I take them on their word.

I have worked with Katherine O'Neill, she is a good officer. I have met Bill Denny once, and that once was when, in good faith, they met with me seeking my cooperation. I offered my cooperation. I offered to meet any time over two weeks to resolve this issue. I do not get the decency of an email, a phone call, a fax or a letter. I do not get anything. All the opposition gets is a faxed program to the upper house saying that it is going to be debated. I ring Bill Denny and he says, 'It's going to be debated up there. We'll see you in the chamber.' Where was the good faith on behalf of the government?

You say to take you on your word that you will introduce it in two years. The example of the last two weeks is that the government did not even want to discuss it. Robert Lawson and I made ourselves available, and we were absolutely, flatly ignored. Attorney, I will make you the offer. I cannot be any more genuine than that. I think the opposition has acted very honourably on this particular issue, very honourably indeed. I do not think that we deserve the treatment that we are getting on this issue, because we both support the same principle. I have offered a very logical solution to the issue. I ask the Attorney to withdraw his motion and accept the amendments so that the house can deal with it as I have outlined.

Motion carried.

STATUTES AMENDMENT (BULK GOODS) BILL

The Legislative Council agreed to the bill without any amendment.

At 18:38 the house adjourned until Thursday 27 November 2008 at 10:30.