LEGISLATIVE COUNCIL

Monday 19 August 2002

The PRESIDENT (Hon. R.R. Roberts) took the chair at 2.15 p.m. and read prayers.

ASSENT TO BILLS

Her Excellency the Governor, by message, intimated her assent to the following bills:

Agricultural and Veterinary Chemicals (South Australia) (Administrative Actions) Amendment,

Child Protection Review (Powers and Immunities),

Education (Compulsory Education Age) Amendment,

Gaming Machines (Limitation of Exception to Freeze) Amendment,

Liquor Licensing (Miscellaneous) Amendment,

National Wine Centre (Restructuring and Leasing Arrangements),

Seeds Act Repeal.

QUESTIONS ON NOTICE

The PRESIDENT: I direct that written answers to the following questions, as detailed in the schedule that I now table, be distributed and printed in *Hansard*: Nos 22, 23, 25, 28 to 32, 34 to 37 and 40.

ELECTRICITY, PRIVATISATION

22. **The Hon. A.J. REDFORD:** What meetings did the Minister for Energy and/or the Premier have with the business community and privatised electricity utilities to try to remedy 'the very difficult conditions of the privatised electricity market in South Australia' as advised to the Legislative Council on 27 May 2002 setting out—

1. With whom did such meetings take place?
2. Whether the Premier, Minister for Energy, or both, were present?
3. The dates of such meetings?
4. The topics at each such meeting?
5. (a) What business leaders and heads of privatised electricity utilities met together (if at all);
   (b) When did the meetings take place; and
   (c) What was discussed?

The Hon. P. HOLLOWAY: The Minister for Police has provided the following information:

Minister Conlon and the Premier have met jointly and individually with a significant number of representatives of companies that operate in the privatised electricity industry in South Australia, including retailers, generators, transmission companies, distribution companies and consumers.

The dates of these meetings range from before the Government was sworn in until the present day and the Government is committed to an ongoing program of consultation and negotiation with the energy industry.

The topics of these meetings are largely confidential at the request of these companies, but include in general terms addressing the problems faced with the supply and cost of electricity and gas to this State.

KENO

23. **The Hon. T.G. CAMERON:**

1. On what date was the time between Keno draws conducted by the Lotteries Commission reduced from 5 minutes to 3.5 minutes?
2. How much money for the financial year preceding the above reduction in time was received by the Lotteries Commission for the sales of Keno tickets?
3. How much money for the financial year after the above reduction in time was received by the Lotteries Commission for the sales of Keno tickets?
4. How much revenue from the sales of Keno tickets has the government received since the decrease in time between draws until the end of the financial year 2000-2001?
5. How much revenue from the sales of Keno tickets did the government receive in the same period prior to the reduction of the time between Keno draws?
6. Has the government investigated the abuse of Keno and Instant Money tickets as a form of serious and problem gambling for those aged 16 and 17 years old?
7. Will the Lotteries Commission release the calculations of the additional revenue they believed they would raise by reducing the time between Keno draws from 5 minutes to 3.5 minutes?

The Hon. T.G. ROBERTS: The Minister for Government Enterprises has provided the following information:

1. 27 June 1999.
2. For the financial year ending 30 June 1999 Keno sales were $69.3 million. As a comparison, 1998-1999 sales were $71.8 million.
3. For the financial year ending 30 June 2000 Keno sales were $68.6 million.
4. The government received $23.6 million from the sale of Keno from 1 July 1999 to 30 June 2001. This amount comprised:

Net Surplus	$10.3 million
Income Tax Equivalent	$6.1 million
Gambling Tax	$7.2 million

5. The government received $20.0 million from the sale of Keno from 1 July 1997 to 30 June 1999. This amount comprised:

Net Surplus	$12.5 million
Income Tax Equivalent	$7.5 million

6. No specific investigation has ever been undertaken into the abuse of Keno and Instant Money tickets as a form of serious and problem gambling for those aged 16 and 17 years old.

Under the State Lotteries Act, the sale of lottery tickets to persons aged 16 and 17 years is legal.

The legal age for participating in all lotteries games was only legislated for in 1994 as a consequence of the State Lotteries (Scratch Tickets) Amendment Bill. Initially it was proposed that the legal age be 18 years; however, following considerable debate, an amendment changed the age at which a ticket could be sold from 18 years to 16 years.

SA Lotteries reinforces the prohibition of sale of lottery tickets to persons under 16 years at every agency by way of permanent notice on display.

7. The shorter draw time was based on consumer research and benchmarking SA Lotteries' Keno draw time against other Keno operators in Australia.

The reduction in the interval between games was the first stage in plans to enhance the entertainment value of the game.

The increased number of games by five per hour was not expected to increase sales substantially.

ROAD SAFETY STRATEGY

25. **The Hon. T.G. CAMERON:**

1. How much has the state government spent on road safety education programs for the years:
   (a) 1997-1998;
   (b) 1998-1999;
   (c) 1999-2000;
   (b) 2000-2001;
   (e) 2001-2002?
2. How much will be spent during 2002-2003?

The Hon. T.G ROBERTS: The Minister for Transport has advised the following:

1. The state government spends money on road safety education programs in a wide range of areas targeted at reducing the road toll. Some areas, such as school-based education and repeat offender 'drink driver' programs are difficult to quantify. Others, such as the publication 'The Driver's Handbook' studied by novice drivers, have an educational content, but are not regarded as part of the road safety education program.

In addition, SA Police and the Department of Education, Training and Employment also resource school based road safety advertising programs. Again, these costs are difficult to quantify.

However, main stream road safety public education, such as mass media campaigns and printed information materials, is funded by Transport SA and can be quantified.

The amounts spent by Transport SA, including administrative costs and salaries, were approximately:

1997-1998	$2 251 000
1998-1999	$3 399 000
1999-2000	$3 710 000
2000-2001	$2 929 000
2001-2002	$2 558 000

2. Funding for 2002-2003 will be available following the release of the forthcoming budget.

SPEED CAMERAS

28. **The Hon. T.G. CAMERON:**

1 For the year 2001, what were the most frequent times of the day that motorists were caught by speed cameras?

2. For the year 2001, what were the most frequent times of the day that motorists were caught by laser guns?

The Hon. P. HOLLOWAY: The Minister for Police has provided the following information:

1. For the year 2001, what were the most frequent times of the day that motorists were caught by speed cameras.

All Expiated Police Laser TINS by Time for 2001
2001 Category Total

Time	0001-0159	0200-0359	0400-0559	0600-0759	0800-0959	1000-1159	1200-1359	1400-1559	1600-1759	1800-1959	2000-2159	2200-2359	Total
2001 Totals	491	0	2	5543	30578	43476	43241	22422	44929	32306	16508	5087	244582

The highest time being between 1600-1759 hours with 18.4% (44929) of all motorists caught.

2. For the year 2001, what were the most frequent times of the day that motorists were caught by laser guns?

All Expiated Police Laser TINS by Time for 2001
2001 Category Total

Time	0001-0159	0200-0359	0400-0559	0600-0759	0800-0959	1000-1159	1200-1359	1400-1559	1600-1759	1800-1959	2000-2159	2200-2359	Total
2001 Totals	1134	538	863	2035	5103	6700	6444	5588	7793	5612	6550	2652	51012

The highest time being between 1600-1759 hours with 15.2% (7793) of all motorists caught.

ROAD ACCIDENTS

29. **The Hon. T.G. CAMERON:** What was the estimated cost to the community of road traffic deaths and accidents in South Australia for the years:

1. 2000; and
2. 2001?

The Hon. T.G. ROBERTS: The Minister for Transport has provided the following information:

1. For the calendar year 2000, all reported road crashes, comprising fatal, serious, minor and property damage crashes, cost the South Australian community approximately $1 080 million. There were 166 fatalities that resulted in a total cost of approximately $260 million.

2. For the calendar year 2001, all reported road crashes, comprising fatal, serious, minor and property damage crashes, cost the South Australian community approximately $1 110 million. There were 153 fatalities that resulted in a total cost of approximately $250 million.

SPEED CAMERAS

30. **The Hon. T.G. CAMERON:** During 2000-2001:

1. What were the 10 South Australian roads and/or highways on which speed cameras were most frequently placed?

2. How many times were speed cameras placed on each of these 10 roads/highways?

3. How much revenue was raised in total through speed camera fines for each of these 10 roads/highways?

The Hon. P. HOLLOWAY: The Minister for Police has provided the following information:

Speed camera offences expiated during July 2001 and June 2002
Ten most frequent speed camera locations

Suburb	Road	Number of times Location worked	Number expiated	Amount expiated $
Adelaide	Port Rd	121	2 779	418 533
Blair Athol	Main North Rd	112	3 663	534 586
Thebarton	Port Rd	109	2 156	319 660
Adelaide	Wakefield Rd/St	106	3 981	585 041
Adelaide	Dequetteville Tce	97	1 994	292 530
Adelaide	King William Rd	96	1 227	184 586
Adelaide	Unley Rd	95	2 716	398 714
Adelaide	South Tce	90	1 771	261 725
Adelaide	Hackney Rd	89	2 289	339 028
Adelaide	West Tce	81	764	114 962

SPEED CAMERAS

31. **The Hon. T.G. CAMERON:** During 2000-2001:

1. (a) What were the 10 South Australian roads and/or highways which raised the most revenue from speed cameras; and
   (b) How much was raised at each location?

2. Of these roads or highways, how many motor vehicle accidents occurred in which people were injured and/or killed?

3. How many times were speed cameras placed on these roads or highways?

The Hon. P. HOLLOWAY: The Minister for Police has provided the following information:

1.

Suburb	Road	Number expiated	Amount expiated $
Seacliff Park	Ocean Blvd	4 520	700 932
Adelaide	Wakefield Rd	3 975	584 095
Blair Athol	Main North Rd	3 663	534 586
Adelaide	Port Rd	2 779	418 533
Adelaide	Unley Rd	2 716	398 714
Bolivar	Port Wakefield Rd	2 369	367 559
Adelaide	Hackney Rd	2 289	339 028
Thebarton	Port Rd	2 156	319 660
North Adelaide	Park Tce	2 097	316 237
Gepps Cross	Grand Junction Rd	1 974	299 120

2. and 3.

Suburb	Road	Number of crashes	Number of injuries or deaths	Number of times location worked
Seacliff Park	Ocean Blvd	16	16	63
Adelaide	Wakefield Rd	27	12	106
Blair Athol	Main North Rd	77	15	112
Adelaide	Port Rd	62	6 (1 fatal)	121
Adelaide	Unley Rd	37	29	95
Bolivar	Port Wakefield Rd	37	22 (2 fatal)	38
Adelaide	Hackney Rd	46	19	89
Thebarton	Port Rd	90	18	109
North Adelaide	Park Tce	29	11	72
Gepps Cross	Grand Junction Rd	116	41 (1 fatal)	56 56

PRISONERS, DEPORTATION

32. **The Hon. T.G. CAMERON:**

1. In the past two years, have any state government prisons held any non-Australian citizens facing deportation in correctional facilities?

2. If so, how many?

3. Are any deportees held in State prisons anywhere in South Australia?

4. If so—

(a) How many; and

(b) For how long?

5. Is there a state government policy which states that non-Australian citizens facing deportation not be accommodated in State prisons?

The Hon. T.G. ROBERTS: The Chief Executive for the Department for Correctional Services has provided the following information:

1. Yes

2. 142—of these only some are eventually deported. The Commonwealth Department of Immigration and Multicultural and Indigenous Affairs determine who will be deported and maintains confidential records on who has been deported.

3. Yes

4. (a) Departmental records show that there are currently 7 prisoners who are serving state or commonwealth sentences, or who have court matters to be finalised who are currently under consideration for deportation.

(b) Six of these prisoners are still serving state sentences are currently not available for deportation. One has appealed to the High Court for refugee status.

5. On 26 June 2001, a Correctional Services Minister's Conference agreed that state jurisdictions would no longer hold potential deportees whose sentences were completed.

SPEED CAMERAS

34. **The Hon. T.G. CAMERON:**

1. Is the government considering extending the points demerit scheme to include speeding offences detected by radar operated detection cameras?

2. Have any estimates been done as to the potential number of drivers that may be caught and lose their driver's licence as a result of the extension of the scheme?

3. Will a study be conducted into the impact of extending the points demerit scheme to include speeding offences detected by radar operated detection cameras before it is introduced?

The Hon. T.G. ROBERTS: The Minister for Transport has provided the following information:

1. The government has given approval for the introduction of demerit points for all camera detected speeding offences, and to provide for the use of red light cameras to detect speeding offences.

2. Details of the legislation to be introduced to achieve these initiatives, has not yet been finalised.

3. An estimate of the number of drivers affected, based on interstate comparisons, has been made. Detailed studies have not been completed and are not called for.

ROAD ACCIDENTS

35. **The Hon. T.G. CAMERON:**

1. Has the report of the Adelaide Road Accident Research Unit conducted in June 1998 into accident scenes and coroner's reports for clues to help reduce South Australia's road toll been completed?

2. What were its key recommendations?

3. Can a copy of the report be provided?

The Hon. T.G. ROBERTS: The Minister for Transport has provided the following information:

1. The in-depth research into Rural Road Crashes report was completed in June 2001. The investigation commenced in March 1998 and concluded in February 2000. The investigation and report was undertaken by the Road Accident Research Unit of the Adelaide University.

2. The key recommendations are contained in the Executive Summary of the report. The Minister for Transport will forward the report to the honourable member separately.

POLICE, SPEEDOMETERS

36. **The Hon. T.G. CAMERON:**

1. Can the government assure the public that South Australian police vehicle speedometers are accurate following recent reports that New South Wales Police may have issued thousands of speeding fines illegally due to faulty police car speedometers?

2. How often are South Australia Police vehicle speedometers tested?

3. How many Police vehicle speedometers were tested during the year 2000-2001 and were subsequently found to be inaccurate?

4. What speedometer 'allowances' are considered acceptable by the Police for their vehicles?

The Hon. P. HOLLOWAY: The Minister for Police has provided the following information:

1. SAPOL vehicles are speedo tested in accordance with S175(3)(b) of the Road Traffic Act, 1961. The tests are carried out by the RAA at Mile End. The equipment used to test the vehicle speedometers is calibrated and certified every 12 months by Abstec Calibrations Pty. Ltd. This firm is a registered laboratory with the National Association of Testing Authorities of Australia (NATA) and all measurements are fully traceable to Australian National Standards and Australian Legal Measurement units. The testing instrumentation has an uncertainty of +0.25kph.

2. The testing of speedometers is undertaken every three months.

3. For the 12 months 2000 to 2001, 834 speedometer tests were conducted by the RAA on police vehicles. 16 speedometers were found to be outside the tolerance of +3kph. These vehicles were all non-patrol vehicles. Inaccurate speedometers are defected and adjusted. Tested at 60kph the average speed is 60.06kph. At 100kph the average speed is 98.6kph.

4. +3kph.

BICYCLES

37. **The Hon. T.G. CAMERON:**

1. How many people in South Australia have been charged with riding a bicycle on a footpath under Australian Road Rule 250 since its implementation?

2. (a) Is the government planning to review the law regarding riding bicycles on footpaths; and

(b) If so, when will this review begin?

The Hon. P. HOLLOWAY: The Minister for Police has provided the following information:

1. Under the Australian Road Rules children 12 years and under are exempt from riding on the footpath. Expiation notices are only issued to persons over 16 years.

For the period 01/01/01 to 31/12/01—73 expiation notices were issued

For the period 01/01/02 to 30/04/02—10 expiation notices were issued.

The Minister for Transport has provided the following information:

2. No specific review of cycling laws currently is being undertaken. However, as with all traffic laws, these laws are being constantly monitored and, where appropriate, changes will be considered.

SPEEDING OFFENCES

40. **The Hon. T.G. CAMERON:**

1. How many motorists were caught speeding in South Australia between 1 March 2002 and 30 June 2002 by:

(a) speed cameras;

(b) laser guns; and

(c) other means;

for the following speed zones:

60-70 km/h;

70-80 km/h;

80-90 km/h;

90-100 km/h;

100-110 km/h;

110 km/h and over?

2. Over the same period, how much revenue was raised from speeding fines in South Australia for each of these percentiles by:

(a) speed cameras;

(b) laser guns; and

(c) other means?

The Hon. P. HOLLOWAY: The Minister for Police has provided the following information:

Detections and revenue received for speeding offences that occurred between 1 March and 30 June 2002.

Vehicle speed at time of detection	Speed camera detections		Laser gun and other detections	
Km/h	Revenue ($)	Number	Revenue ($)	Number
60-69	$51 345	359	$18 654	112
70-79	$4 653 750	43362	$806 738	5737
80-99	$882 513	7418	$679 931	4350
100-109	$209 126	1869	$127 084	759
>= 110	$326 963	2489	$875 221	5336

Total number of speed detections = 71791

Total revenue received = $8 631 325

Notes

- Detection method was not able to be broken down any further than 'Speed Camera' and 'Laser Gun and Other'.
- Any notices that were withdrawn (unless for prosecution) were excluded from the calculations.

MEMBERS, TRAVEL

The PRESIDENT: I lay on the table members' travel expenditure for 2001-02, pursuant to the Members of Parliament Travel Entitlement Rules 1983.

DETAINED CHILDREN

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I lay on the table a copy of a ministerial statement relating to detained children made on Wednesday 14 August in another place by the Premier.

LEAN, Mr R.G., DEATH

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I lay on the table a copy of a ministerial statement relating to the death of the former assistant commissioner made on Wednesday 14 August in another place by my colleague the Minister for Police.

MARALINGA LANDS

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I lay on the table a copy of a ministerial statement relating to section 400 of the Maralinga lands made on Thursday 15 August in another place by the Premier.

EMERGENCY POWERS ACT

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I lay on the table a copy of a ministerial statement relating to the Emergency Powers Act made on Thursday 15 August in another place by the Premier.

POLICE, DEPUTY COMMISSIONER

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I lay on the table a copy of a ministerial statement relating to the appointment of Assistant Commissioner John Ronald White made on Thursday 15 August in another place by my colleague the Minister for Police.

GAS SUPPLIES

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I lay on the table a copy of a ministerial statement relating to gas supplies made on Thursday 15 August in another place by my colleague the Minister for Government Services.

ADELAIDE AIRPORT

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I lay on the table a copy of a ministerial statement relating to the Adelaide Airport terminal development made earlier today in another place by the Premier.

WHALE AND DOLPHIN PROTECTION

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I lay on the table a copy of a ministerial statement relating to whale rescue and dolphin protection made earlier today in another place by the Premier.

PAPERS TABLED

The following papers were laid on the table:

By the President—

Members' Travel Expenditure, 2001-02, pursuant to Members of Parliament Travel Entitlement Rules, 1983

Auditor-General—Interim Report on the Port Adelaide Waterfront Redevelopment: Misdirection of Bid Documents

Corporation Reports, 2000-01—

Flinders Ranges

Port Adelaide Enfield

By the Minister for Aboriginal Affairs and Reconciliation (Hon. T.G. Roberts)—

Report on the Implementation of the State Water Plan

Report on the Implementation of Catchment Water Management Plans.

OMBUDSMAN'S REPORT

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I lay on the table a copy of a ministerial statement relating to the Ombudsman's report made earlier today in another place by my colleague the Minister for Health.

PERPETUAL LEASES

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I lay on the table a copy of a ministerial statement relating to perpetual leases made on Tuesday 13 August in another place by my colleague the Minister for Environment and Conservation.

NATIVE TITLE

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I lay on the table a copy of a ministerial statement relating to native title judgments made on Thursday 15 August in another place by my colleague the Attorney-General.

CATCHMENT WATER MANAGEMENT

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I lay on the table a copy of a ministerial statement relating to catchment water management made on Wednesday 14 August in another place by my colleague the Minister for Environment and Conservation.

LIDDY, Mr P.

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I lay on the table a copy of a ministerial statement relating to the assets of Mr Peter Liddy made on Tuesday 13 August in another place by my colleague the Attorney-General.

HENSLEY INDUSTRIES

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I lay on the table a copy of a ministerial statement relating to Hensley Industries made earlier today in another place by my colleague the Minister for Environment and Conservation.

RADIOACTIVE WASTE

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I lay on the table a copy of a ministerial statement relating to radioactive waste made on Wednesday 14 August in another place by my colleague the Minister for Environment and Conservation.

HOSPITALS, QUEEN ELIZABETH

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I lay on the table a copy of a ministerial statement relating to the Queen Elizabeth Hospital made in another place by my colleague the Minister for Health.

QUESTION TIME

PUBLIC-PRIVATE PARTNERSHIPS

The Hon. R.I. LUCAS (Leader of the Opposition): I seek leave to make an explanation before asking the Leader of the Government in the Council, in his own right, but also representing the Premier, a question about public-private partnerships.

Leave granted.

The Hon. R.I. LUCAS: Some members may be aware that the former government announced in last year's budget a public sector initiative currently going under the title of public-private partnerships. The new government has indicated that, broadly, it will continue along a similar path. Again, some members might be aware that the South Australian government is, I understand, hosting a conference on 17 and 18 September on public-private partnerships, to be addressed by the Minister for Government Enterprises and a number of leading exponents of public-private partnerships from around Australia and around the world.

The Hon. A.J. Redford interjecting:

The Hon. R.I. LUCAS: Well, that is an interesting question. I was informed last week from a source very close to the Premier, the Hon. Mr Rann, that the United Trades and Labor Council telephoned Mr Rann's office last week expressing the strongest possible opposition to public-private partnerships and, in particular, to the government hosting this forum on public-private partnerships. This source, who, as I said, is very close to the Premier, indicated that the UTLC expressed its dissatisfaction in the strongest possible terms, indicating that it believed public-private partnerships were anti the public sector and were anti the commitments that the Rann led opposition had made in relation to privatisation. My questions to the Leader of the Government, and to the Premier, are as follows:

1. What is the cost to the South Australian government of hosting the public-private partnerships conference?

2. What action did the Premier or his office order in response to the telephone call from the United Trades and Labor Council expressing concern or dissatisfaction at the new government's policy on public-private partnerships and, in particular, did the Premier or his office ask any other minister or officers of the public sector to take action in response to the telephone call of complaint from the United Trades and Labor Council?

The Hon. Diana Laidlaw: Do they plan to progress it or cancel it?

The Hon. R.I. LUCAS: I hope that the government will continue with the conference. I am sure it is too late to cancel the conference at this late stage.

The Hon. T.G. Cameron: They should invite John Brumby across to speak at it.

The Hon. R.I. LUCAS: And also the New South Wales minister.

The Hon. Diana Laidlaw: Tony Blair.

The Hon. R.I. LUCAS: And Tony Blair and a number of other Labor luminaries from around the nation and around the world. No, I do not think the suggestion is to cancel the conference. My questions continue:

3. Has the cabinet yet considered and approved the guidelines for the operation of public-private partnerships? The former cabinet had approved guidelines for public-private partnerships well prior to the state election. The exponents in the field have been asking when the new government will be issuing the guidelines for public-private partnerships. For some time, a number of them have been told by representatives of the government that cabinet is to consider these guidelines soon.

The Hon. A.J. Redford interjecting:

The Hon. R.I. LUCAS: I am not sure. The question is: has cabinet yet considered these guidelines? There was some suggestion that cabinet might be considering these guidelines today. Have they been considered and approved? If not, when will they be considered, approved and promulgated so that those who are interested in public-private partnerships can consider them to see what role they might be able to adopt?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): My colleague the Treasurer, when he was the shadow treasurer some 12 months ago, would have at least announced the Labor Party's policy in relation to public-private partnerships. They were certainly part of the Labor Party's policies put before the people of South

Australia at the election. I do not think there is any secret about that. I take it that the previous government was also examining such matters. After all, as the Leader of the Opposition correctly pointed out—or perhaps it was Mr Terry Cameron by way of interjection—John Brumby in Victoria and other Labor state treasurers have been examining the potential of public-private partnerships over the past couple of years. There is no secret about that.

I am pleased that the Leader of the Opposition has given some publicity to the very important forum that the government intends to hold next month in relation to this subject at which my colleague the Minister for Government Enterprises will be presenting a major paper in relation to this matter. I hope that members from all sides of this parliament will come along and contribute.

In relation to the leader's first question about the cost of that conference, I will have to get that information for him, because obviously I do not have it with me. I am not sure which department will be organising the conference, but I will get that information for him.

His second question referred to a telephone call which was supposedly made to the Premier. I am not aware of any such telephone call, but I will refer that question to the Premier. Finally, the cabinet has certainly been considering the issue of public-private partnerships, and I expect an announcement to be made in relation to that matter fairly soon.

The Hon. A.J. REDFORD: As a supplementary question, what is the difference between a public partnership and a private partnership, and does the minister agree with the Hon. Terry Cameron's interjection that a simple change of name will fool most unions in relation to this issue?

The Hon. P. HOLLOWAY: I do not think that a supplementary question during question time is the appropriate place to discuss these things. I suggest that the honourable member go along to the seminar where he will be informed in great detail about public-private partnerships so that he can make up his own mind. I think he might well be able to make a useful contribution but, then again, he may not.

ANANGU PITJANTJATJARA LANDS

The Hon. R.D. LAWSON: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation a question about the Anangu Pitjantjatjara lands.

Leave granted.

The Hon. R.D. LAWSON: On Friday 2 August, the minister led a delegation, comprising Randall Ashbourne of the Premier's office, John Sutherland, the minister's adviser, Sally Glover, senior legal adviser in the Premier's office, and the Premier's media adviser, David Heath, to Alice Springs where they consulted with members of the Anangu Pitjantjatjara executive. Subsequently, Mr Randall Ashbourne, Senior Adviser from the Premier's office, sent a memo to the respective chairs of the Anangu Pitjantjatjara executive, the Pitjantjatjara Council and the Yankunjatjara Council. The memo says that its purpose is to set out the South Australian government's position on certain matters. I now quote from the memo as follows:

> The Pitjantjatjara land rights legislation is perfectly clear—Anangu Pitjantjatjara, through the elected executive, is the official voice of the traditional owners in relation to the administration of land issues.

I will not quote all the document, but a number of other paragraphs follow, as follows:

> Pitjantjatjara Council is not recognised in the act and there are no provisions in the legislation for Pitjantjatjara Council to be used in any way—let alone as a checking mechanism on decisions of the AP executive.

Mr Ashbourne says:

> . . . it is our opinion that the AP executive is the rightful owner of all files held by the Pitjantjatjara Council's Legal and Anthropological Unit in relation to work they have been contracted to perform for Anangu Pitjantjatjara. The South Australian government recognises the AP executive and its chairman, Mr Owen Burton, as the official, legal representatives of the people of the Pitjantjatjara lands in relation to issues relating to the use and management of the lands.

Mr Ashbourne continues:

> . . . the government agrees with AP's view that it is not productive to have two 'political' voices seeking to represent the Anangu. Whether or not members of the Pitjantjatjara Council will have a role to play in the new structure [which is proposed] is a matter entirely for the Anangu themselves to decide.

Mr Ashbourne concludes:

> We certainly hope that we can work constructively and positively with the AP executive, the Pitjantjatjara Council, the Yankunjatjara Council (and in fact ALL community organisations on the lands) to deliver vastly improved administration and service outcomes for all Anangu-based on models which they accept and endorse.

I am advised that subsequently the minister has forwarded several models to interested parties to examine regarding the governance of the Anangu Pitjantjatjara lands, but I think it is also fair to say that those models seek to weaken the authority that is given to the traditional owners under the South Australian legislation. My questions are as follows:

1. Will the minister confirm that advice has been received that the AP executive is, in fact, the rightful owner of all the legal and anthropological files held by the Pitjantjatjara Council (the matter referred to in Mr Ashbourne's letter)?

2. Will he advise the council what models of future governance are being suggested by the government?

3. Will he assure the council that the wishes of the traditional owners of the Anangu Pitjantjatjara lands will be taken into account in determining measures relating to the future governance of the lands?

4. Who is in charge of the government's Aboriginal affairs policy—the minister, the Premier or Mr Randall Ashbourne?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): Those questions certainly are interrelated, and I may not answer them in the order in which they were asked, but I will certainly answer them in a coherent way that members can understand and that other people reading this also can understand and, hopefully, we do not have to get too repetitive. I have always acknowledged in this council that AP is the administrative body for the Anangu Pitjantjatjara Council—or the Anangu Pitjantjatjara executive has always been the body that has sole rights and responsibilities for the administration of the AP lands. There are three land administering bodies within the region that have worked cooperatively for 20-odd years. The problem that we have had to face, particularly in the past 18 months (or, more likely, over the past two years), is the future role of the organisational structures if the AP becomes the sole body administering the lands within the geographic zone that we call the Pitjantjatjara lands.

On 2 August, I went to Alice Springs with a modest party of negotiators to try to pull together a negotiated settlement.

I employed Dr Mick Dodson as a mediator to try to reach an outcome with which all parties could live. This was to be done by pulling together a composite model using the AP executive as the administrative executive for the lands, which would then weaken the Pitjantjatjara Council's role in relation to administration.

The negotiated position we were putting was that the mediator would try to pull together the difficulties associated with the ownership and control of the anthropological information that is vital in dealing with a whole range of questions on the lands, the most important of which to a lot of traditional owners is the royalties that may be negotiated out of land access in respect of exploration for mining wealth and oil. Finally, if the exploration leads to mining, certainly the anthropological knowledge required to identify those people to the land negotiated is an important role and function for any administrative body. We were trying to get the anthropological knowledge under the one roof, administered by the one executive. Of course, again I have to put myself on record as saying that AP was to be that body.

The role and function of the Pitjantjatjara Council in relation to its 21 year history of providing anthropological and legal knowledge would have to be a negotiated position. It was my view that no-one could force the Pitjantjatjara Council, operating on behalf of the traditional owners, to hand over the anthropological and legal files. Rather than the matter being settled in the courts, it would be better being settled by negotiation. That was the position I adopted after the mediation involving Mick Dodson had broken down. When those negotiations failed and we could not get any agreement on a way to proceed, we negotiated the groups' agreeing to a future governance model in which we could draw up the principles around the table on 2 August. Failing that, we would go away and consider two or three models over a longer time frame. We could not get agreement to the models in the time frames we had set ourselves. There was movement in relation to all the negotiated representatives in putting forward these models.

A view was expressed that we could come to some sort of consensus around a model, given that each negotiating group had put up a similar sort of model. As we could not get agreement around one single model, we decided that we would return to Adelaide, draw up three models for recommendation which would be forwarded to the three land holding councils and try to get agreement on a future governance that dealt with the problems that we as a government find imperative, that is, to get human services onto the ground and administered by the government with the AP executive and with the support and ownership of the traditional owners.

The models that we have submitted for negotiation are still in the discussion stages and are being discussed as we speak. I cannot give any indication as to whether there will be an agreement around one model but, certainly, the government, when it goes through those stages, will insist that a form of governance include a human services delivery model that comes to terms with the problems that people face in that region.

So we are determined to follow through on the goals that we have set as a government, that is, to have an administrative body that is made up of representatives of the three groups. We have set a task to have one administrative executive, which will be the AP executive, and the future role of the Pitjantjatjara Council will be up to the Pitjantjatjara Council. Under the legislation we have no responsibility for the continuance of the Pitjantjatjara Council: it is a service provider. There is a view that some of the services that have traditionally been and are still being negotiated with the AP executive will still be provided. There is a view that some of those services will be stopped, that is, the anthropological and legal services, and taken under the wing of the AP executive.

One of the questions was about the future role of the Pitjantjatjara Council: again, as we have no responsibility for it, its future is in its own hands. I have answered the question on recognition of the AP executive. I pay tribute to the organisational structure, as I do with any representative body. The organisational representatives of that body have to gain the respect of not only the traditional owners but also of others around them: that is up to them.

The future of the anthropological and legal files, I suspect, will be the subject of a legal battle between the AP executive and the Pitjantjatjara Council, which believes that it has the right to operate for and on behalf of the traditional owners. That question will not be settled easily. If the government has to make a decision, I am sure that Crown Law will advise me of that at a later date if we cannot get any negotiated position.

In relation to the role of the traditional owners, in the models that we have put forward, the traditional owners become an important plank in any future negotiations regarding the management of land and the delivery of services. Within the negotiating framework that we have set ourselves, we have tried to strengthen the role and function of the traditional owners. That role and function do not exist at the moment under legislation in relation to the AP executive, although there are representative members on the AP executive.

The way in which the AP executive reports back to the traditional owners needs to be improved, in the government's opinion, and, with regard to the input of the traditional owners into the executive, we certainly will have to pay more respect to the traditional owners and ensure the traditional owners' role and function in the future. This will be in relation to not just the management of the lands but also to the formulation of policy that will stop the evils of petrol sniffing, alcohol abuse, truancy from schools and poor health and nutrition. The traditional owners have to supply more information and play more of a role—

The Hon. A.J. Redford interjecting:

The Hon. T.G. ROBERTS: —in delivering those services to the communities. The honourable member interjects in relation to the role and function of the Pitjantjatjara Council. The same goes for them. They are land governing, land management bodies. They have no responsibility for the core services of human resource management, and we will try to make sure that whatever body is put together—that is, a composite body of executive management and human service delivery—has a less complicated form and structure than the one there now. As I have said before, the principles around negotiated agreements still hold but the time will come, I suspect, because we cannot get the agreement we require to get the simplified form of delivery structure and the integration of traditional owners' input into the ownership of service delivery and acceptance, when we may have to come back to parliament with legislative change to the framework that we have at the moment, which has been in place for over 20 years.

In most other states, where change has been required to improve service delivery, the legislation that is required to ensure that governments and Aboriginal communities, particularly remote ones, work together has been enacted.

The Hon. R.D. LAWSON: As a supplementary question, given the minister's acknowledgment that the anthropological and legal documents rightly belong to the AP Council, will the minister use his good offices to ensure that those documents are delivered, rather than forcing the parties to litigation, as he seems to envisage?

The Hon. T.G. ROBERTS: I think the reference I made to the anthropological and legal files was that it would be a contested issue in relation to any negotiated position, as it has been. I will need to seek advice from Crown Law in relation to the legal owners of that information, given that it has been gathered over the past 20-odd years and I am not familiar with the contracting service agreements that have been in place over that length of time. If the government can play a role in simplifying the ownership of the legal and anthropological files, it will be part of a streamlined administrative servicing by one executive. Again, that issue will be contested by one side or the other and, if negotiations break down completely, there will be a legal outcome or there may be insistence on a legislative outcome.

DROUGHT RELIEF

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question about drought.

Leave granted.

The Hon. CAROLINE SCHAEFER: I understand that the South Australian Farmers Federation is convening a crisis meeting in Karoonda tonight to discuss methods of some sort of assistance for alleviation of the drought being suffered through much of South Australia but, in particular, in the Mallee and the Upper South-East, and that the President of the Farmers Federation (John Lush) has called for the minister to visit the area. He stated:

> The crisis out there is worse now than it was. I initially thought that they might get some rain and it might come in time to help them through, but obviously that's not going to happen. That area looks really bad at the moment when you go out there. So if we can get the minister out there, he won't take much convincing that they've got a crisis on their hands.

My questions are:

1. What strategies do the minister and his department have in place either to assist these people or to lobby the federal minister for appropriate assistance?

2. When does the minister intend to visit the Mallee and meet with the people most affected first hand?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): There have been some reports of the seasonal conditions throughout this state. We have had a deficiency of rain generally across most of the state but, in particular, it is those regions along the eastern border of the state, from the Upper South-East through the Murray-Mallee and Riverland to the north-east pastoral regions, which appear to be badly affected. Fortunately, in other areas of the state, although we have had less than average rains, my advice is that if we do get average rains from now on we can still look forward to a reasonable harvest through most of those other agricultural regions. I very much hope that that is the case.

Given the situation and the reports that have come to me over the past few weeks, the Adverse Seasonal Conditions Committee, which is established within my department, is due to meet on 21 August (this Wednesday) to discuss the current seasonal conditions and to consider an appropriate response. As I said, it appears that those areas along the border with New South Wales and Victoria, from the Upper South-East through to the pastoral regions, appear to be the most badly affected. The Farmers Federation will be represented at that meeting, I understand, as well as a number of other officers from both PIRSA and SARDI. I think also a representative from the Bureau of Meteorology attends those meetings. Certainly, I will be awaiting their advice.

In relation to visiting the region that is badly affected, I came back through that area after meeting with the inland fishers in June. That was the day on which some huge dust storms were blowing through that region, so I am aware that conditions are bad out there. I will be pleased to visit that region as soon as we finish in this parliament in the next week or two.

The Hon. J.F. STEFANI: I have a supplementary question. Can the minister advise whether he has received any representations from the member for Hammond on behalf of his constituency in relation to this matter?

The Hon. P. HOLLOWAY: I have not had any formal representation from the member for Hammond, but I discuss issues from time to time with the member for Hammond as they affect this portfolio. As I said, we discuss a number of issues, and certainly seasonal conditions is one of the matters we discuss from time to time.

WHITE SNAILS

The Hon. CARMEL ZOLLO: I seek leave to make an explanation before asking the Minister for Agriculture, Food and Fisheries a question regarding the control methods used by cereal farmers for white snails.

Leave granted.

The Hon. CARMEL ZOLLO: Over the past few years the presence of white snails in crops has developed into a major problem—fouling harvesting machinery and contaminating the grain. Contaminants in grain are an important issue for farmers and consumers. My question is: has SARDI been successful in identifying suitable control methods for white snails that can be adopted by cereal farmers?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): Certainly, the white snail is a real problem. One only has to drive through some parts of Yorke Peninsula, for example, to see masses of white snails encrusted over fence posts. One can imagine the problem they cause when they get enmeshed with grain. I am pleased to say that SARDI has made some significant progress in developing effective control measures for dealing with white snails in South Australian crops and pastures over the past 12 months.

Baiting is an important control tactic for white snails and, traditionally, baits have been used at any time from April to September during the growing period for crops. Recent research has shown that baits are less effective against small snails, that is, those with a shell diameter of less than seven millimetres. During the latter half of the growing season, many snails fall into this size category due to early season breeding; hence, baiting at this time is less effective. It has been found that this particular cohort of snails is still present at harvest and results in the fouling of harvest machinery and the contamination of grain samples.

The finding of the ineffectiveness of baits against small snails has led to a change in the timing of the use of baits within a growing season. It is now recommended that baiting should be done early in the growing season, that is, in April

and May, when most large snails that are vulnerable to baits are present. This strategy has the added advantage of controlling the large adult snails early in the season at a time before they have commenced egg laying. Hence, if the control is correctly timed, most of the large snails are eliminated and the potential for any reproduction and build-up of the next generation is dramatically reduced.

This new strategy, I am pleased to say, was practised by a small number of farmers during 2001 and has proved to be very effective. Hopefully, this work by SARDI will help reduce this problem in the future.

SHEARER, Ms J.

The Hon. SANDRA KANCK: I seek leave to provide an explanation before asking the Minister for Aboriginal Affairs, representing the Minister for Health, a question about people being detained under the Mental Health Act for attempting suicide.

Leave granted.

The Hon. SANDRA KANCK: Members may have seen the page 1 story in the *Weekend Australian* about the successful suicide attempt of Adelaide woman, Jo Shearer. That story also mentioned an earlier unsuccessful attempt. Committing suicide is a legal act, and for someone in Jo Shearer's circumstance—given that legal voluntary euthanasia is not available—a perfectly rational act; yet when her first attempt at suicide failed she was forcibly taken by ambulance (she told the ambulance officers she did not want to go) to the Royal Adelaide Hospital where she was detained under the Mental Health Act. I will let Jo Shearer tell the council her experiences in her own words. Jo said:

> I remember almost every moment of my appalling stay in the hospital with utter clarity, as if the punitive nature of my care and treatment—or rather lack of treatment—has etched it upon my mind forever. I was "detained" by psychiatrists for two weeks until a loophole I discovered in reading the SA Mental Health Act brought about my release. I was, in general, treated as though I had committed a crime. In reality, I had simply exercised my legal right to attempt to end my life and therefore my unbearable suffering. For the first few days I was forbidden to leave the ward without a guard and a nurse. After several days I was allowed outside with my family, and finally on my own, although I had to report on leaving and returning to the ward.

Amongst myriad conditions, Jo had an auto-immune disease which had weakened her muscles and which was destroying tissues, severe lumbar scoliosis, unremitting pain and constant nausea, chondrocalcinosis of the knees and extensive tenosynovitis. Consequently, she could barely walk. Escaping was simply out of the question, yet she was treated as if she were a dangerous prisoner about to break out at any moment, and she resented that. Jo eventually got hold of a copy of the Mental Health Act and discovered that three conditions must be met for detention to occur—and all three of those conditions must be met.

Amongst other things, section 12 of the act provides that the person must have a mental illness requiring immediate treatment. Jo did not. The act of detaining Jo Shearer failed at the first barrier. Ultimately, Jo Shearer drew this to the attention of the psychiatrists and asked what mental illness she was being treated for—soon after that she was released. Jo said that she had found a loophole in the act that allowed her to get out: rather, she demonstrated to those who ought to have known better that they had badly misinterpreted the act. My questions are:

1. Does the minister agree that the provisions of the Mental Health Act were breached when they were invoked to compulsorily detain Jo Shearer at the Royal Adelaide Hospital in March?

2. If attempting suicide is not illegal, what was the basis of the assumption by the hospital's doctors that Jo Shearer was suffering from a mental illness?

3. What treatment was given for this apparent mental illness?

4. Will the minister investigate the circumstances of this particular incident of compulsory detention and advise what action will be taken against the doctors involved?

5. What guidelines are in place to assist doctors in correctly interpreting the Mental Health Act in regard to compulsory detention?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I will refer those important questions to the minister in another place and bring back a reply.

INDEPENDENT GAMBLING AUTHORITY

The Hon. NICK XENOPHON: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Gambling, a question in relation to the appointment of the new presiding officer of the Independent Gambling Authority (IGA).

Leave granted.

The Hon. NICK XENOPHON: Towards the end of last week, it was announced in the *Government Gazette* that Mr Stephen Howells, a Victorian barrister, was to be the new presiding officer of the IGA for a period, as I understand it, of three years. I emphasise that I do not seek to criticise Mr Howells, his qualifications or his competence. Clearly, he is a highly regarded and highly successful barrister in Victoria. However, given that Mr Howells does not reside in South Australia, as I understand it, my questions to the minister are as follows:

1. Why was a South Australian resident overlooked for this important position? More importantly, given Mr Howells' qualifications, why was a member of South Australia's legal profession overlooked for this position? Could the government not find a South Australian of sufficient calibre to head the Independent Gambling Authority?

2. Does the minister agree with the comment made by Mr Chris Kourakis, President of the Law Society of South Australia, that having a head of a statutory authority such as this residing interstate is, in effect, unworkable?

3. What estimated costs will be incurred by taxpayers for Mr Howells to commute to and from Adelaide as well as his accommodation and per diem expenses on an annual basis?

4. Does the minister acknowledge that having an interstate presiding officer of the IGA, particularly one who has a successful and busy practice, will make it difficult for the IGA to meet at short notice when urgent matters arise either within the IGA or with other regulatory authorities such as the Liquor and Gambling Commissioner?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I will take that question on notice and refer it to the Minister for Gambling in another place and bring back a reply.

HAJEK SCULPTURE

The Hon. DIANA LAIDLAW: I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries, representing the Minister for the Arts, a question about the Hajek sculpture.

Leave granted.

The Hon. DIANA LAIDLAW: The major redevelopment of the Adelaide Festival Centre complex, commenced by the former Liberal government, is nearing completion and should be officially opened by the Premier and the Minister for the Arts on Sunday 13 October. The redevelopment includes gutting one-third of the vast and hostile concrete plaza area that covers Festival Drive. This demolition work will effectively sever the link between the theatres and the major public artwork on top of the carpark adjacent to Parliament House—the concrete environmental sculpture called 'City Sign', but more commonly known by the surname of its creator, West German artist Otto Hajek.

From the outset the installation has been controversial. Certainly, South Australian artists lobbied to be given the work. They protested when it was given to Hajek and they protested again when Her Majesty the Queen opened the work in 1977. In the meantime Mr Hajek, who is internationally recognised for his work in successfully incorporating art and architecture in public places, had created a site-specific hard edge monumental piece for the Southern Plaza. It was designed to harmonise with the angled shapes of the two major theatre structures. It was meant to humanise the huge plaza deck and to provide a public artwork of international standing equal to the proposed international performing arts complex.

Certainly, Hajek's work successfully camouflages the Festival Centre's 10.6 metre high water cooling tower, while its dominant coverage of the Southern Plaza area continues to ensure that it is regarded as the largest artwork in Australia. Some commentators, including my nieces and nephews, find that the only favourable thing they can say about him was that he was visionary in using the Crows' colours: red, yellow and blue. However, Hajek was not so successful in dealing with the harshness of our sun and, more particularly, our light.

These matters were subsequently addressed (but equally unsuccessfully, I suggest) with the removal of many of Hajek's surfaces to allow for the planting of trees and shrubs. It has been argued to me that this treeing decision, together with the earlier decision to paint and not mosaic Hajek's coloured surfaces, amounts to tampering with Hajek's original design and raises questions about artistic integrity, contractual terms and the life of the work. Accordingly, my questions to the Premier and the Minister for the Arts are:

1. Considering the deplorable state of the Hajek sculpture, due to all the dust and debris from the demolition of the adjacent plaza, is it the government's intention to rehabilitate the work, including the two fountain features, before the opening of the redeveloped Festival Centre or, at least, during this financial year?

2. If not, will the Premier advise the terms of the original commission signed by Premier Dunstan relating to the maintenance of the sculpture, and whether the non-maintenance of the work represents a breach of contract or just an eyesore for the centre of our city?

3. What are the terms of the original commission relating to the lifespan of the work? Specifically, is it here to stay forever in any form or, because it could be argued that the work has already been tampered with, with or without Hajek's approval, and do such factors have a bearing on the permanency of this piece of public art?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I have to say that my views on that piece of artwork are rather the same as those of the honourable member's nephews and nieces. However, I do not think I should contribute further to the answer, and I will ask the Premier to provide a response to the questions asked by the honourable member.

CRIME PREVENTION OFFICERS

The Hon. T.J. STEPHENS: I seek leave to make a brief explanation before asking the Minister for Regional Affairs a question about crime prevention in Port Augusta.

Leave granted.

The Hon. T.J. STEPHENS: I was very concerned to see the recent Labor government's budget has cut a community initiated crime prevention program in Port Augusta. Crime prevention in Port Augusta has been one of the city's highest priorities. Until the budget was brought down, the city was well served by an extremely able, energetic and committed crime prevention officer. This position was funded under a partnership agreement between the state government and Port Augusta City Council. Positive results from the officer initiated crime prevention programs were just starting to flow through.

It now appears that, without any prior notice or consultation, the state government funding component has been cut and the crime prevention officer position has been cut. My questions are:

1. What assessment was made of the crime prevention program and its performance before the decision was made to cut the program?

2. Was there any consultation with the community or was a regional impact statement carried out before deciding to cut this service?

3. Why has the government cut funds allocated to reduce crime in Port Augusta, especially a government that went to the polls promising support for local communities in their efforts to reduce crime?

The Hon. T.G. ROBERTS (Minister for Regional Affairs): I thank the honourable member for his very important question. I suspect that his intention is either to have the program reinstated or for the government to make an assessment of what it intends do in the absence of a crime prevention officer. The government is expending quite a bit of effort, energy and money to turn around the situation in Port Augusta. A strategy has been put together, which includes all sections of the community, and there has been a lot of cooperation by the community in putting together a whole range of programs. It is true that the apportionment of funding for the position was cut as a budget saving measure. Each ministerial department had to make an assessment as to savings and, unfortunately, there were budget implications in the case of crime prevention officers statewide.

It is not to say that the work that was being done by the crime prevention officer will not be picked up in some other way within some communities. Some regional communities will probably be worse off than others in relation to that cut if other crime prevention programs which have either been started by the crime prevention officers programs or which are nearing completion are not picked up by the communities. I hope to have a report in the very near future on the situation

in Port Augusta in relation to the success of the other programs. A whole suite of programs was being put together.

My early feedback is that there have been major successes and that things have improved in Port Augusta in relation to a whole range of issues, but there are still issues that are being grappled with that have not had the success that perhaps the community would require. Extra effort will be applied to Port Augusta because of its special circumstances, and we hope to be able to get the cooperation of the communities in the same way as the previous government when it put its crime prevention strategy in place, and to build on the efforts that are being made by a wide range of organisations in Port Augusta to come to terms with the difficulties that were being dealt with not just by local government but also by the broader communities generally. As I said, I hope to have that report shortly. But I am told by people on the ground that there has been improvement, and we hope to build on those improvements that have been made.

REGIONAL COMMUNITIES CONSULTATIVE COUNCIL

The Hon. G.E. GAGO: I seek leave to make an explanation before asking the Minister for Regional Affairs a question about the Regional Communities Consultative Council.

Leave granted.

The Hon. G.E. GAGO: The Minister for Regional Affairs recently announced the establishment of the Regional Communities Consultative Council as a new peak group representing people in regional South Australia. Can the minister outline the structure of this new body and explain how it differs from the former Regional Development Council?

The Hon. T.G. ROBERTS (Minister for Regional Affairs): The regional consultation processes are an important part of the response to the programs that we are putting in place, not just in regional development but also in crime prevention, as pointed out in my answer to the previous question. I have announced that a new body will be established to provide advice and feedback to me, as minister, and to the government generally. The Regional Communities Consultative Council will replace the Regional Development Council and will consist of about 20 representatives from the community. These representatives will be from regional areas. The members of the council will be chosen from a wide range of backgrounds. Meetings of the council will be held in a variety of locations and may be supplemented from time to time with co-opted representatives.

The Hon. Diana Laidlaw: So what's the difference under your government? The only difference is that you've changed the name.

The Hon. T.G. ROBERTS: Well, the difference is that, if we are to have a 20 person committee, about five out of the 20 will be chosen on a regional basis, so that when the meetings are held in a particular region there will be people in those regions who have particular knowledge about programs—

The Hon. J.S.L. Dawkins: They won't have the continuity.

The Hon. T.G. ROBERTS: No, they will not have continuity throughout the region, but 15 of them will. Five will be co-opted, and when I have described why the co-opting is necessary to get a broad range of views within communities, generally, regional questioners have been convinced that it is probably a better consultative process than that of the previous government. There is flexibility with five people in relation to hearing young people's voices, hearing the aged, and hearing a whole range of views that perhaps would not have been the case if the region's mothers and fathers were chosen because they were leaders within the community.

It is a different mix. The council will have the task of looking at the key issues affecting people living in regional areas and also to explore the major problems affecting people in those regions. The scope of this council will be broader than that of its predecessor, recognising that the regions face a range of challenges and have a lot of different ideas to share with each other. The timing for the setting up of the council will be as soon as possible. We will be getting local government and other bodies within regions to make names available for a choice, and hopefully we will get a broad cross-section of those people forwarded to us after consultation.

The other major difference from the previous council is that no state or federal politicians will be members, and the body will be chaired by an independent person. At present, I am considering the membership of the Regional Communities Consultative Council and hope to report back to parliament details of the inaugural meeting once the appointments have been made.

The Hon. DIANA LAIDLAW: As a supplementary question, does the minister envisage that the five floating members who attend each regional meeting will have full voting rights similar to the 15 permanent members? How does the minister envisage this will work in terms of voting rights and recommendations?

The PRESIDENT: Order! The honourable member will not have a debate; the minister will answer the question.

The Hon. T.G. ROBERTS: It is an advisory body. I do not think that too many contentious votes will be taken. If there are, I am sure that the committee itself will work out a form and structure and a method of voting, if that is required. However, that will be part of the—

The Hon. Diana Laidlaw: You haven't thought it through.

The Hon. T.G. ROBERTS: No, I am saying that the consultation processes will deliver a democratic body that hopefully will have a strong voice in regional communities that will be passed on to the minister.

The Hon. J.S.L. DAWKINS: As a further supplementary question, will the minister indicate whether the Regional Communities Consultative Council will consider as an urgent matter the future of the Community Builders Program?

The Hon. T.G. ROBERTS: My view is that the Community Builders Program is working. It is one of those bodies that is experiencing success, and many of the people who have participated in those programs have grown with the leadership development envisaged when the program was being set up by the previous government. The Community Builders Program has been recognised by us as having value enough for it to continue. I understand a community builders' meeting is to be held on Eyre Peninsula in continuation of the regional development builders' program that was held during the life of the previous government. I suspect that, in the next two to three weeks, there will be a meeting on Eyre Peninsula.

UNIT PRICING

The Hon. IAN GILFILLAN: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs, representing the Attorney-General, a question about unit pricing.

Leave granted.

The Hon. IAN GILFILLAN: On 30 May I asked the minister a simple question on whether the government supported broadening the current unit pricing requirements. I asked whether the Labor government supported the extension of unit pricing as it had in the survey before the election where it won office. The minister chose not to answer my question in his written reply. He indicated that the issue of unit pricing was one for the Trade Measurement Advisory Committee to deal with. He also indicated that in 1999 the Trade Measurement Advisory Committee considered the matter of broadening the existing unit pricing measure and ruled that it was not warranted.

The introduction of a broader regime of unit pricing in South Australia would require supermarkets to display two prices for each product—one would be the total price of the product and the other would be the price per unit. The measure of the unit price would vary depending on the type of product; for example, coffee could be displayed with its price for 100 grams and milk with its price for 100 millilitres. This would impact on supermarkets within our state. However, with the use of computers in pricing this impact would be small.

My questions to the minister are—and I note that, previously, this minister indicated support for the measure quite enthusiastically and thought it would help his shopping skills:

1. Does the minister agree that the power and value of a federation is not that each state falls to a lowest common denominator but that each state has the freedom to try different things and the opportunity to learn from not only their own mistakes and successes but also from their neighbours'? Federation is about states challenging and helping each other to improve and to excel.

2. Does the minister agree that South Australia's broadening its unit pricing regulations will not cause the uniform trading systems in this country to collapse and could, in fact, encourage other states to adopt similar practices?

3. I ask again: does the Labor government, as it said prior to the election, support the broadening of unit pricing?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I will refer those important questions to the minister in another place again and bring back another reply.

REPLIES TO QUESTIONS

TORRENS PARADE GROUND

In reply to **Hon. SANDRA KANCK** (17 July).

The Hon. T.G. ROBERTS: The Minister for Administrative Services has advised that:

1. The state government has offered the Returned Services League, the Vietnam Veteran's Association of Australia and the Royal Australian Air Force Association a lease to occupy part of the building in the Torrens Parade Ground.

The ex-service organisations have agreed to the following rental arrangements:

RSL—$20 000 pa indexed annually to CPI

Air Force Association—$11 480 pa indexed annually to CPI

Vietnam Veterans Association—$3 210 indexed annually to CPI

The Naval Association was also interested in relocating to the Torrens Parade Ground and decided to remain in their existing premises.

2. The lease arrangements with the ex-service groups will not impact on the use of the Parade Ground for cultural events that may be associated with say the Fringe or Festival of Arts.

LE FEVRE TERRACE

In reply to **Hon. DIANA LAIDLAW** (9 July).

The Hon. T.G. ROBERTS: The Minister for Local Government has advised that:

1. The government's interest in any possible traffic restrictions on Le Fevre and adjacent roads will be determined and expressed in accordance with the prescribed process, at the time that Adelaide City Council considers any traffic restrictions by way of Section 32 of the Road Traffic Act 1961.

2. As indicated in the answer to question 1, the government will consider the merit of any traffic restriction on Le Fevre and adjacent roads when a specific proposal is put before it.

3. Until the Adelaide City Council puts a specific proposal before the government, and the government has determined its position, it is not appropriate to speculate on any possible changes to legislation currently under development relating to traffic restrictions.

4. While not wishing to comment on any specific and theoretical outcome with respect to Le Fevre and adjacent roads, it is well understood that the government reserves the right to legislate in order to address issues of concern to it.

INDUSTRY, GOVERNMENT ASSISTANCE

In reply to **Hon. T.G. CAMERON** (8 July).

The Hon. P. HOLLOWAY: The Minister for Industry, Investment and Trade has provided the following information:

1. The annual reports of the Department of Industry and Trade show that the level of financial assistance spent on industry investment and assistance matters in 1998-99 to 2000-01, plus as yet unpublished details of the level of assistance in 2001-02 totals $163.527 million.

The level of new capital investment by industry assisted under these programs is $1 084 million. The number of new or saved jobs totals 16 603 and the impact on Gross State Product for the projects assisted has been estimated at $7 915 million.

2. Through a number of recently announced initiatives such as the charter of budget honesty, this government has publicly stated that it will be open and accountable. All proposals involving more than $500 000 are subject to scrutiny by the Industries Development Committee of the Parliament. Through providing maximum detail in Agency Annual Reports, publishing details of incentives and assistance contracts entered into and other mechanisms, the contract will provide comprehensive details on this aspect of government expenditure.

PUBLIC LIABILITY

In reply to **Hon. D.W. RIDGWAY** (27 May).

The Hon. P. HOLLOWAY: The Treasurer has provided the following information:

A second ministerial meeting between commonwealth, state and territory ministers and the President of the Australian Local Government Association was held in Melbourne on 30 May 2002 to continue work on addressing issues associated with the availability and affordability of public liability insurance. The treasurer, as the responsible minister, attended this meeting.

A Joint Communique was released by the ministers at the conclusion of that meeting and the treasurer made a ministerial statement on 3 June 2002 outlining the intentions of the South Australian government.

Of particular interest to the horse riding industry are proposals to permit the parties to a contract, subject to proper disclosure and to certain protections, to agree that services are provided on the basis that there is no liability for negligence.

On 8 July 2002, the South Australian government released the Recreational Services (Limitation of Liability) Bill 2002 which seeks to introduce a system of waivers to deal with risk associated with certain types of recreational services.

The bill also provides for codes of practice to be registered with the relevant minister. The code would be devised by a provider or group of providers, or by a peak body representing a particular sport

or recreation. It would set out the safety measures to be offered to participants in the recreation activity. The code would be made available at the location of the activity and will help people to make an informed choice before deciding whether to engage in a particular recreation or sporting activity.

The previous obstacle to such agreements was the Commonwealth *Trade Practices Act*. The Commonwealth on 27 June introduced the *Trade Practices Amendment (Liability for Recreational Services) Bill 2002* to amend the Act so that such agreements become possible by allowing parties to a contract for recreational services to contract out of the present implied warranty that services will be rendered with due skill and care.

Proposed legislation to cap insurance payouts should also benefit the horse riding industry along with other sections of the community. The South Australian government released on 8 July 2002 the *Wrongs (Damages for Personal Injury) Amendment Bill 2002* for public comment. This bill seeks to extend the system of thresholds and caps applying under the motor vehicle accident system to all bodily injury damages claims. It is hoped that these initiatives will result in insurance companies being able to insure all sectors of the horse riding industry.

Improved risk management is also a very important initiative since it has the potential to bring about the best of all outcomes—a reduction in the number and severity of injuries. On their own behalf organisations should take all reasonable steps to minimise the likelihood of injuries.

MINISTERIAL STAFF

In reply to **Hon. R.I. LUCAS** (29 May).

The Hon. P. HOLLOWAY: The Premier advises that soon after coming to Office, he issued a verbal instruction to ministers that ministerial staff such as Chiefs of Staff, ministerial advisers and media advisers were not to be issued with credit cards.

Staff performing administrative duties in ministerial offices may be issued with credit cards to facilitate the conduct of everyday business in ministerial offices.

Ministerial staff accompanying ministers on overseas travel may be issued with a credit card however that card must be surrendered on return.

The relevant treasurer's instruction is being amended to reflect these arrangements and a review is being undertaken by the Department of Premier and Cabinet of guidelines in relation to hospitality expenditure.

Ministerial staff will maintain the ability to be reimbursed for appropriate entertainment costs.

DRUGS SUMMIT

In reply to **Hon. M.J. ELLIOTT** (8 July).

The Hon. P. HOLLOWAY: The Premier has provided the following information:

1. Status of *Hansard* record:
- The government is committed to transparency and community participation in the policy process.
- The government's decision to have the proceedings of the recent South Australian Drugs Summit transcribed and made publicly available on the Drugs Summit website is an indication of this commitment.
- The expertise of the Hansard office was identified as best able to provide this service. However the documentation is not *Hansard* as such.
- The documentation of all Drugs Summit plenary sessions, including Day 5, is a true and accurate record of the proceedings.

2. Record of Day 5:
- The record of day 5 was finalised on the morning of 8 July 2002 and posted on the Drugs Summit Website on the afternoon of that day.
- The delay in finalising the preparation of the document for posting on the Website was due to administrative and technical reasons.

3. Advice of Social Inclusion Initiative to the government:
- The recommendations for the Summit have been referred to the Social Inclusion Board and Unit, which will advise the government on how to respond to the recommendations.
- Advice to the government will be in the form of a Cabinet Submission and as such the details will be confidential to Cabinet.
- The commitment of the government is to respond in detail to each of the Summit's 43 recommendations. If any recommendations are not accepted, the government's response will include a clear explanation of the reasons for such a decision.

In reply to **Hon. DIANA LAIDLAW** (8 July).

The Hon. P. HOLLOWAY: The Premier has provided the following information:

- I am pleased that many Opposition MPs and MLCs attended the Drugs Summit. I am sure that the Hon Diana Laidlaw's colleagues would advise her that the Drugs Summit proved an extremely successful process for consideration of complex issues.
- Delegates to the Summit worked hard and cooperatively throughout the week of the Drugs Summit.
- This is reflected in the comprehensive recommendations presented to the government by the delegates, all of which deserve careful assessment and consideration.
- The Social Inclusion Board and Unit after consulting as appropriate will provide advice to the government through a cabinet submission on all the recommendations presented by the delegates to the Drugs Summit.
- The government's response will take into account advice received on all recommendations from the Social Inclusion Board and Unit. If any recommendations are not accepted, the government's response will include a clear explanation of the reasons for such a decision.

MEMBERS, CODE OF CONDUCT

In reply to **Hon. R.I. LUCAS** (9 July).

The Hon. P. HOLLOWAY: The Premier has provided the following information:

The government is preparing a draft Code of Conduct for MPs for the consideration of the Parliament. This Code is in addition to the government's Ministerial Code of Conduct which came into effect on 1 July 2002.

Contrary to what has been asserted, the letter tabled by Mr Lucas is not on parliamentary letterhead.

The letter was written at a time that Mr Lewis was a member of the Liberal Party. For how long have Liberal MPs been aware of the existence of the letter and what action did they take at the time?

ANIMAL LIBERATION RAIDS

In reply to **Hon. CAROLINE SCHAEFER** (10 July).

The Hon. P. HOLLOWAY: I provide the following information:

Animal Liberation has embarked on a campaign to have sow stall housing banned. This campaign was preceded by a raid, with illegal entry, of the piggery at Mount Compass and television footage taken of a pig suffering from leg sores.

The legislation which deals with matters of livestock disease control and biosecurity is the *Livestock Act 1997* Section 28 of which defines, 'A person who does an act intending that, or being recklessly indifferent as to whether, livestock become affected … with a notifiable condition is guilty of an offence.'

In the present case, there is no evidence of intentional disease spread, and insufficient evidence of risk of entry of disease to establish reckless indifference to disease spread. Therefore, prosecution under any part of the Livestock Act 1997 is unlikely to be sustained in this instance.

In order to address the risk by such behaviour as in this case, the Chief Inspector has written to Animal Liberation, advising of their responsibilities under the Act not to recklessly risk spread of disease.

The Minister for Police has provided the following information:

On 17 June 2002 the Manager of Mount Compass Bacon, Munetta Road, Mount Compass telephoned the Aldinga Police Station to report that unknown persons had unlawfully entered property of Mount Compass Bacon between 3.50pm on 16 June and 7am on 17 June 2002. A sign left on the premises indicated that the offender/offenders was/were linked to a group known as 'animal liberation'. The manager, at the time of reporting the matter, advised police that he only wanted the incident recorded in case it became an ongoing problem. No further incidents have been reported to police.

MURRAY RIVER FISHERY

In reply to **Hon. D.W. RIDGWAY** (17 July).

The Hon. P. HOLLOWAY: I provide the following information:

1. A commercial fisher near Swan Reach recently informed fisheries officers conducting patrols of the lower River Murray that a number of his drum nets had been stolen. The matter has since been reported to the Swan Reach Police.

There have not been any reports to FISHWATCH regarding the theft of gill nets from the river. There has been information provided suggesting that a number of commercial River fishers have been approached to sell gill nets to members of the public. It could be assumed that these persons wished to acquire the nets to use for the taking of fish illegally, either in the river or the sea. There have been no confirmed reports of any sales of this nature having occurred.

Fisheries officers regularly patrol the river and adjacent waters in order to detect and remove any illegal fishing gear. Recent patrols have resulted in the removal of a number of shrimp and yabbie traps, but there have been no illegal drum nets or gill nets detected.

2. Opportunities exist for fish to be sold through black markets across the State and interstate across all fisheries. Fisheries Officers have investigated a number of reports recently, where suspected illegal sales of freshwater fish are alleged to have taken place. To date no offences have been detected.

There are a number of ongoing investigations in other fisheries regarding reports of illegal taking and selling of fish.

3. Additional Resources are not considered necessary as Fisheries Officers conduct regular patrols of the river. The frequency, location and nature of patrols are often in response to intelligence gathered from fishers and through reports to FISHWATCH and fisheries officers. Information received relative to the river will be monitored closely.

In addressing the recent changes in the river fishery, additional patrols have been conducted and are programmed for the future.

PIRSA FISHWATCH is committed to monitoring levels of illegal fishing activity across the State. Their resources are highly mobile and are directed to immediately address any identified problems as they arise.

The community has been alerted to the prospect of increased illegal fishing and warned to be wary of illegal sales of fish. They are also encouraged to report any suspicious fishing activity or fish sales to the FISHWATCH reporting service.

4. An assessment of fishing returns submitted by commercial fishers over recent years indicate that gill nets account for around 63 per cent of the total annual quantity of fish caught. With the removal of gill nets from the River, it can be expected that these fish will remain in the River system to breed and/or to be caught by other means, such as drum nets and by recreational fishers.

The quantity of fish caught by gill nets varies every year depending on the flow conditions of the River and the abundance of fish. In recent years, about 60 tonnes of Callop, 13 tonnes of Murray cod, 55 tonnes of Bony bream and 82 tonnes of European carp have been caught by commercial gill nets every year.

The government is committed to a national native fish strategy for the Murray Darling Basin that has as its overall goal, to rehabilitate native fish communities in the Basin back to 60 per cent of their estimated pre-European settlement levels after 50 years of implementation. To assist in meeting this target, commercial access to Murray cod and callop in the river fishery will be removed in July 2003. This means that after this time, there will be no commercial harvest of these native fish stocks in the River Murray above Wellington.

The total recorded commercial catch of Murray cod in 2000-2001 was 26 tonnes. For callop it was 102 tonnes. This quantity of fish will be left in the river system every year to breed and be available for recreational capture using lines and hooks.

The ability of native fish to reproduce depends largely on river flow conditions and the advent of flooding events. The government is implementing a program to improve environmental flows in the River that will assist with the further rehabilitation of native fish stocks.

KERNICK, Mr P.

The Hon. CARMEL ZOLLO: I seek leave to make a personal explanation.

Leave granted.

The Hon. CARMEL ZOLLO: In my contribution to the matters of interest debate on 10 July last, I inadvertently referred to Mr Phil Kernick as the President of the Dairy Industry Development Board instead of the President of the SA Dairy Farmers' Association Inc. Mr Perry Gunner, of course, is the Chairman of the Dairy Industry Development Board. I know that both gentlemen are committed to the expansion of our dairy industry and the SA Dairy Industry Strategic Plan for 2010, and I apologise for my error.

HOBAN, Mr P.

The Hon. NICK XENOPHON: I seek leave to make a personal explanation.

Leave granted.

The Hon. NICK XENOPHON: In the course of the parliamentary debate on the Gaming Machines (Limitation of Exception to Freeze) Amendment Bill on 18 July 2002, I referred to a discussion I had just had with Mr Peter Hoban, who was in the gallery, the solicitor for Mr Ralph Cufone, who was also in the gallery whose company Anport Pty Ltd was the applicant for the Angle Vale poker machine licence. As a result of that discussion with Mr Hoban, I informed the council that the property was purchased in November 2001 and was settled on in December 2001. I relied in good faith on that information that had I received before passing it on to the council.

Subsequently, in the course of a further hearing on this matter before the Liquor and Gambling Commissioner, I requested and obtained documents from Mr Cufone's solicitors which disclosed that there was a memorandum of assignment between Lijobe Pty Ltd, the assignor, and Anport Pty Ltd, the assignee, dated 30 September 2000 for purchase of the land at Angle Vale.

Based on the information at the hearing, the barrister for Anport Pty Ltd confirmed that there was a settlement on that land on 11 May 2001. On the basis of information received from the barrister, Mr Firth, this was at a time when Anport Pty Ltd knew that the freeze was due to expire on 31 May 2001 but was aware it could be extended.

In making this explanation I am not in any way criticising the source of the information I received about the purchase dates of the land, as I accept that the information given to me by Mr Hoban was given in good faith, albeit in the pressure cooker atmosphere of the debate. Finally, as a courtesy to Mr Hoban, I have read to him earlier today the substance of this explanation and obtained his concurrence to it.

APPROPRIATION BILL

Received from the House of Assembly and read a first time.

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I move:

That this bill be now read a second time.

On 11 July 2002 the 2002-03 budget papers were tabled in the council. Those papers detail the essential features of the state's financial position, the status of the state's major financial institutions, the budget context and objectives, revenue measures and major items of expenditure included

under the Appropriation Bill. I refer all members to those documents, including the budget speech 2002-03, for a detailed explanation of the bill. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides for the Bill to operate retrospectively to 1 July 2002. Until the bill is passed, expenditure is financed from appropriation authority provided by the *Supply Act.*

Clause 3: Interpretation

This clause provides relevant definitions.

Clause 4: Issue and application of money

This clause provides for the issue and application of the sums shown in the schedule to the Bill. Subsection (2) makes it clear that the appropriation authority provided by the *Supply Act* is superseded by this bill.

Clause 5: Application of money if functions etc, of agency are transferred

This clause is designed to ensure that where parliament has appropriated funds to an agency to enable it to carry out particular functions or duties and those functions or duties become the responsibility of another agency, the funds may be used by the responsible agency in accordance with parliament's original intentions without further appropriation.

Clause 6: Expenditure from Hospitals Fund

This clause provides authority for the Treasurer to issue and apply money from the Hospitals Fund for the provision of facilities in public hospitals.

Clause 7: Appropriation, etc, in addition to other appropriations, etc.

This clause makes it clear that appropriation authority provided by this bill is additional to authority provided in other Acts of Parliament, except, of course, in the *Supply Act*.

Clause 8: Overdraft limit

This sets a limit of $50 million on the amount which the government may borrow by way of overdraft.

The Hon. R.I. LUCAS secured the adjournment of the debate.

ESSENTIAL SERVICES COMMISSION BILL

Received from the House of Assembly and read a first time. Pursuant to section 28A of the Constitution Act 1934, the bill was declared a bill of special importance.

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): 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.

Today the Government is delivering on a key election commitment by introducing to Parliament major new legislation that aims to serve the long-term interests of the community with respect to the price and delivery of essential services.

The Essential Services Commission Bill establishes the new Essential Services Commission as a powerful new industry regulator.

Utility services such as electricity, gas, water and sewerage are essential to the daily lives of all South Australians. Reliable supply of those services at reasonable prices is essential to the community and to the ongoing competitiveness of South Australian businesses, small and large.

The Government must play a central role overseeing the regulatory framework in which these essential services are provided.

There has been even more focus on the Government's regulatory role given the privatisation by the Liberal Government of the State's electricity industry and national market reforms in the electricity and gas industries.

Privatisation has failed South Australians. For example, the impact of privatisation on electricity prices was clearly apparent from 1 July 2001 when nearly 3000 commercial consumers faced power price increases averaging 35 per cent with some increases as much as 100 per cent. Over the past few years South Australia has experienced numerous instances of electricity blackouts that have caused severe disruption to the community. There have also been supply shortfalls of gas affecting some of South Australia's largest businesses.

On top of these previous price increases and supply problems, all households and small businesses consuming less than 160MWh per annum will face a fundamental change in the way they take electricity from 1 January 2003. These small customers will be required to choose their electricity retailer, a process referred to as full retail competition. Some reports have estimated that electricity prices to households could increase by as much as 30 per cent from 1 January 2003.

This Government inherited these price, supply and reliability problems. Our first response has been to call a halt to any further privatisation of Government assets. Our second response is to consider how price, supply and reliability problems in essential services can be addressed. Our choices in this regard are effectively limited to ensuring that the regulatory regime is sufficiently directed and powerful.

The Government believes that the current regulatory arrangements are inadequate and must be revised to provide greater clarity for the regulated businesses and the community they serve. The *Independent Industry Regulator Act 1999* has been reviewed as has the Victorian *Essential Services Commission Act 2001*. The Victorian Act has been useful in providing insights to ways of improving the South Australian regulatory regime. The results of this review were incorporated into a Position Paper titled 'Establishing the Essential Services Commission' which was publicly released in June 2002.

The new Essential Services Commission will subsume the existing regulatory responsibilities of the South Australian Independent Industry Regulator. The Commission will continue to have regulatory independence and will not be subject to the direction and control of the Minister with respect to its regulatory functions. The current Regulator, Mr Lew Owens, will become the first Chairman of the new Commission.

Over the next few months the functions of the Commission will be expanded from the electricity industry, third party access to the Tarcoola to Darwin railway and third party access to South Australian ports and maritime services to include regulation of the gas industry and water and sewerage services.

However, the immediate focus of the Commission will be on electricity, reflecting the immediate priority in preparing for electricity full retail competition.

Given the convergence of the gas and electricity industries, there is a large degree of commonality between gas and electricity regulation and there are benefits from having one regulator address energy matters. The Government is currently reviewing the legislative amendments to the *Gas Act 1997* and other related Acts to bring gas pricing and licensing regulatory functions within the ambit of the Commission. These amendments will be tabled in Parliament by the end of this year.

The Commission will also oversight the quality and reliability of water services and require a standard customer contract to be developed with SA Water. The economic regulation of water and sewerage services is excluded from the initial functions of the Commission.

There is flexibility to declare other essential services to be subject to the jurisdiction of the Essential Services Commission.

A major element of the Bill is the introduction of a new primary objective. The Commission must protect the long term interests of South Australian consumers with respect to the price, quality and reliability of essential services. The long term interests of consumers are consistent with efficient and financially viable regulated industries, that have incentives for long term investment. Accordingly, the Commission must also have regard to these matters in its regulatory decisions.

A real strengthening of regulatory powers is achieved by a combination of increased enforcement powers and penalties in this Bill and, as appropriate, by increased enforcement powers and penalties in the related industry Act.

In this Bill, the maximum penalty for breach of a pricing determination by the Commission is $1 million. Enforcement powers include warning notices and injunctions. Where it appears to the Commission that a contravention has occurred, eg, of a pricing determination, it may issue a warning notice and receive an assurance that a breach has been, or will be, redressed. In addition,

the Minister, the Commission or any other person may seek an injunction in the Courts to require that an entity undertake actions to remedy a breach.

As an example of increased enforcement powers and penalties in related industry Acts, the *Electricity Act 1996* will also provide for penalties of up to $1 million for a breach of a licence condition, including breaches of industry codes or rules. Similar provisions with respect to warning notices and injunctions will also be included in the Electricity Act. Amendments to the Electricity Act will be tabled as soon as possible.

Overall, these enforcement provisions will be a substantial incentive to industry participants to comply with the Commission's determinations.

The approach of linking the Essential Services Commission legislation with the relevant industry Act, and stronger enforcement powers, will be followed with the gas industry and other industries as appropriate.

There are substantially improved governance arrangements for the Essential Services Commission, as compared with those applicable to the South Australian Independent Industry Regulator.

In particular, there will be a Commission Chairperson and the capacity to appoint part-time Commissioners. Appointments will be by the Governor. With the broadening of the regulatory responsibilities of the Commission from those of the current Regulator, it is important that further knowledge, skills and experience in these new fields can be brought to the Commission to complement the skills and experience of the Commission Chairperson, as required. Joint decision making on important determinations, particularly in these new areas, can help ensure good regulatory outcomes. Additionally, the Commission would be able to delegate specific functions and projects to the Chairperson and to the part-time Commissioners as considered appropriate.

A number of good practice administrative and operating procedures are specified. These procedures will ensure appropriate transparency and accountability and will not impact on the Commission's regulatory independence.

Consumers and industry will need to know the Commission's general consultation and regulatory practices and principles. Accordingly, the Essential Services Commission is required to prepare and publish a Charter of Consultation and Regulatory Practice, outlining the Commission's approach to, and processes of, consultation and regulatory principles. As it is an important document, the Commission is required to consult with the Minister in the preparation of this document.

In terms of improved communications, harmonisation and coordination of regulatory activities, the Essential Services Commission is required to enter into, and publish, Memoranda of Understanding (MOUs) with other regulators, such as the Office of the Technical Regulator. The Commission is also required to consult with various entities, including consumer bodies. These entities will be declared by regulation.

The Commission must submit to the Minister an annual performance plan and budget, which must comply with the Minister's requirements. It is expected that the Essential Services Commission will continue to be primarily industry funded through licence fees on regulated industries, as is the case with the South Australian Independent Industry Regulator.

The establishment of an Essential Services Ombudsman is another key Government commitment that has been announced previously.

The requirement for the electricity, gas, water and sewerage industries to participate in an Ombudsman scheme will be legislated in the relevant industry Act. For example, the amendments to the Electricity Act that are soon to be tabled will require such participation. Responsibility for resolution of consumer complaints with respect to gas and water and sewerage services will be added over time.

The new Ombudsman scheme must be approved by the Essential Services Commission. It is expected that the scheme would build upon the existing Electricity Industry Ombudsman.

As in the case of electricity industry participants, gas and water industry participants will be required to continue to fund the activities of the new Ombudsman.

I commend the bill to honourable members.

Explanation of clauses

PART 1

PRELIMINARY

Clause 1: Short title

Clause 2 Commencement

Clauses 1 and 2 are formal.

Clause 3: Interpretation

This Clause sets out definitions for terms used in the measure. It defines "essential services" as being:

(a) electricity services;

(b) gas services;

(c) water and sewerage services;

(d) maritime services;

(e) rail services;

(f) any other services prescribed for the purpose of the definition.

PART 2

ESSENTIAL SERVICES COMMISSION

Clause 4: Essential Services Commission

Clause 4 establishes the *Essential Services Commission*.

Clause 5: Functions

Clause 5 states the Commission's functions. These include the regulation of prices.

Clause 6: Objectives

Clause 6 states the objectives the Commission must have in performing its functions. It provides that its primary objective must be the protection of the long term interests of South Australian consumers with respect to the price, quality and reliability of essential services.

Clause 7: Independence

Except as provided under this measure or any other Act, the Commission is not to be subject to Ministerial direction in the performance of its functions.

Clause 8: Commission may publish statements, reports and guidelines

The Commission is empowered to publish statements, reports and guidelines relating to the performance of its functions.

Clause 9: Commission must publish Charter

Under this clause, the Commission must publish a Charter of Consultation and Regulatory Practice including guidelines relating to processes for making price determinations or codes or rules and conducting inquiries.

Clause 10: Consultation

Clause 10 provides that the Commission must consult with a relevant prescribed agency in the making of a price determination or a code or rules, in the conduct of an inquiry, after first consulting with the Minister and in preparing and reviewing the Charter of Consultation and Regulatory Practice.

It also provides that, if requested to do so by the Commission, a prescribed agency must consult with the Commission.

A prescribed agency means a person, body or agency that has functions or powers under relevant health, safety, environmental or social legislation applying to a regulated industry and is prescribed by regulation for the purposes of this Part.

Clause 11: Memoranda of Understanding

Under this clause, the Commission and a prescribed body must enter into a Memorandum of Understanding to include such matters as are prescribed and any other matters that the parties consider appropriate.

Clause 12: Membership of Commission

Clause 12 states that the Commission is to be constituted of a Commissioner, appointed by the Governor as the Chairperson, and such number of additional Commissioners as are appointed by the Governor.

Clause 13: Commissioners

A person may be appointed as a Commissioner who is qualified for appointment because of the person's knowledge of, or experience in, one or more of the fields of industry, commerce, economics, law or public administration.

Clause 14: Acting Chairperson

Clause 14 provides that the Governor may appoint an Acting Chairperson to act in the office of the Chairperson and a person so appointed has, while so acting, all the functions and powers of the Chairperson.

Clause 15: Staff

The staff of the Commission may comprise persons employed in the Public Service and assigned to assist the Commission or persons appointed by the Commission.

Clause 16: Consultants

The Commission may engage consultants.

Clause 17: Advisory committees

The Commission may establish advisory committees to provide advice on specified aspects of the Commission's functions.

Clause 19: Delegation

This clause allows the Commission to delegate functions or powers to a Commissioner or any person or body of persons that is, in the Commission's opinion, competent to perform or exercise the relevant functions or powers.

Clause 19: Conflict of interest

Clause 19 provides that the Chairperson, an Acting Chairperson, a Commissioner or a delegate of the Commission must inform the Minister in writing of any interest that the person has or acquires that conflicts or may conflict with the person's functions. Unless that conflict is resolved to the Minister's satisfaction, the person is disqualified from acting in relation to the matter.

Clause 20: Meetings of Commission

The Chairperson may convene as many meetings of the Commission as he or she considers necessary for the efficient conduct of its affair. A quorum of the Commission consists of a majority of the Commissioners in office for the time being.

Clause 21: Common seal and execution of documents

Clause 21 provides that the common seal of the Commission must not be affixed to a document except in pursuance of a decision of the Commission and the affixing of the seal must be attested by the signatures of 1 or more Commissioners. It also provides that a document is duly executed by the Commission if the common seal of the Commission is affixed to the document in accordance with the proposed section or the document is signed on behalf of the Commission by a person or persons in accordance with an authority conferred under the proposed section.

Clause 22: Application of money received by Commission

Except as otherwise directed by the Treasurer, fees or other amounts received by the Commission will be paid into the Consolidated Account.

Clause 23: Annual performance plan and budget

This clause requires the Commission to prepare and submit to the Minister a performance plan and budget for the next financial year or for some other period determined by the Minister.

Clause 24: Accounts and audit

This clause requires the Commission to ensure that proper accounting records are kept of the Commission's receipts and expenditures. The Auditor-General may at any time, and must at least once in each year, audit the accounts of the Commission.

PART 3
PRICE REGULATION

Clause 25: Price regulation

Clause 25 provides hat the Commission may make price determinations if authorised to do so by a relevant industry regulation Act or by regulation under this measure.

Clause 26: Making and effect of price determinations

This clause sets out the process for making price determinations and deals with their commencement and subsequent variation or revocation.

Clause 27: Offence to contravene price determination

It is to be an offence with a maximum penalty of $1 000 000 if a regulated entity contravenes a price determination or part of a price determination that applies to the entity.

PART 4 INDUSTRY CODES AND RULES

Clause 28: Codes and rules

This clause provides that the Commission may make codes or rules relating to the conduct or operations of a regulated industry or regulated entities.

PART 5
COLLECTION AND USE OF INFORMATION

Clause 29: Commission's power to require information

The Commission is empowered to require a person to give the Commission information in the person's possession that the Commission reasonably requires for the performance of the Commission's functions.

Clause 30: Obligation to preserve confidentiality

This clause requires the Commission to preserve the confidentiality of commercially sensitive material received by it.

PART 6
REVIEWS AND APPEALS

Clause 31: Review by Commission

Under this clause, the Commission may—

- on application by the Minister, or by a regulated entity to which the determination applies, review a price determination
- on application by a person of whom a requirement has been made for information under Part 5, review that requirement
- on application by a person who has been given notice under Part 5 of the proposed disclosure of information that the person claimed to be confidential information, review the decision of the Commission to disclose the information.

Clause 32: Appeal

This clause provides that the applicant for a review under Part 6, or any other party to the review who made submissions on the review, who is dissatisfied with the result of the review may appeal to the Administrative and Disciplinary Division of the District Court. The Court may, on appeal, affirm the decision appealed against or remit the matter to the Commission for consideration or further consideration in accordance with any directions of the Court.

Clause 33: Exclusion of other challenges to price determinations

Under this clause, the validity of a price determination may not be challenged in proceedings apart from a review or appeal under Part 6.

PART 7
INQUIRIES AND REPORTS

Clause 34: Inquiry by Commission

The Commission is empowered by this clause to conduct an inquiry of its own initiative.

Clause 35: Minister may refer matter for inquiry

The Commission is required to conduct an inquiry into a matter if required to do so by the Minister administering this measure or a relevant regulated industry Act.

Clause 36: Notice of inquiry

This clause provides for the various notices that must be given of an inquiry.

Clause 37: Conduct of inquiry

This clause provides for the Commission's procedures and powers on an inquiry.

Clause 38: Reports

A report on an inquiry must be made to the relevant Minister and tabled in Parliament.

PART 8
MISCELLANEOUS

Clause 39: Annual report

Annual reports on the Commission's operations must be made to the Minister and tabled in Parliament.

Clause 40 : Warning notices and assurances

This clause allows the Commission to issue warning notices and obtain assurances from persons who contravene the measure.

Clause 41: Register of warning notices and assurances

The Commission must keep a register of warning notices and assurances. The registers may be inspected without fee.

Clause 42: Injunctions

This clause allows for various court injunctions to be obtained against persons contravening the measure.

Clause 43: False or misleading information

It is to be an offence with a maximum penalty of $20 000 or imprisonment for 2 years if a person makes a false or misleading statement in any information given under the measure.

Clause 44: Statutory declarations

The Commission may require that information provided to it be verified by statutory declaration.

Clause 45: General defence

Under this clause, it will be a defence to a charge of an offence if the defendant proves that the offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

Clause 46: Offences by bodies corporate

If a body corporate is guilty of an offence against the measure, each director of the body corporate is, subject to the general defence, guilty of an offence and liable to the same penalty.

Clause 47: Continuing offence

This clause provides a daily penalty for continuing offences.

Clause 48 : Order for payment of profit from contravention

The court convicting a person of an offence against the measure may order the convicted person to pay to the Crown an amount not exceeding the court's estimation of the amount of any monetary, financial or economic benefits acquired, or accruing to the person as a result of the commission of the offence.

Clause 49: Immunity from personal liability

This clause provides an immunity from personal liability for a person engaged in the administration or enforcement of the measure for acts or omissions in good faith. The liability will instead lie against the Crown.

Clause 50: Evidence

This clause provides assistance in the proof of various matters in prosecutions and other proceedings.

Clause 51: Service

This clause deals with the methods of service of documents required or authorised to be given under the measure.

Clause 52: Regulations

The Governor may make regulations for the purposes of the measure.

Clause 53: Review of Act

Under this clause, the Minister is to review the measure as soon as possible after the period of 3 years from the date of assent. A report on the outcome of the review is to be completed within 6 months after that period of 3 years. The report must be tabled in Parliament.

SCHEDULE 1

Appointment and Selection of Experts for Court

A panel of experts is to be established to sit as assessors with the Court consisting of persons with knowledge of, or experience in, a regulated industry or in the fields of commerce or economics.

SCHEDULE 2

Repeal and Transitional Provisions

The *Independent Industry Regulator Act 1999* is repealed.

The Commission is declared by this Schedule to be the same body corporate as the South Australian Independent Industry Regulator established under the *Independent Industry Regulator Act 1999*.

The person holding office as the South Australian Independent Industry Regulator is, under this Schedule, to be taken to have been appointed as the Chairperson of the Commission.

SCHEDULE 3

Consequential Amendments

This Schedule makes consequential amendments to the *Local Government Act 1999* and the *Maritime Services (Access) Act 2000* replacing references to the South Australian Independent Industry Regulator with references to the Essential Services Commission.

The Hon. R.I. LUCAS secured the adjournment of the debate.

ELECTRICITY (MISCELLANEOUS) AMENDMENT BILL

Received from the House of Assembly and read a first time. Pursuant to section 28A of the Constitution Act 1934, the bill was declared a bill of special importance.

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I move:

That this bill be now read a second time.

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

Leave granted.

The government has brought the *Essential Services Commission Bill 2002* before Parliament to establish the Essential Services Commission as a powerful regulator with jurisdiction over the areas of electricity, gas, ports, rail and water.

A key initial role of the Essential Services Commission is to protect the interests of consumers following the introduction of Full Retail Competition early next year.

The government fulfils another key election commitment with this bill, the *Electricity (Miscellaneous) Amendment Bill 2002*. This bill reiterates the government's commitment to the long term interests of South Australian electricity consumers by further empowering the Essential Services Commission to perform its key role and establishing a comprehensive regulatory framework incorporating a range of customer protections.

By combining a powerful regulator with a broader regulatory regime, all enshrined in legislation, this government is ensuring it maintains effective oversight of the provision of this essential service in preparation for the introduction of full retail competition next year.

The introduction of full retail competition will mean that all South Australian electricity customers will be able to choose their electricity retailer. This will present a fundamental change in the way some 730 000 customers, with annual electricity consumption of less than 160MWh, being domestic households and small businesses, take supply of an essential service. Under current arrangements, these customers are only able to take supply from AGL.

There will no doubt be those customers who, in preparation for full retail competition, will seek and enter into new contracts from 1 January 2003, be it with AGL or another retailer supplying this class of customer.

However it is also to be expected that a large number of these small customers will not have entered into a new contract in preparation for full retail competition. The proposed amendments to the Electricity Act will protect both those customers who choose to shift electricity retailers and those who stay with their current supplier. The current legislative environment does not guarantee that any of these small customers will enjoy an appropriate level of protection after 1 January 2003.

The experience of 1 July 2001, where almost 3000 commercial consumers became contestable with the removal of the grace period tariff, demonstrates all too clearly what can occur when electricity customers are faced with having to negotiate their own contracts, in a climate where there is initially limited competition. It should be noted that in July 2001 these were relatively sophisticated commercial consumers, not small customers who may not be in a position to negotiate a contract.

This government does not want a repeat of that unacceptable situation where the Liberal government was forced to react to mounting pressures from the business community, given the previous government's lack of foresight and preparation for the removal of the grace period tariff.

It is for this reason that this government is striving to establish appropriate protections well in advance of full retail competition.

These protections will ensure that, as the incumbent retailer, AGL is obliged to offer a 'standing contract' to all small customers, be they existing or new, as at 1 January 2003. This will ensure that all domestic household and small business customers will have a retail contract, even if they haven't entered into a new contract with AGL or any other retailer of their own accord.

But the government recognises that not only should small customers be entitled to continue to receive electricity, they should be entitled to receive that electricity at a justifiable price, and be aware of that price before their supply commences.

In recognition of this, the legislative amendments will require the electricity retailer to publish not only the tariff which the customer will be charged under the standing contract, but a justification of that price.

It will then be the role of the Essential Services Commission, as the independent regulator, to assess the price and its justification, and most importantly, if it considers the prices are not justifiable, to set an appropriate price.

Having dealt with the immediate availability of retail contracts from 1 January 2003, the bill also ensures that where a customer moves into new premises where electricity is supplied by a particular retailer, or enters a fixed term contract which subsequently expires without a replacement contract being entered into, that customer will continue to receive electricity by obliging the retailer with responsibility for those premises to continue supplying under a 'default contract'. Again, these retailers will be subject to the price justification regime imposed by the Essential Services Commission.

As with any regulatory framework, sufficient penalties must be available, and enforced, where there is a breach.

This government recognises that in an industry as large as the electricity retail market, where the provision of the service is essential, there needs to be an appropriate deterrent to minimise any likely breaches. It is for this reason that this bill will amend the current penalties such that, in instances of a primary Code or licence breach, a maximum penalty of $1 million will be applied.

Penalties for breaching a price determination issued by the Essential Services Commission will attract a maximum penalty of $1 million, as specified in the Essential Services Commission Act.

In instances where a Code or licence breach does occur, the bill includes a comprehensive process for rectification, to be utilised by the Essential Services Commission, involving the issuing of warning notices and the entering into of statutory undertakings.

As the proposed amendments illustrate, the government believes that customers deserve peace of mind which comes from knowing that their electricity will continue to be supplied, under terms and conditions which are overseen by a powerful regulator, and at a price which is justified.

Whilst it is difficult to predict the level of retail competition in the South Australian small customer market on 1 January 2003, one thing is certain, customers will be protected as they adjust to a new environment, to the full extent of this government's powers.

I commend the bill to honourable members.

Explanation of Clauses

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Amendment of s.4—Interpretation

This clause amends section 4 of the Act by inserting definitions for terms used in the measure. It defines "annual electricity consumption level" as meaning a level of consumption of electricity determined in accordance with the regulations. It is contemplated that the regulations may, for that purpose, make provision for the estimation or agreement of the level in specified circumstances.

It also defines "Commission" as meaning the Essential Services Commission which is to be established under a measure currently before the Parliament.

"Small customer" is defined as meaning a customer with an annual electricity consumption level less than the number of MW.h per year specified by regulation for that purpose, or any customer classified by regulation as a small customer.

This clause also makes consequential amendments to section 4 of the Act, by striking out several definitions.

Clause 4: Amendment of s. 6G—Establishment of board

This clause amends section 6G of the Act by substituting the Minister to whom administration of the *Electricity Act 1996* is committed for the Treasurer for the purpose of consultation with holders of licences regarding appointments to the board.

Clause 5: Insertion of ss. 6N and 6O

Clause 5 inserts two additional sections. Section 6N(1) provides that the Planning Council may, by written notice, require a person to give information in that person's possession to the Planning Council within a reasonable time where that information is reasonably required by the Planning Council for the performance of the Planning Council's functions under the Act, or any other Act, or the National Electricity Code. Subsection (2) provides that the person required to give information under this section must provide the information to the Planning Council within the time stated in the written notice. Contravention of this section is an offence, and carries a maximum penalty of $20 000. Subsection (3) provides that a person cannot be compelled to provide information under this section if that information might tend to incriminate the person of an offence.

Section 6O(1) provides that the Planning Council must preserve the confidentiality of information gained by the Planning Council in the course of performance of its functions under the Act where that information could affect the competitive position of an electricity entity or other person, or

is commercially sensitive for some other reason.

Subsection (2) provides that subsection (1) does not apply to the disclosure of information between persons engaged in the administration of the Act, and includes persons engaged to provide legal or other professional advice to the Planning Council.

Subsection (3) provides that information that has been classified as confidential by the Planning Council is not liable to disclosure under the *Freedom of Information Act 1991*.

Clause 6: Amendment of s. 15—Requirement for licence

This clause amends the penalty provision of section 15 of the Act, raising the maximum penalty from $250 000 to $1 000 000.

Clause 7: Amendment of s. 17—Consideration of application

This clause makes a consequential amendment to section 17 by striking out paragraph *(ab)* of subsection (2). The amendment is consequential on the expiry of the cross-ownership rules set out in Schedule 1.

Clause 8: Amendment of s. 21—Licence conditions

This clause amends section 21 of the Act by providing that the Industry Regulator must or may make a licence subject to certain conditions determined by the Industry Regulator, rather than limiting that requirement to the issue of a new licence.

Clause 9: Amendment of s. 22—Licences authorising generation of electricity

This clause amends section 22 of the Act by providing that the Industry Regulator must make a licence authorising the generation of electricity subject to certain conditions determined by the Industry Regulator, rather than limiting that requirement to the issue of a new licence.

Paragraph *(b)* amends subsection (1)*(c)*(i), which requires the electricity entity to prepare and periodically revise a safety and technical management plan dealing with matters prescribed by regulation, by extending the subject matter of the plan to include reliability and maintenance.

Clause 10: Amendment of s. 23—Licences authorising operation of transmission or distribution network

This clause amends section 23 of the Act by providing that the Industry Regulator must make a licence authorising the operation of a transmission or distribution network subject to certain conditions determined by the Industry Regulator, rather than limiting that requirement to the issue of a new licence.

Paragraph *(b)* amends subsection (1)*(c)*(i), which requires the electricity entity to prepare and periodically revise a safety and technical management plan dealing with matters prescribed by regulation, by extending the subject matter of the plan to include reliability and maintenance.

Paragraph *(c)* amends subsection (1)*(k)* by requiring the electricity entity to participate in an ombudsman scheme that applies to the electricity industry and to other regulated industries (within the meaning of the *Essential Services Commission Act 2002*, a measure that is currently before the Parliament) prescribed by regulation, and the terms and conditions of which are approved by the Commission.

Paragraph *(d)* removes the reference to non-contestable customers in subsection (1)*(n)*(iv) and replaces it with a reference to small customers.

Paragraph *(e)* inserts two additional subsections in section 23. Subsection (5a) provides that if an electricity entity fails, within a period of 90 days from a date specified by the Commission by written notice to the entity, to enter into an agreement with another electricity entity specified by the Commission as required by a condition of the entity's licence imposed under subsection (1)*(n)*(viii) (a coordination agreement), the entity will, if the Commission so directs by written notice to the entity, be taken to have entered into such an agreement with the other entity, containing terms specified in the notice.

Subsection (5b) provides that the Commission may vary or substitute terms of certain coordination agreements.

Clause 11: Amendment of s. 24—Licences authorising retailing

Paragraphs *(a) (c)* and *(f)* make amendments to section 24 of the Act to remove references to non-contestable customers.

Paragraph *(b)* amends subsection (2) by providing that the Industry Regulator must make a licence authorising the retailing of electricity subject to certain conditions determined by the Industry Regulator, rather than limiting that requirement to the issue of a new licence.

Paragraph *(d)* amends subsection (2) by striking out subsections *(d), (e), (f)* and *(g)* and substituting two new paragraphs. Paragraph *(d)* imposes a condition that requires the electricity entity to comply with code conditions which the Commission must make under the *Essential Services Commission Act 2002* (a measure currently before Parliament) on or before a prescribed date, and which relate to the provision of pricing information. This information enables small customers to compare competing offers in the retail electricity market. Paragraph *(e)* imposes a condition that requires the electricity entities to comply with code provisions as in force from time to time relating to standard contractual terms and conditions to apply to the sale of electricity to small customers, thus protecting the small customer.

Paragraph *(e)* amends subsection (2)*(l)* by requiring an electricity entity that sells electricity to customers with an annual electricity consumption level of less than 750 Megawatt Hours per year to participate in an ombudsman scheme that applies to the electricity industry and to other regulated industries (within the meaning of the *Essential Services Commission Act 2002*, a measure that is currently before the Parliament) prescribed by regulation, and the terms and conditions of which are approved by the Commission.

Clause 12: Amendment of s. 24A—Licences authorising system control

This clause amends section 24A of the Act by providing that the Industry Regulator must make a licence authorising system control over a power system subject to certain conditions determined by the Industry Regulator, rather than limiting that requirement to the issue of a new licence.

Clause 13: Amendment of s. 25—Offence to contravene licence conditions

This clause amends the penalty provision of section 25(1) of the Act, raising the maximum penalty from $250 000 to $1 000 000. Paragraph *(b)* substitutes subsection (2) and introduces a measure allowing an offence under the section to be prosecuted as either an indictable offence or a summary offence, at the discretion of the prosecutor. However, if the offence is prosecuted as a summary offence, a maximum fine of $20 000 applies.

Recovery of profit (currently dealt with in subsection (2)) is to be dealt with under proposed section 94A.

Clause 14: Amendment of s. 30—Register of licences

This clause amends section 30 of the Act by requiring the Industry Regulator to keep a register of licences that are currently held by electricity entities, rather than of licences that have been issued.

Clause 15: Amendment of s. 35A—Price regulation by determination of Commission

This clause amends section 35A(1) of the Act by providing that a determination referred to in the subsection is made under the *Essential Services Commission Act 2002*, a measure currently before the Parliament.

Paragraph *(b)* makes a consequential amendment in relation to a reference to non-contestable customers.

Paragraph *(c)* inserts a measure providing that, despite the provisions of the *Essential Services Commission Act 2002* (a measure currently before Parliament) a determination of a kind referred to in subsection (1)*(a)* is not to be stayed pending determination of an application for review or an appeal under Part 6 of the Act.

Clause 16: Amendment of s. 36—Standard terms and conditions for sale and supply

This clause makes a consequential amendment relating to a reference to non-contestable customers.

Clause 17: Insertion of Division 3AA of Part 3

This clause inserts Division 3AA into Part 3 of the Act. The Division inserts two additional sections providing special provisions relating to small customers. Section 36AA provides that—

- the section applies to an electrical entity which has been declared by the Governor to be an electrical entity to which the section applies;
- it is a condition of the electricity entity's licence that the entity must, at the request of a small customer, agree to sell electricity to the customer at the entity's standing contract price, and subject to the entity's standing contract terms and conditions (this avoids a situation in which a small customer may be unable to secure an offer of a retail contract.);
- a current small customer of an entity, on the commencement of the section and if the customer has not contracted with another electricity entity for the purchase of electricity from the commencement date, is taken to have requested that the entity sell electricity to the customer on the basis referred to in subsection (2) (this measure protects small customers during the transition to full retail competition.);
- an entity is not required to sell electricity to a customer if the entity is entitled in accordance with the entity's standing contract terms and conditions to refuse to sell electricity to that customer.

Subsection (6) defines "standing contract price" as meaning whichever of the following is the price last fixed:

(a) the price fixed for the sale of electricity to non-contestable customers by the electricity pricing order under section 35B immediately before 1 January 2003;

(b) a price fixed by the entity as the entity's standing contract price by notice published in the *Gazette* and in a newspaper circulating generally in the State, where—

(i) the price was fixed by the notice with effect from the end of the period of 3 months from the date of publication of the notice; and

(ii) the notice contained a statement of the entity's justification for the price; and

(iii) the Commission did not, within the period of 3 months, fix the entity's standing contract price as referred to in paragraph *(c)*;

(c) a price fixed by the Commission as the entity's standing contract price by a determination of a kind referred to in section 35A(1)*(a)*.

"standing contract terms and conditions" is defined as meaning terms and conditions that have been published by the electricity entity under section 36 as the entity's standing contract terms and conditions.

Subsection (7) provides an expiry date for the operation of the section of 1 July 2005.

Section 36AB provides that—

- the section applies to an electrical entity holding a licence authorising the retailing of electricity and selling electricity to one or more small customers in South Australia; and
- it is a condition of the electricity entity's licence that the entity must, if the entity becomes bound in accordance with the regulations to sell electricity to a small customer under a default contract arrangement for a period specified in the regulation, give the customer written notice and sell electricity to the customer at the entity's default contract price and subject to the entity's default contract terms and conditions.

Subsection (3) defines "default contract price" as meaning whichever of the following is the price last fixed:

(a) the price fixed for the sale of electricity to non-contestable customers by the electricity pricing order under section 35B immediately before 1 January 2003;

(b) a price fixed by the entity as the entity's default contract price by notice published in the *Gazette* and in a newspaper circulating generally in the State, where—

(i) the price was fixed by the notice with effect from the end of the prescribed period from the date of publication of the notice; and

(ii) the notice contained a statement of the entity's justification for the price; and

(iii) the Commission did not, within the prescribed period, fix the entity's default contract price as referred to in paragraph *(c)*;

(c) a price fixed by the Commission as the entity's default contract price by a determination of a kind referred to in section 35A(1)*(a)*.

"Default contract terms and conditions" is defined as meaning terms and conditions that have been published by the electricity entity under section 36 as the entity's default contract terms and conditions.

This amendment protects both customer and electricity entity in the event that there is no standing contract in existence by providing a clear basis upon which electricity is sold to the customer.

Clause 18: Insertion of Divisions A1 and A2 of Part 7

This clause inserts Divisions A1 and A2 into Part 7 of the Act. Division A1 inserts two additional sections. Section 63A(1) provides that the Commission may issue a warning notice to a person who is in contravention of Part 3 of the Act. The warning notice warns the person that the person will be prosecuted for the contravention unless, if the contravention is capable of being rectified, the person takes certain specified action to rectify the contravention within a specified period, and gives the Commission an assurance, in specified terms and within a specified period, that the person will avoid a future contravention of that kind.

Subsection (2) provides that the Technical Regulator may issue a warning notice to a person where it appears to the Technical Regulator that the person has contravened Part 6 of the Act.

Subsection (3) provides that a warning given under section 63A must be in writing.

Subsection (4) provides that actions which may be specified to rectify contravention may include actions the effect of which is to remedy any adverse consequences of the contravention. These actions include (but are not limited to) refunding amounts wrongly paid, compensation, disclosure of information and publication of advertisements relating to the contravention or remedial action.

Subsection (5) allows a warning issued under this section to be varied.

Subsection (6) provides that if the Commission or Technical Regulator, as the case requires, has issued a warning notice to a person, the Commission or Technical Regulator may not take proceedings against the person in respect of the contravention to which the warning notice relates unless—

- the person fails to take the specified action to rectify the contravention within the specified time; or
- the person fails to give the Commission or Technical Regulator, as the case may require, an assurance in the specified terms within the specified period; or
- the person contravenes an assurance given by that person in response to the warning notice.

Section 63B(1) provides that the Commission must keep a register of warning notices issued, and also a register of assurances given, issued by or given to the Commission under Division A1. Subsection (2) imposes the same requirement on the Technical Regulator. Subsection (3) provides that a person may inspect these registers without payment of a fee.

Division A2 inserts section 63C. Section 63C(1) provides that the District Court may grant an injunction in such terms as the Court determines to be appropriate. The injunction may be granted if the Court is satisfied that a person has engaged or proposes to engage in conduct that contravenes or would contravene the Act. Application to the Court for such an injunction may be made by the Minister, the Commission, the Technical Regulator or any other person.

Subsection (2) provides the Court with the power to order a person to take specified action to remedy adverse consequences of that person's conduct.

Subsection (3) provides that actions which may be specified to remedy contravention may include (but are not limited to) refunding amounts wrongly paid, compensation, disclosure of information and

publication of advertisements relating to the contravention or remedial action.

Subsection (4) provides that the Court may make an injunction under this section either in proceedings in which the Court convicts a person for an offence to which the application relates, or in proceedings brought specifically for the purpose of obtaining the injunction.

Subsection (5) provides that the Court may grant an injunction that *restrains* a person from engaging in conduct that constitutes a contravention of the Act whether or not it appears to the Court that the person intends to engage again, or continue to engage, in that kind of conduct. The Court may also grant the injunction whether or not the person has previously engaged in conduct that constitutes a contravention of the Act. The section does not require that there be an imminent danger of substantial damage to any other person if the person engages in conduct that constitutes a contravention of the Act.

Subsection (6) provides that the Court may grant an injunction that *requires* a person to do an act or thing whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, in that act or thing. The Court may also grant the injunction whether or not the person has previously refused or failed to do that act or thing. The section does not require that there be an imminent danger of substantial damage to any other person if the person refuses or fails to do that act or thing.

Subsection (7) provides for the granting of interim injunctions.

Subsection (8) provides that a final injunction may be granted under the section without proof that proper grounds exist for the injunction, provided that the injunction is made with the consent of the parties.

Subsection (9) provides that where the applicant for an injunction is the Minister, the Commission or the Technical Regulator, there will be no requirement of an undertaking as to damages.

Subsection (10) provides that the Minister may give an undertaking as to damages or costs on behalf of another applicant. If an undertaking of that sort is given, then no further undertaking will be required.

Subsection (11) provides that an injunction under the section may be rescinded or varied at any time.

Clause 19: Amendment of s. 64—Appointment of authorised officers

This clause amends section 64 of the Act by removing the reference to the expired Schedule 1 (Cross-ownership rules).

Clause 20: Amendment of s. 75—Review of decisions by Commission or Technical Regulator

This clause amends section 75 of the Act by striking out provisions relating to rectification orders relevant to breaches of the expired cross-ownership rules.

Clause 21: Amendment of s. 80—Power of exemption

This clause amends section 80 of the Act by removing references to the expired Schedule 1.

Clause 22: Insertion of s. 94A

This clause inserts an additional section. Section 94A provides the Court with the power to order a person convicted of an offence against the Act to pay to the Crown an amount not exceeding the amount of benefits acquired by, or accrued or accruing to, the person as a result of the commission of the offence.

Clause 23: Amendment of s. 96—Evidence

Clause 23*(a)* and *(c)* amend, respectively, sections 96(2)*(b)* and 96(3a)*(b)* of the Act by extending the operation of those subsections to include an apparently genuine document purporting to be a certificate of, respectively, the Commission and the Technical Regulator certifying as to the issuing and receipt of certain documents, and by extending the type of documents to include a notice and an assurance.

Paragraph *(b)* makes a consequential amendment in relation to a reference to a non-contestable customer. An evidentiary aid is provided in relation to small customers.

Clause 24: Amendment of s. 98—Regulations

This clause makes a consequential amendment relating to prescribing contestability

SCHEDULE

Further Amendments to the Electricity Act 1996

This Schedule makes consequential amendments to the Act replacing references to the Industry Regulator with references to the Essential Services Commission.

The Hon. R.I. LUCAS secured the adjournment of the debate.

RECREATIONAL SERVICES (LIMITATION OF LIABILITY) BILL

Received from the House of Assembly and read a first time.

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I move:

That this bill be now read a second time.

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

Leave granted.

This Bill is part of a package of measures to address the problem now faced by individuals, small businesses and not-for-profit organisations throughout the State in obtaining affordable liability insurance. It provides a mechanism whereby participants in a recreational activity (as defined) can agree with a provider on the extent of liability for any injury to the participant in the course of the activity.

The Bill has to be read in the context of pending Commonwealth amendments to the *Trade Practices Act 1975* (TPA). Currently, section 74 of the TPA provides that, in every contract for services supplied by a corporation to a consumer, there is an implied warranty that the services will be rendered with due care and skill. Section 68 of the TPA provides that it is not possible to contract out of a warranty implied by the TPA. A contract for services includes a contract for the provision, or the use or enjoyment, of facilities for amusement, entertainment, recreation or instruction.

The Commonwealth's amending legislation (the *Trade Practices Amendment (Liability for Recreational Services) Bill 2002*) (the Commonwealth Bill) varies this position in the case of a contract for recreational services. It would allow the parties to such a contract to agree to exclude or modify the statutory warranty that would otherwise apply; that is, suppliers of recreational services would, by contract, be able to limit their liability for death or personal injury arising from the supply of those services. The Commonwealth Bill does not apply to liability for other types of loss.

The Commonwealth Bill defines recreational services as services that consist of participation in—

(a) a sporting activity or a similar leisure-time pursuit; or

(b) any other activity that—

(i) involves a significant degree of physical exertion or physical risk; and

(ii) is undertaken for the purposes of recreation, enjoyment or leisure.

The effect of the Commonwealth Bill will, therefore, be to open the way for participants in these activities to be able to agree to reduce or exclude the service provider's liability for damages if the participant suffers injury or death due to the provider's failure to use proper care and skill.

The *Recreational Services (Limitation of Liability) Bill 2002* provides the mechanism that participants in a recreational activity are to use if they wish to limit the provider's legal liability for personal injury. The mechanism is designed to give some certainty to the provider as to just what the law requires of him or her, and to the consumer as to just what safety measures he/she can expect.

The Bill proposes that a provider of recreational services may register an undertaking to comply with a registered code. The registered provider may then enter into a contract with a consumer whereby the parties agree that any liability of the provider is limited to the case where injury is caused by failure to comply with the code. There is no entitlement to damages for any personal injury which is not due to a breach of the code.

Any person may apply to the Minister to register a code of practice governing the provision of recreational services of a particular kind. The code must set out the measures to be taken to ensure a reasonable level of protection for consumers. The Minister may require the person to obtain a report on the adequacy of the proposed code from a nominated person or association (for example, an expert in the field, or a peak body within the industry). The Minister is not obliged to register any code, and may refuse to do so if he/she is not satisfied as to its adequacy, or for any other reason. If the Minister decides to register the code, it will also be published on the Minister's website. Any person who provides recreational services may then register with the Minister an undertaking to comply with the code.

Recreational service providers who register an undertaking to comply with a registered code must make the code available for inspection at their places of business. Before entering into a contract with a consumer, the provider must give the consumer a notice, as required by the regulations, setting out the effect of the agreement. It is then up to the consumer to decide whether he/she wishes to deal with the provider on these terms.

The Bill also proposes that a registered provider who provides recreational services gratuitously may limit his/her liability by prominently displaying a notice to the effect that the duty of care is governed by a particular registered code. The notice must comply with the requirements of the regulations. If the consumer avails himself/herself of the recreational services, he/she will be taken to have agreed to a modification of the duty of care so that it is governed by the code.

The benefit of registering codes is certainty. Where the common law of negligence applies, it can be difficult for a person to know in advance whether he/she has met the applicable standard of care. This makes it difficult for providers to know how they should act, and for insurers to assess risks. If liability is limited to breaches of a published code, the provider knows what he/she must do, and the consumer knows what he/she can expect. This should assist insurers in accurately assessing risks and setting premiums at a realistic level reflecting actual risks, rather than the less predictable risk of being found negligent.

Of course, the Bill deals only with a provider's civil liability. There is no intention to affect criminal liability, such as liability to prosecution for a breach of applicable regulations. Some recreations are governed by detailed statutory or regulatory provisions which provide criminal penalties for breach. Providers who breach these duties remain liable to prosecution.

The consultation draft of this Bill contained provisions permitting parents and guardians to contract to modify the duty of care owed to their children when participating in recreations covered by the Bill. This aspect of the Bill was criticised by several commentators who feared that children could lose their rights due to poorly considered parental decisions. The Government has taken this criticism into account by providing that a consumer means a person "other than a person who is not of full age and capacity".

The Bill, then, takes up the opportunity presented by the Commonwealth legislation to allow participants in some recreational activities to decide for themselves whether to assume the risks of injury, relying on the protections offered by the applicable codes. The Bill reflects the Government's view that adult consumers of recreational activities should be able to take responsibility for their own safety in this way. In general, comment received on the Bill was supportive of this underlying concept.

The Government is concerned that, unless a measure of this kind is implemented, providers of recreational activities will be unable to afford liability insurance. If that happens, they will either close their doors or make a decision to trade without any insurance. Either result is undesirable. The Government has received representations from numerous sporting and recreational groups, as well as others in the community, urging that something be done. The Government agrees, and I commend this Bill to the House.

Explanation of clauses

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Interpretation

This clause contains definitions of words and phrases used in the measure. In particular—

a consumer is a person (other than a person who is not of full age and capacity) for whom a recreational service is, or is to be, provided;

recreational activity is defined as—

- a sporting activity or a similar leisure-time pursuit; or
- any other activity that involves a significant degree of physical exertion or physical risk and is undertaken for the purposes of recreation, enjoyment or leisure;

recreational services is defined as any one or more of the following services:

- a service of providing facilities for participation in a recreational activity; or
- a service of training a person to participate in a recreational activity or supervising, guiding, or otherwise assisting a person's participation in a recreational activity.

Clause 4: Registration of code of practice

This provides that the Minister be given discretion to register, or refuse to register, a code of practice (code) on application by the provider of a recreational service. A code submitted for registration must comply with the regulations as to its form and content and registration is effected by notice in the *Gazette*. The Minister may refuse to register a code if the Minister is not satisfied as to its adequacy or for any other reason.

The Minister incurs no liability for or in respect of the code as a result of it being registered.

Clause 5: Registration of provider

The provider of a recreational service may apply to register with the Minister an undertaking to comply with a registered code (thus becoming a registered provider). Information about the registered provider and the provider's undertaking will be entered on the Minister's website.

Clause 6: Duty of care may be modified by registered code

A registered provider may enter into a contract with a consumer modifying the provider's duty of care to the consumer so that the duty of care is governed by the registered code. Before entering into such a contract, the provider must give the consumer notice as required by the regulations as to the effect of the contract.

If a registered provider provides recreational services gratuitously and displays notices prominently (in a manner and form required by the regulations) notifying consumers that the provider's duty of care is governed by the registered code, a consumer who avails him/herself of the services will be taken to have agreed to a modification of the provider's duty of care so that it is governed by the code (and not by any other law).

Clause 7: Modification of duty of care

If a consumer to whom this clause applies suffers personal injury, the provider is not to be liable in damages unless the consumer establishes that a failure to comply with the registered code caused or contributed to the injury.

This clause applies to a consumer who—

- has entered into an agreement with a registered provider modifying the provider's duty of care to the consumer; or
- is taken to have agreed to a modification of the provider's duty of care under clause 6(3).

Clause 8: Application of this Act

This Act operates to modify a duty of care under any other Act or law but does not affect—

- a liability of a manufacturer of goods; or
- a liability in respect of the sale of goods; or
- criminal liability.

Clause 9: Other modification or exclusion of duty of care not permitted

A duty of care owed by a provider of recreational services to a consumer may not be modified or excluded in relation to liability for damages for personal injury except as provided by this measure.

Clause 10: Regulations

The Governor may make regulations for the purposes of this measure.

The Hon. R.D. LAWSON secured the adjournment of the debate.

STATUTES AMENDMENT (STRUCTURED SETTLEMENTS) BILL

Received from the House of Assembly and read a first time.

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): 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.

At present, it is not possible for our civil courts to make a final award of damages for personal injury except in the form of a lump sum. Until now, there has been no need to change this situation because the tax disadvantages of receiving the settlement as a periodic payment would have made structured settlements unattractive to plaintiffs. However, the Commonwealth Government has now introduced the *Taxation Laws Amendment (Structured Settlements) Bill 2002*. This Bill would provide a tax exemption for structured settlements which meet certain eligibility criteria. This

may mean that such settlements become more attractive to personal injury litigants in the future. The States and Territories have therefore agreed with the Commonwealth to legislate to remove barriers to such settlements. That is the purpose of this Bill.

This Bill permits the courts, with the consent of the parties, to award personal injury damages in the form of a structured settlement. In essence, the defendant, instead of paying a lump sum to the injured party, purchases an annuity from an insurance company. The annuity pays the injured party a set amount at regular intervals, either for life, or up to a set date. The Commonwealth Bill sets out in detail the criteria which the annuity must meet in order to be tax-exempt.

The Government's consultation on an early draft of these provisions has resulted in changes, but no submission indicated any opposition to the proposal to permit structured settlements by consent. The measure will simply give the parties another option.

I commend the Bill to the House.

Explanation of clauses

This Bill provides for matching amendments to each of the *District Court Act 1991*, the *Magistrates Court Act 1991* and the *Supreme Court Act 1935* to provide that, in an action for damages for personal injury, the court has the power to make, with the consent of the parties, an order for damages to be paid (in whole or in part) in the form of periodic payments (by way of an annuity or otherwise) instead of in a lump sum.

The Bill is set out as follows:

PART 1—PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

Clause 3: Interpretation

PART 2—AMENDMENT OF DISTRICT COURT ACT 1991

Clause 4: Insertion of s. 38A—Consent orders for structured settlements

PART 3—AMENDMENT OF MAGISTRATES COURT ACT 1991

Clause 5: Insertion of s. 33A—Consent orders for structured settlements

PART 4—AMENDMENT OF SUPREME COURT ACT 1935

Clause 6: Insertion of s. 30BA—Consent orders for structured settlements

The Hon. R.D. LAWSON secured the adjournment of the debate.

WRONGS (LIABILITY AND DAMAGES FOR PERSONAL INJURY) AMENDMENT BILL

Received from the House of Assembly and read a first time.

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I move:

That this bill be now read a second time.

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

Leave granted.

This Bill is part of a package of measures to address the problem now faced by individuals, small businesses and not-for-profit organisations throughout the State, in obtaining affordable liability insurance.

Treasurers and officials have engaged in national discussions to identify effective legislative and other solutions to the problem. While statistics show that the cost of claims is far higher in New South Wales than in other jurisdictions, Ministers agreed that a national response is desirable. On 30 May 2002, Ministers published a joint communique setting out plans for legislative and other reforms designed to reduce the cost of insurance claims and so reduce premiums. Trowbridge consulting produced a report dated 30 May 2002 (the Trowbridge report) on possible strategies to deal with the problem.

This Bill addresses the public liability problem by capping damages for all kinds of personal injury actions, and by making some special rules about liability in certain cases.

The Bill is based on the existing provisions of section 35A of the *Wrongs Act 1936*, which deals with the damages to be awarded for personal injury arising out of motor vehicle accidents. Members will recall that the provision includes thresholds for damages for non-economic loss, a points scale for the assessment of such damages, a cap on awards for future loss of earning capacity, a prescribed discount rate to be applied to the multiplier for future losses, rules about damages for gratuitous services and other measures. In keeping with the recommendations of the Trowbridge Report, the Bill proposes to extend that scheme to injuries resulting from other situations.

The Bill applies in relation to damages for personal injury arising from an accident (which includes a motor accident) if the relevant accident was caused wholly or partly by negligence, or some other unintentional tort, or by the breach of a contractual duty of care. It does not apply to injuries caused by an intentional tort, such as an assault.

As to non-economic loss, the thresholds now applying to motor accident cases will apply to all cases. That is, the injured person must show that his/her ability to lead a normal life was significantly impaired for at least 7 days or, if it was not, that he/she incurred medical expenses of at least the prescribed minimum amount (currently $2 750). This provision aims to exclude damages for non-economic loss in very minor claims. Further, the points scale currently applicable to the calculation of damages for non-economic loss in motor accident cases is applied to all other cases covered by the Bill.

The Bill also proposes a significant change to the way in which the points scale works and the amounts that can be awarded. At present, each of the points is of equal value; that is, there is 1 fixed multiplier which applies to all cases in a given year. Experience suggests that this scale tends to over-compensate minor injuries but under-compensate the more serious cases. The Government, therefore, proposes to vary the scale so that the less serious injuries are compensated on the basis of a lower value multiplier and the more serious cases are compensated on the basis of a higher value multiplier.

Whereas, at present, the maximum that a person may receive for non-economic loss in the most serious cases is $102 600, as a result of the Government's proposal, the maximum, in the future, will be $241 500. This is a very substantial increase which, the Government believes, will better recognise the devastation which the most serious kinds of injuries can bring about in people's lives. On the other hand, at the low end of the scale, injuries attracting up to 10 out of the possible 60 points will be compensated at $1 150 per point, as against the present $1 710. The Government considers this to be adequate in the case of more minor injuries.

The current rule in motor accident cases that damages for mental or nervous shock may only be awarded in limited circumstances is carried over to other personal injury cases. In essence, the claimant must have been physically injured in the accident, or present at the scene at the relevant time, unless the claimant is the parent, spouse or child of someone killed, injured or endangered in the accident.

Similarly, the current rule that there are to be no damages for loss of earning capacity for the first week of incapacity is to be applied to all accident cases. Again, the Government is proposing a significant change to the cap on damages. The cap that currently applies to damages for future economic loss, ($2.2M) is now to be applied to all loss of earning capacity; that is, past and future. The law as it is now allows the cap to be somewhat manipulated by delaying finalisation of the case. As there is currently no cap on past loss of earning capacity, a loss which would have been capped if it related to the future becomes uncapped as time passes as it becomes a past loss instead of a future loss.

Currently, in relation to motor accidents, the law provides that if an injured person is to be compensated by way of lump sum for loss of future earnings, or other future losses and an actuarial multiplier is used, then, in determining the multiplier, a prescribed discount rate is to be used. That prescribed rate is 5 per cent, unless some other figure is fixed by regulation. The Bill makes the same provision in respect of all accidents, including motor accidents.

A question relating to the discount rate was raised by His Honour Justice Gray in the case of *Hillier v Hewett*, (Judgment No. [2001] SASC 225]). In this context, it may be useful to make clear that the Government does not intend that the courts be at liberty to reduce the discount rate fixed in the Bill. In particular, there is no intention that it should be open to further reduction to allow for notional tax on notional investment income of the lump sum. The High Court in *Todorovic v Waller* (1981-82 50 CLR 402) indicated that a discount rate should take into account the effect of taxation on notional income of the invested fund. The Government believes that all relevant factors, including taxation, are reflected in the 5 per cent discount rate fixed in this Bill.

The Bill provides that there is to be no interest on either future or non-economic losses. Instead, interest is limited to past economic losses, such as medical treatment costs and lost earnings.

As at present, there are to be no damages to compensate for the cost of the investment or management of the amount awarded. The present rules about damages for gratuitous services are also extended to cover other personal injury claims.

All of these provisions relate to the calculation of the award of damages to the injured person.

However, the Bill also deals with some issues relating to the issue of liability; that is, the entitlement of the injured person to recover damages at all.

First, under the Bill, liability for damages is excluded if a person is injured in the course of committing an indictable offence. This provision is based on a provision found in the present *Criminal Injuries Compensation Act* and repeated, in substance, in the *Victims of Crime Act 2001*. Of course, the exclusion only applies if the injured person's conduct contributed materially to the risk of injury. In case this should work injustice, the Bill gives the court a discretion to award damages in such a case, if the circumstances are exceptional and the principle would, in the circumstances, operate harshly and unjustly. In general, however, the Government believes that persons who sustain injury while committing indictable offences (that is, more serious offences) should bear their own losses.

The Bill also makes special provision for the case where a person is injured while intoxicated. In that case, contributory negligence is presumed, and damages must be reduced by at least 25 per cent or more if the court thinks it appropriate. This again applies the current rule in motor accident cases to a wider range of cases. The special rule dealing with drivers who are incapable of exercising effective control of the vehicle, or have a blood alcohol reading over 0.15 per cent, remains unchanged. The rationale behind these provisions is that the community is entitled to expect people who choose to consume intoxicants to bear the responsibility for the consequences. Of course, the Bill does not intend to visit these consequences on a person whose intoxication was not self-induced or had nothing to do with the accident. In those cases, the presumption of contributory negligence is rebutted. Similar rules apply to a person who chooses to rely on the skill and care of a person he/she knows to be intoxicated.

The existing laws about failure to wear a seatbelt or helmet where these are required by law are retained in substance, although somewhat differently expressed.

Proposed new section 24N sets out in some detail how the court is to deal with the case where the plaintiff's damages must be reduced because he/she is contributorily negligent in more than one respect. This clarifies a possible ambiguity in the present law and is intended to assist courts as to what is intended.

The present evidentiary provisions and provisions relating to the territorial application of the statute have been reworded but are substantially similar in their effects.

The Bill also includes 2 further provisions. The first one deals with the protection of a person who voluntarily renders aid in an emergency, the so-called "good samaritan". If the person is acting without expectation of payment or other benefit, he/she is not liable in damages for an act or omission in good faith and without recklessness. The immunity does not excuse the person for the consequences of negligent driving, nor help him/her if he/she was intoxicated. The other addition provides that, after an incident out of which injury arises, a party may express regret for what has happened, without this being used against him/her in court. In essence, this allows a party to say "sorry". This is often helpful, especially in matters involving medical or professional negligence, in which the relationship between the parties is important. Saying "sorry" may help both parties deal with what has occurred and, perhaps, assist in reaching an earlier resolution of their dispute.

The draft measures published for consultation also included a provision amending the *Volunteers Protection Act 2001*. The intention was to permit the Minister to agree to indemnify volunteers who provide services to Government. This provision has not been included because it now appears that it is not necessary. As the *Volunteers Protection Act* stands, the Crown can itself be a "community organisation". This means that a volunteer who renders services to the Government can already be covered by the Crown under that Act subject, of course, to the statutory exceptions to that rule. In the case where the volunteer is working for some other community organisation which is assisting the Government, nothing prevents the Minister from agreeing to indemnify that organisation for the liabilities incurred by its volunteers. Accordingly, the absence of the provision from this Bill should not be taken to indicate any change in policy. In some cases, indemnity will apply automatically and, in others, it may be achieved by agreement.

Finally, Members should be made aware of the fact that this Bill does not operate retrospectively. It will only apply to accidents that occur in future. It is important to stress this because the Government received submissions on behalf of asbestos disease victims who were exposed to asbestos fibres (perhaps many years ago) but who have yet to bring claims. and, in some cases, may not yet have developed any symptoms of disease. Under this Bill, the right to claim in respect of injury caused by an asbestos exposure which has already happened is preserved unchanged. However, a person who is exposed to asbestos or some other noxious substance in the future and is injured thereby will be covered by the law as amended by the Bill. I hope this clarifies the position for those persons and puts their minds to rest.

The Government believes that this Bill is a practical measure that will help in containing claim costs. This should be reflected in containment of premium costs, thereby assisting in ensuring that affordable liability insurance remains available to the public.

I commend this Bill to the House.

Explanation of clauses

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Insertion of new Part 2A

New Part 2A is to be inserted in the principal Act after section 23C. It contains much that is similar to current section 35A but its application is extended to personal injuries arising from all accidents (as defined in new section 24).

PART 2A: DAMAGES FOR PERSONAL INJURY

DIVISION 1—PRELIMINARY

24. Interpretation

This new section provides for the interpretation of the new Part. In particular, it defines an accident as an incident out of which personal injury arises and includes a motor accident.

24A. Application of this Part

New Part 2A applies where damages are claimed for personal injury—

- arising from a motor accident (whether caused intentionally or unintentionally); or
- arising from an accident caused wholly or in part by negligence, some other unintentional tort on the part of a person other than the injured person or a breach of a contractual duty of care.

DIVISION 2—ASSESSMENT OF DAMAGES

24B. Damages for non-economic loss

Damages may only be awarded for non-economic loss if the injured person's ability to lead a normal life was significantly impaired by the injury for a period of at least 7 days or medical expenses of at least the prescribed minimum have been reasonably incurred in connection with the injury.

The proposed section sets out in detail the manner in which damages for non-economic loss are to be assessed.

24C. Damages for mental or nervous shock

Damages may only be awarded for mental or nervous shock if the injured person was physically injured in the accident or was present at the scene of the accident when the accident occurred or is a parent, spouse or child of a person killed, injured or endangered in the accident.

24D. Damages for loss of earning capacity

No damages are to be awarded for the first week of work lost through incapacity and total damages for loss of earning capacity are capped at the prescribed maximum (*see* new section 24).

24E. Lump sum compensation for future losses

If an injured person is to be compensated by way of lump sum for loss of future earnings or other future losses and an actuarial multiplier is used for the purpose of calculating the present value of the future losses, then, in determining the actuarial multiplier, a prescribed discount rate (*see* new section 24) is to be applied.

24F. Exclusion of interest on damages compensating non-economic or future loss

Interest is not to be awarded on damages compensating non-economic or future loss.

24G. Exclusion of damages for cost of management or investment

Damages are not to be awarded to compensate for the cost of the investment or management of the amount awarded.

24H. Damages in respect of gratuitous services

Damages are not to be awarded—

- to allow for the recompense of gratuitous services except services of a parent, spouse or child of the injured person; or
- to allow for the reimbursement of expenses, other than reasonable out-of-pocket expenses, voluntarily incurred, or to be voluntarily incurred, by a person rendering gratuitous services to the injured person,

and are not to exceed an amount equivalent to 4 times State weekly earnings (*see* new section 24). The court has a discretion to make an award in excess of this amount in certain circumstances.

DIVISION 3—SPECIAL PROVISIONS IN REGARD TO LIABILITY

24I. Exclusion of liability in certain cases

Liability for damages is excluded if the court—

- is satisfied beyond reasonable doubt that the accident occurred while the injured person was engaged in conduct constituting an indictable offence; and
- is satisfied on the balance of probabilities that the injured person's conduct contributed materially to the risk of injury.

The court may award damages despite this exclusionary principle if satisfied that the circumstances of the particular case are exceptional and the principle would, in the circumstances of the particular case, operate harshly and unjustly.

24J. Presumption of contributory negligence where injured person intoxicated

If the injured person was intoxicated at the time of the accident, and contributory negligence is alleged by the defendant, contributory negligence will be presumed unless rebutted.

The injured person may rebut the presumption by establishing, on the balance of probabilities, that the intoxication did not contribute to the accident or was not self-induced.

Damages to which the injured person would be entitled in the absence of contributory negligence are to be reduced, on account of contributory negligence, by at least 25 per cent. In the case of a motor accident, if the injured person was the driver of a motor vehicle involved in the accident and the evidence establishes that—

- the concentration of alcohol in the injured person's blood was .15 grams or more in 100 millilitres of blood; or
- the driver was so much under the influence of intoxicating liquor or a drug as to be incapable of exercising effective control of the vehicle,

the minimum reduction is to be increased to 50 per cent.

24K. Presumption of contributory negligence where injured person relies on care and skill of person known to be intoxicated

If—

(a) the injured person—
- was of or above the age of 16 years at the time of the accident; and
- relied on the care and skill of a person who was intoxicated at the time of the accident; and
- was aware, or ought to have been aware, that the other person was intoxicated; and

(b) the accident was caused through the negligence of the other person; and

(c) the defendant alleges contributory negligence on the part of the injured person,

contributory negligence will, unless rebutted, be presumed.

The injured person may only rebut the presumption by establishing, on the balance of probabilities, that the intoxication did not contribute to the accident or the injured person could not reasonably be expected to have avoided the risk.

Where contributory negligence is to be presumed, the court must apply a fixed statutory reduction of 25 per cent in the assessment of damages.

If, in the case of a motor accident, the evidence establishes that—

- the concentration of alcohol in the driver's blood was .15 grams or more in 100 millilitres of blood; or
- the driver was so much under the influence of intoxicating liquor or a drug as to be incapable of exercising effective control of the vehicle,

the fixed statutory reduction is increased to 50 per cent.

24L. Evidentiary provision relating to intoxication

A finding by a court that there was present in the blood of a person, at or about the time of an accident, a concentration of alcohol of .08 or more grams in 100 millilitres of blood is to be accepted, for the purposes of new Part 2A, as conclusive evidence of the facts so found and that the person was intoxicated at the time of the accident.

A finding by a court that a person was at or about the time of an accident so much under the influence of alcohol or a drug as to be unable to exercise effective control of a motor vehicle is to be accepted, for the purposes of new Part 2A, as conclusive evidence that the person was, at the time of the accident, so much under the influence of alcohol or a drug as to be unable to exercise effective control of the motor vehicle.

24M. Non-wearing of seatbelt, etc.

Contributory negligence will be presumed unless rebutted if injury occurs to a person above the age of 16 years while not wearing a seatbelt or a safety helmet as required by law. Where contributory negligence is to be presumed, a fixed statutory reduction of 25 per cent must be applied to any damages assessed.

24N. How case is dealt with where damages are liable to reduction on account of contributory negligence

New section 24N sets out the manner in which a court is to proceed if damages are liable to reduction on account of actual or presumed contributory negligence.

DIVISION 4—TERRITORIAL APPLICATION

24O. Territorial application

New Part 2A is intended to apply to the exclusion of inconsistent laws of any other place to the determination of liability and the assessment of damages for personal injury arising from an accident occurring in this State.

Clause 4: Repeal of Division 10 of Part 3

This Division (comprised of section 35A) is to be repealed as a consequence of new Part 2A.

Clause 5:Insertion of Divisions 13 and 14 of Part 3

DIVISION 13—GOOD SAMARITANS

38. Good samaritans

A good samaritan (as defined in this new section) incurs no personal civil liability for an act or omission done or made in good faith and without recklessness in assisting, or giving advice about the assistance to be given to, a person in apparent need of emergency assistance.

A medically qualified good samaritan incurs no personal civil liability for an act or omission done or made in good faith and without recklessness in assisting, or giving advice about the assistance to be given to, a person in apparent need of emergency medical assistance.

However—

- the immunity does not extend to a liability that falls within the ambit of a scheme of compulsory third party motor vehicle insurance; and
- the immunity does not operate if the volunteer's capacity to exercise due care and skill was, at the relevant time, significantly impaired by alcohol or another recreational drug.

DIVISION 14—EXPRESSIONS OF REGRET

39. Expressions of regret

In proceedings in which damages are claimed for a tort, no admission of liability or fault is to be inferred from the fact that the defendant or a person for whose tort the defendant is liable expressed regret for the incident out of which the cause of action arose.

Clause 6: Transitional provision

New Part 2A will operate prospectively.

The Hon. R.D. LAWSON secured the adjournment of the debate.

FISHERIES (CONTRAVENTION OF CORRESPONDING LAWS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 17 July. Page 587.)

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I thank members for their indication of support for what is a fairly straightforward bill. I look forward to the committee stage of the debate.

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

FISHERIES (VALIDATION OF ADMINISTRATIVE ACTS) BILL

Adjourned debate on second reading.
(Continued from 16 July. Page 518.)

The Hon. CAROLINE SCHAEFER: This is an administrative bill which seeks to fix some anomalies in the current act. It relates to the management of the blue crab fishery. This bill was first introduced by the previous government in the spring session last year and lapsed when the parliament was prorogued. Essentially, this bill validates a number of practices to do with the collection and setting of licence fees for the blue crab fishery; the transfer of quota; and the linking of the number of pots with the blue crab quota when that quota is transferred to another owner. As I understand it, there is no detrimental effect on the blue crab fishery and it simply reflects practices that have been carried on for quite some time with the full understanding and approval of operators within the industry. I therefore support the bill.

The Hon. J.S.L. DAWKINS: Mr President, I draw your attention to the state of the council.

A quorum having been formed:

The Hon. T.G. CAMERON: This bill was introduced by the previous government and has been reintroduced because it lapsed due to the proroguing of parliament. In early 2001 it was discovered that PIRSA fisheries had made a mistake in interpreting regulations in respect of the licence fees payable with regard to blue crab quotas. This bill validates those decisions and ensures the continuation of licences. SA First supports the bill. All it does is validate the agreement that was understood between the parties prior to the errors being discovered.

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I thank members for their contribution. I point out that unforeseen circumstances led to the requirement of this bill. The administration of new regulations was not conducted according to the regulations but was administered in the spirit of the intent of the understood arrangements between the government and the blue crab fishery. This bill validates those administrative actions. The bill also validates all of the industry transfer of quotas and is necessary to provide certainty in relation to the management arrangements for the fishery. I commend the bill to the council.

Bill read a second time.

RECREATIONAL SERVICES (LIMITATION OF LIABILITY) BILL

Adjourned debate on second reading (resumed on motion).
(Continued from page 648.)

The Hon. R.D. LAWSON: The Liberal opposition will be supporting the passage of this bill. Reasons as to why this measure would be supported were expressed by the Hon. Iain Evans in another place. This bill is, of course, one of a number of measures to address the public liability insurance crisis so described. The comments I propose making now in relation to this bill apply also to the other bills that will be before the council today on that subject, namely, the Statutes Amendment (Structured Settlements) Bill and the Wrongs (Liability and Damages for Personal Injury) Amendment Bill.

Whilst we welcome the introduction of these measures, it is fair to say that many of the complaints that have been aired to members of parliament about the effect in the community of the unavailability (in many cases) and the high cost (in practically all cases) of public liability insurance indicates that this crisis is having a devastating effect on the community, and we doubt that these bills will have much effect at all. Indeed, during the debate in another place on this bill, the Treasurer acknowledged in several cases that the bill will not affect a number of the high-profile activities that have been affected by the unavailability and cost of insurance.

For example, the pony club movement in the state has been very active, as well as a number of organisations under the umbrella Horse SA—organisations such as the Southern Carriage Driving Society, the South Australian Working Draft Horses Association, the Pony Club Association, Australian Horse Riding Centres, and other businesses, including the Templewood Riding School (private businesses), which have been seeking the capacity to have some relief from legal liability but which will probably be largely unaffected by the provisions of this bill.

A number of adventure tourism operators in South Australia and adventure parks similarly will not receive the benefit of the measures proposed in this bill. Some of the motorcycle clubs and motor racing organisations will probably not receive any benefit from a bill of this kind. This is a novel bill and the government is to be congratulated for being the first in Australia to tackle this particular issue, although we do regret that its effect will not be as great as was, I think, suggested by the minister in the press statements announcing its introduction.

The single greatest impediment as the law presently stands to including exclusion clauses in contracts—which either exclude or limit liability—is a provision in the Trade Practices Act that renders ineffective such attempts to exclude liability in the particular cases to which it applies. The Trade Practices Act applies only in relation to goods and services and does not apply to all organisations that carry on these activities. It applies to those who carry on business in trade and commerce; it applies to what I term constitutional corporations. It does not apply to many trusts or small businesses that are operated not by companies but by individuals and partnerships.

The Fair Trading Act in this state is the comparable state legislation, and it is interesting to see that, to date, no attempt has been made to amend that legislation. The commonwealth government, however, has announced that it will be amending the Trade Practices Act. That amending bill has been introduced into the federal parliament and it includes new provisions, the effect of which I will not read other than to cite the heading, 'Limitation of liability in relation to the supply of recreational services'. Recreational services are defined in the commonwealth legislation as services that consist of participation in the following:

(a) a sporting activity or similar leisure time pursuit; or
(b) any other activity that involves a significant degree of physical exertion or physical risk; and

this is a conjunctive 'and' not a disjunctive 'and'—

is undertaken for the purposes of recreation, enjoyment or leisure.

The South Australian bill takes up the same definition. We would have preferred that the definition of 'recreational

services' be somewhat wider, but we do appreciate that this is legislation that is designed to dovetail into federal legislation, and therefore it is necessary to adopt exactly the same definition.

Members on this side are concerned that the bill does not flesh out—in much detail at all—the procedure for the registration of a code of practice or for the registration of the providers. In another place, the Treasurer tended to suggest that whether or not a code of practice or a provider would be registered was purely a matter for ministerial discretion. Whilst that is true, the discretion must surely be exercised appropriately. Reading what the Treasurer had to say, one could be forgiven for thinking that, in his view of the law, it will simply be a matter for a minister to take an entirely anecdotal view of what is to be allowed and what is not to be allowed.

For example, when challenged by members of the opposition about whether this act would apply to the Pitchi Richi Railway or the Yorke Peninsula railway, both of which have had to be closed down because of the insurance crisis, the Treasurer responded by saying that in his view they were not appropriate organisations to receive this status and that therefore, so long as he was Treasurer, they would not be getting it. This is not, in our view, purely a matter of ministerial whimsy as to whether or not these benefits are obtained. It is possible that, upon mature reflection, the Treasurer will change his mind when presented with evidence that shows that organisations of that kind, and no doubt many other organisations in the community, should be covered by a code of practice and should be entitled to receive the benefit of this measure.

It must be said that the operation of this legislation is much narrower by reason of the fact that the government has excluded from the final bill that it introduced the capacity to exclude or reduce liability in respect of minors. The bill originally proposed by the government, and which accompanied the discussion paper issued in early July, envisaged a mechanism whereby a parent or guardian could, on behalf of a child, sign a waiver. However, that has been removed. That removal does have the effect of substantially reducing the number of people—both businesses and individuals—who will be able to benefit from this measure because many recreational services and sporting activities in our community are undertaken by minors. Therefore, adventure parks, of which there are a number in this state and which are commercial operators who have had great difficulty in obtaining public liability insurance at an affordable cost, will not be able to obtain any benefit from the proposals under the Recreational Services (Limitation of Liability) Bill. We accept that the government, during its consultation process, received representations which warranted the exclusion, at least at this stage, of minors from this measure.

The comments of the Treasurer regarding the registration of codes of practice were somewhat alarming, and the opposition is keen to ensure that proper discretion is exercised in relation to the registration and non-registration of codes of practice. It was originally proposed that a code of practice was any code that was simply placed on the minister's web site. That provision, if it is continued into the version of the bill passed by the House of Assembly, will be opposed because the opposition believes that any code of practice should be published in the *Government Gazette* so that there is a permanent record of the code, from time to time, and that one can look back to see what the code said at any particular point in time, rather than having a running provision which is amended from time to time and simply appears on a ministerial web site.

I think it is fair to say that this bill, when implemented, will give rise to litigation, and probably as much litigation as applies to the law of negligence at present, because the question will always be whether or not the provider has complied with the code of practice, and that will inevitably lead to issues of dispute. If the code of practice, for example, ever uses words such as 'reasonable care', 'takes reasonable steps' etc., which most codes and standards do contain, there will be room for argument and litigation. So, although it is possible to write an exemption into the contract, or have an exemption on a sign at the entrance to some amusement device or the like, there will still be opportunities to argue about whether the fact situation to accommodate the limitation or modification of the duty of care has been implemented. We will be moving amendments during the course of the committee stage to ensure that the codes are published in the *Government Gazette* and a permanent record of them is retained.

There is another issue about these codes of practice which will give rise to an amendment to be moved by the opposition during the committee stage. These codes of practice will, in effect, modify the law of the land. In the circumstances, we believe that they ought to be disallowable instruments in the same way that other rules and regulations affecting the community are disallowable instruments, namely, that there be a requirement that they be tabled in parliament, subjected to parliamentary scrutiny and an opportunity for parliamentary discussion and debate upon them, and, if appropriate, a motion of either house to disallow the code of practice. Because, as I say, these codes, which in effect alter the law, are of far greater import than many regulations which are already subjected to the provisions of the Subordinate Legislation Act.

They are far more significant, for example, than many bylaws which are tabled in this parliament and which we have an opportunity to disallow. So, in those circumstances, we will be moving an amendment which makes the codes disallowable. There was, in fact, a discussion about whether these codes ought not come into force until they have lain on the table. Some codes—and I am thinking particularly of the research and clinical practice codes under the Reproductive Technology Act of this state—did not come in force until after they had been tabled, and until after there was either no notice of disallowance or until the notice of disallowance had been duly discharged. The view we have taken to date in our consultations is that it would be appropriate to simply adopt the standard disallowance provisions which will enable the Legislative Review Committee and the parliament generally to have some input into the codes.

In this context, I should also mention that we are disappointed that neither this bill nor some other measure introduced really address the important issue for community groups in our society. In Victoria, a very proactive approach has been adopted to ensure that community groups, through a group buying arrangement, could secure affordable insurance and could also be provided with professional assistance in relation to risk management.

It is clear that, whatever the result of the so-called insurance crisis—and whatever measures are taken as a result of it—better risk management and a better understanding of the principles and practices of risk management will have to be adopted in our community organisations. Many of them say that they have never made a claim or that they have a

very good claims record. But the important issue is not so much what their claims record was but the practices they have adopted to ensure that risk to the organisation and its members and activities is appropriately managed.

I have mentioned the Victorian scheme announced earlier this week, details of which are provided on the web site ourcommunity.com.au, which outlines its history as an initiative of the Victorian government, the Municipal Association of Victoria and the insurance broker Jardine, Lloyd Thomson. As I have said, this measure, which is supported by the Victorian government, has been a very positive one. In March this year, it was announced by the Hon. John Lenders, the Victorian Minister for Finance, whose ministerial statement on public liability insurance is particularly enlightening. It is a matter for regret that this particular initiative has not been taken up in this state.

The Victorian industry working party has been keen to encourage a national initiative, and the Our Community organisation's web site to which I have referred has been keen to promote a wider use of its public liability insurance scheme, which came into force only on 1 January. The scheme claims to cover most community events, celebrations and festivals, but it does not cover sporting and adventure activities or emergency services, which will be covered by other measures. Although the Victorian model does not address the issue of recreational services, unlike the bill before us, it is certainly an important complementary measure, and the opposition would like to see similar legislation as part of the package.

My colleague in another place the Hon. Iain Evans has also mentioned the opposition's desire to ensure that this entire package of measures is implemented but that the implementation be monitored to determine its effectiveness. As I have said, the government—in particular, the Treasurer—has been loud in proclaiming that this bill will have very beneficial effects. This parliament owes it to the community to ensure that measures are put in place to ensure that the government lives up to its rhetoric and that what we have promised the community will be delivered. With those remarks, and foreshadowing amendments to be moved by the opposition in the committee stage, I indicate our support for the measure.

The Hon. CARMEL ZOLLO: I am pleased to add my support to this legislation. In both my Address-in-Reply and Supply Bill contributions, I talked about the issue of public liability and the concerns many constituents have brought to me—and, no doubt, to all members—about the fear of litigation, in particular on community groups, putting a stop to some recreational activities. This bill is one of a suite of bills before us. I am certain that the legislation will be expedited in the spirit of cooperation in response to concerns, expressed over the past year primarily, about the ability to obtain insurance premiums let alone being able to afford the premiums. Without taking anything away from the other two bills to be dealt with—the Wrongs (Liability and Damages for Personal Injury) Amendment Bill and the Statutes Amendment (Structured Settlements) Bill—it is probably more the area of public liability that has decisively focused the crisis in the insurance industry.

This is a problem faced by not only individuals but also many community groups, not-for-profit organisations and small businesses. This legislation specifically provides for limitation of liability of providers of recreational services. It states that it provides the mechanism for participants in a recreational activity if they want to limit the provider's legal liability for personal injury. The mechanism is designed to give some certainty to the provider as to what the law requires of him or her and to consumers as to what safety measures he or she can expect. A registered code will be enacted with which a provider has to comply so that they can then enter into a contract with the consumer whereby the parties agree that any liability of the provider is limited to where an injury is caused by failure to comply with the code. Importantly, there is no entitlement to damages for any personal injury not due to a breach of the code.

The bill sets out administrative processes for registration to the code, the manner in which it is brought to the attention of the consumer at the place of business, and the manner in which the consumer then enters into the contract. As pointed out by the minister in the other place, this bill only deals with the provider's civil liability without the intention of affecting criminal liability. After community feedback, the bill deals strictly with a consumer being a person other than a person who is not of full age and capacity. Earlier draft legislation allowed the same opting out provisions by parents on behalf of their children, but the government has taken on board the possibility of some parents making poorly considered decisions and that provision has been removed. As a parent, I agree with not allowing parents to make those decisions on behalf of their children.

The other issue raised during drafting discussions was that some parents often have placed on them the responsibility of looking after other people's children in recreational activities, and the burden of deciding on behalf of other parents is not one we should place on consumers. Given the need to deal with these bills quickly, and as I will not be speaking on the other two bills, I take this opportunity to say that I am pleased to see in the Wrongs (Liability and Damages for Personal Injury) Amendment Bill two important initiatives which have the potential to assist in easing the psychological distress of being involved in or assisting with an accident.

First, there is the protection of good Samaritans in that such people, when acting without expectation of payment or other benefit, and are not negligent in other ways, do not become liable in damages for an act or omission in good faith and without recklessness. The other important initiative relates to a party being able to say sorry following an accident without the admission or apology being used against them in court. Many years ago, when I was involved in an accident, apart from being shaken and worrying about all sorts of things, I felt very sorry for the young student who apologised a thousand times and said that it was her fault that the accident occurred. It was her fault, but I knew that she should not, legally, be admitting it.

In response to the crisis, two other states—New South Wales and Queensland—have already legislated, and the commonwealth has introduced legislation to facilitate some of the states' initiatives. I understand that it is currently reviewing the law of negligence and will report in due course. Both the industry and the public need to be confident that the industry is, first, able to offer its services and, secondly, that it is affordable. With the other states and the commonwealth also legislating, all of us expect the industry to come to the party and play its part in the form of lower premiums. The set of three bills being dealt with as a package before us is in response to a national crisis, and the Treasurer in the other place should be commended for his consultation and quick response with respect to this matter.

The Hon. G.E. GAGO secured the adjournment of the debate.

FISHERIES (VALIDATION OF ADMINISTRATIVE ACTS) BILL

In committee.

Clause 1.

The Hon. IAN GILFILLAN: The Democrats support the bill. I will make a couple of observations, in so far as the adviser may be able to respond in the committee stage. I refer to the following paragraph in the report:

> The Crown Solicitor has recommended that the regulations be amended to provide for correct administration of the fishery prospectively and that a bill be passed to validate the past incorrect acts or omissions to provide legal certainty for the management of the fishery in the future.

It is quite clear that it is sensible for this place to make such a correction. In respect of clause 3, the explanation of clauses states:

> This clause validates acts done or omitted to be done prior to 17 September 2001 in or with respect to the variation of conditions of fishery licences. . .

It further states:

> It also validates the collection of amounts paid prior to 27 June 2001 purportedly as renewal fees or instalments of renewal fees. . .

Does this open up any opportunity for claims of damages? It certainly is a retrospective measure, and normally we treat retrospective measures with considerable caution and are persuaded to introduce them only in rather extraordinary circumstances. I do not deny that extraordinary circumstances do exist and justify the introduction of this bill, but I ask the minister whether he anticipates, or whether there are any indications, that there would be any claim against the crown, presumably, or any dispute which may cost the crown in legal costs.

The Hon. P. HOLLOWAY: The whole purpose of this bill is to remove any liability that might accrue to the government. There would be, I guess, no purpose in introducing the bill otherwise. It is to remove that liability that we are seeking to retrospectively amend the law to validate those acts. However, I am advised that, to date, no such legal action has been taken, and it is my understanding that the fishers involved accept the situation that this is really to put that question of liability beyond all doubt.

The Hon. IAN GILFILLAN: Were the fishers consulted or involved in discussions prior to the introduction of this bill?

The Hon. P. HOLLOWAY: The fishers were involved through the appropriate fishing management committee in relation to all decisions that were taken. Certainly, the blue crab fishers were well aware of the government's original intention. Of course, these events happened long before I was a minister, back in early 2001. My advice is that the fishers were certainly involved in the original decisions and accepted them. This bill was introduced into the House of Assembly last year by the previous government, so it has been around a long time—nearly 12 months—and there has certainly been ample opportunity for any comment on the bill. I think the fact that there has been no action indicates that the fishers concerned accept the need for the bill.

Clause passed.

Remaining clauses (2 and 3) and title passed.

Bill reported without amendment; committee's report adopted.

Bill read a third time and passed.

STATUTES AMENDMENT (STRUCTURED SETTLEMENTS) BILL

Second reading debate resumed.

(Continued from page 649.)

The Hon. R.D. LAWSON: I support the second reading of the bill. This bill will allow the Supreme Court, the District Court and the Magistrates Court to award personal injury damages in the form of a structured settlement, namely, a judgment for periodic payments, rather than for a lump sum payable immediately.

When the government's discussion paper on public liability insurance was issued in July, these provisions were contained in the then draft Statutes Amendment (Liability for Personal Injury) Bill. That bill would have empowered the court to order that a plaintiff receive a judgment by a periodic payment—that is, a structured settlement—even if the plaintiff did not consent to the payment. However, we are pleased to see that the bill currently before the council has removed that power from the court. Under this bill, a judgment for periodic payments can be ordered only with the consent of both parties, and the opposition considers that that is fair and reasonable.

This legislation is said to be complementary with the commonwealth's amendments to the taxation legislation, although I must say that the definitions and terminology used in that legislation are somewhat different from that which we have in this bill which, although it speaks of structured settlements, really operates in relation to judgments of the court only. The federal Taxation Laws Amendment (Structured Settlements) Bill 2002 does remove some of the existing impediments to the payment of compensation by way of periodic payments. Under the law as it presently stands, compensation for personal injury received in the form of a lump sum is generally tax free in the hands of the recipient. It is not liable to be assessed as ordinary income under section 25 of the act, because the payment is of a capital nature; nor is it subject to capital gains tax because there are provisions in the act which provide an exemption for certain compensation or damages receipts. However, any component of a lump sum that is identifiable as compensation for the loss of earnings is taxable.

The new commonwealth law will permit certain annuities and lump sums which are paid to an injured person under a structured settlement to be exempt from tax. At present, the receipt of an annuity is regarded as assessable income in the hands of a taxpayer. However, that part of an annuity payment which represents the return of the capital that was used to purchase the annuity (referred to as the deductible amount) is excluded from assessable income. The amount of the annuity in excess of the deductible amount is included in assessable income on the basis that it represents earnings on the lump sum. The commonwealth legislation lays down certain conditions—I think five in all—for the beneficial operation of the exemption under commonwealth law. It appears to relate only to settlements. The explanatory memorandum in the commonwealth government legislation has as one condition:

> Settlement must be a written agreement between the parties to the claim, and that applies irrespective of whether or not the agreement is approved by an order of the court or is embodied in a consent order made by the court.

The parties to a structured settlement may seek court approval for a structured settlement. This may be necessary in cases involving those with legal incapacity—that is, persons who are minors or who have been injured so that they do not have the mental capacity to give a valid consent.

The commonwealth legislation seems to be based upon settlements—that is, consent agreements—between parties rather than judgments of the court. Whilst it is true that by far the largest proportion of personal injuries claims are settled, some are determined ultimately by an order of the court. I will ask the minister to advise—in committee, if necessary—whether it is envisaged that this capacity to have a structured settlement will apply to judgments of the court.

It is difficult to see why any structured settlement would be accepted by a plaintiff. Why would anyone take a periodic payment when they could have all the judgment up-front, unless they are receiving some substantially increased amount for taking a periodic payment? If the structured settlement requires the defendant—that is, the insurer—to purchase an annuity, it may well be that there is not much benefit to the insurer in a structured settlement. Of course, it is possible that an insurer may go into bankruptcy after a few years or even perhaps after a few months and, in the light of the recent collapse of HIH and other companies, that is by no means an unreasonable fear. Anyone advising a plaintiff would have to advise against the taking of a structured settlement when there was any possibility at all of the periodic payment not being honoured some years down the track.

Of course, it is possible that there will be structured settlements in cases where the state of South Australia, the commonwealth government or some other entity of relative permanence will be available and can, with a state guarantee, ensure that the judgment would always be stood behind. With regard to medical negligence claims against a public hospital, for example, there is a category of cases where a structured settlement may be appropriate, because in those cases the plaintiff's interests would be protected by the guarantee. We note that in a letter to the Treasurer of 26 July the Law Society expressed the preferred view that consent of a plaintiff or his or her next friend be a precondition to a structured settlement. That suggestion was adopted by the Treasurer. We will be supporting the second reading.

The Hon. IAN GILFILLAN: I indicate Democrat support for this legislation. I respect the contribution made by the Hon. Robert Lawson and believe that the committee stage will, indeed, be used for some quite detailed and specific analysis, which I certainly am not competent to deal with in my second reading contribution. However, the structured settlement as an option can hardly be objected to, and I do not think the Hon. Robert Lawson, speaking on behalf of the opposition, indicated that in any way. Only time will tell whether it is taken up enthusiastically by successful litigants. Purely from a layperson's point of view, for some people the management of a lump sum is almost as hazardous perhaps as the durability of insurance companies. I expect that, if this is to be encouraged widely by governments, there needs to be some underpinning—some form of guarantee—for structured settlement so that there can be that sense of confidence that it will continue where there is a life expectancy or where a cut-off date is stipulated.

In some ways I feel it is a more appropriate and desirable method for allocating compensation. I suspect it may be a safer way to allocate compensation than the rather complex means of calculating a lump sum which supposedly will provide on an enduring basis the benefit that the injured person is entitled to. So I indicate Democrat support for the second reading and we would be very surprised to oppose it at the third reading, but we will be interested to hear what contribution the Hon. Robert Lawson and others make in the committee stage.

The Hon. J. GAZZOLA secured the adjournment of the debate.

WRONGS (LIABILITY AND DAMAGES FOR PERSONAL INJURY) AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 651.)

The Hon. R.D. LAWSON: The opposition will support the Wrongs (Liability and Damages for Personal Injury) Amendment Bill and we commend the government for introducing it. However, it should be said at the outset that we have reservations about the speed with which this bill—and, indeed, the other two bills which have been debated this afternoon—have been brought forward. The bills were rushed through the House of Assembly, it can only be said, last week, and I think in each case were introduced on one day and on the same day passed through all stages. Amendments were made to these bills by the government right up to the time of their introduction. I think it is also fair that we put on record our view that the government has oversold this bill and the beneficial effects that are intended to come from it. I think it is worth repeating briefly the history.

The government's response to the insurance industry was, in our view, muted to begin with. It was not until 3 June this year that the Treasurer made a ministerial statement on the matter. That was notwithstanding the fact that the opposition had been raising a number of questions in the parliament about it for quite some time, and all members of parliament would have received representations, letters and delegations about the effect on many organisations and businesses, both large and small, in our community about the pain that they were suffering in consequence of either the unavailability of insurance or the very rapidly rising cost of insurance. In a ministerial statement of 3 June the minister stated:

Our government has agreed to consider some bold steps to stabilise premiums and see them reduce and ensure accessibility and affordability of public liability insurance to the community.

Note the three claims of the Treasurer: 'bold steps', he said, that would 'stabilise premiums and see them reduce', and these bold steps would 'ensure accessibility and affordability'. However, what is absent from this bill and from the package of bills that accompanies it is any explanation or evidence as to how they will have the effect of stabilising premiums. Even more, there is no evidence that these measures will produce reduced premiums. The Treasurer and the government have not produced any evidence or material upon which it could be said that accessibility or affordability of public insurance will be improved by these measures. To claim that they are bold measures is laughable to anybody who knows anything about this subject.

The insurance industry has indicated that this measure will not reduce premiums. In an item published in the *Sunday Mail* of 14 July the Insurance Council of Australia President, Mr Raymond Jones, was quoted as saying that the premiums would not fall and, in fact, Mr Jones was speaking shortly before 14 May in a senate hearing on the New South Wales

Labor government's reform program which is mirrored in the South Australian provisions.

I think it is also worth referring to an item which appeared in the *Financial Review* of 4 May written by Allesandra Fabro which outlined some of the evidence that measures of this kind will not lead to reduced premiums. The *Financial Review* article, under the heading 'Capping claims won't bring down premiums' referred to an American study into tort law reform which analysed data from every United States state between 1985 and 1989 and showed no difference in premiums between those states with little or no tort law restrictions and those with medium to very high restrictions. The report states:

> Tort law limits enacted since the liability insurance crisis of the mid 1980s have not lowered insurance rates in the ensuing years. States with little or no tort restrictions have experienced the same level of insurance rates as those that enacted severe restrictions.

The Trowbridge report, which was commissioned by the federal government and which was presented to a meeting of federal, state and territory ministers in early May, also suggested that the capping of claims was unlikely to reduce premiums. Victoria's Minister for Finance, John Lenders, is quoted as saying that the state of Victoria has signed up to tort law reform but is actually insisting upon the two basic tests, namely, to make insurance more accessible to those who currently cannot get it, and more affordable. He is quoted as saying:

> Then we will have the public policy discussion on the diminution of some rights to achieve other outcomes.

That is precisely the discussion that we are not having in South Australia because the South Australian government has not produced any evidence that the measures that we are debating in this bill—which will reduce the rights of individual citizens in our community—will lead to any corresponding benefits to the community at large. However, notwithstanding that, we believe, on equity grounds, that it is entirely appropriate that people who suffer injury in motor vehicle accidents should receive compensation which is the same as the compensation received for other victims of comparable torts.

As I say, it is worthwhile mentioning right at the outset that this measure, whilst welcome on the basis of equity, will not provide the relief which the community is seeking in this area. It is interesting to see that the discussion paper which was issued on 8 July was accompanied by a ministerial statement which did not have quite such overblown claims, but the Treasurer did on that occasion say that these measures are designed to make insurance against bodily injury damages more affordable and accessible. They may be designed to do that, but the evidence that they will achieve that, certainly in the short term, is not presented.

By the time the minister got to introduce this bill in the parliament last week, I must say, he had toned down his rhetoric considerably and his claims were far less extravagant and more realistic. Last week the Treasurer described the bill as:

> A practical measure that will help in containing claim costs. This should be reflected in containment of premium costs, thereby assisting in ensuring that affordable liability insurance remains affordable to the public.

This is a far more sober assessment. Over the weekend I spent two days at a constitutional convention, at which a number of members of this parliament were present. The Hon. Gail Gago was present at the convention and is in the chamber at the moment. All of us who were there would have heard countless references to the low esteem in which members of parliament are held, and many explanations were given for this phenomenon. Misbehaviour in parliament was one recurrent theme, but it seems to me that one of the greatest reasons for the community to have cynicism about the political process is a crisis occurring, a political claim being made of 'don't worry, we will solve it for you,' bills are introduced, media statements issued, press conferences held, and the community is given the impression that the problem has been solved, then it drags on into the future.

One sees the number of pony clubs, tourist operators, recreational service providers, amusement operators, local shows, even the Loxton Mardi Gras Festival, heaven forbid, that have been affected by the insurance crisis, but this measure will provide no benefit to them. They will be disappointed with this parliament, and we—and I there refer not only to the government but to all members—will be castigated in the community mind for our failure to deliver on the high-blown rhetoric that heralded the measure in the first place.

One of the principal reasons for our scepticism about this bill is that it does not in any way seek to limit or cap the damages for the cost of future care of an injured plaintiff. We are not saying that such damages should limit the cost of future care, because the cost of future care is an extremely important component, but it is also the most substantial component of any damages award. Modifying, reducing and limiting the amount of damages you can recover for future pain and suffering, to adjust the way in which nervous shock losses are to be compensated or to remove claims by criminals or people who are intoxicated is really tinkering around the edges, when the figures show that about one-third of any significant damages award represents the cost of future care. It indicates that this measure is tinkering at the edges.

I know that in another place the suggestion made by my colleague in relation to future care was grabbed upon by a gleeful government. To say that we are anxious to reduce the cost of future care and were half-hearted in our support for this bill was entirely meretricious, in my view. What we are saying is: 'Don't say this bill has solved the insurance crisis when, clearly, it has not.' Measures to provide long-term care for people who are injured as a result of the negligence of others, whether it be in a motor accident or by any other means, are measures that this community has to adopt.

When I was Minister for Disability Services I learnt that the cost of long-term care, whether it be through Julia Farr Services or in any one of the community group homes that we were establishing, is extremely high: $100 000 a year for someone with a life expectancy of 45 years amounts to a very significant sum, especially when 24-hour care is very often required. As a community we have to provide these facilities. Let us take the example of a motorcycle accident in which a rider and a pillion passenger sustain exactly the same injuries when their vehicle collides with a river red gum. One is compensated through the legal system, and compensated generously; the other is left to the public system, where the services are completely stretched. The anomaly is that many of the people who receive compensation through the insurance system use their compensation to pay the government for providing them with the services.

This bill will not deliver some of the exaggerated claims made for it. Damages to motor vehicle claimants are presently governed by section 35A of the Wrongs Act, and that section is now being recast to cover all claimants. In view of the time, I do not propose to go through each of the measures that

are taken in relation to each of the various heads of damage. Suffice to say that we will be supporting the measures. In particular, we will be supporting the new method of calculating damages for non-economic loss. Presently, as members will be aware, there is a scale of 0 to 60 in relation to non-economic loss (we used to call that pain and suffering), the court is required to determine a number on that scale from the lowest to the highest and there is a common multiplier that applies to the figure so selected.

What is proposed under this legislation, not only for motor vehicle but for all injuries that come under it, is a sliding scale or a staggered scale, which will mean that those people who are more seriously injured will have a higher monetary amount applied to their multiplier and will be better compensated. It also will have the effect of reducing the compensation to those who are less seriously injured. The current maximum payment under the motor vehicle scheme on the 0 to 60 scale is something over $100 000. It will be possible under the new scale for a seriously injured patient to receive up to $240 000.

The Motor Accident Commission makes very detailed calculations of the costs to it of the various changes that are proposed to be made from time to time. I am confident that the commission will have made a calculation of what reductions it will receive in consequence of this change, and I ask the minister to provide during the committee stage information about the cost or the saving to the commission as a result of this change.

With regard to economic loss, that is, loss of wages and loss of future earning capacity, it is noted that clause 24(d) is intended to cap damages for loss of earning capacity at a prescribed maximum, which will currently be $2.2 million, the figure that was originally derived as a result of amendments made to the Wrongs Act after the Blake case. That prescribed maximum has applied to motor vehicle claimants and now will extend to all claimants.

It is interesting to note that the same cap will now apply to both past and future earning capacity. Once again, that is a measure which will result in some savings to the motor accident scheme. I put on record that I would like the minister to advise of the actual monetary consequences of that change. We will support the new provision that will exclude liability for damages in cases where a person sustains injury whilst engaged in conduct which constitutes an indictable offence and the injured person's conduct contributed to a risk of injury.

This provision is based on the Criminal Injuries Compensation Act, which provides that a person who is injured by the criminal act of another, whilst the first person himself was engaged in criminal conduct, is not compensable. Similarly, offenders are not entitled to be regarded as victims for the purposes of the Victims of Crime Act. We believe that the bill is reasonable in this direction because it does require proof beyond reasonable doubt of the commission of the act which would constitute the offence. We also commend the government for including in the bill a provision which prevents the same issue of criminal culpability being litigated in both the criminal and civil courts.

We welcome new Division 13 which deals with good Samaritans. This provision substantially adopts the Good Samaritans (Limitation of Liability) Bill 2002, which is a private members bill introduced in May this year by the member for Davenport. It is interesting to note that the bill, which was circulated with the discussion paper in July and which was still being circulated earlier last week, defined a good Samaritan as a person who comes to the aid of another who is apparently in 'need of emergency medical assistance'.

I emphasise the word 'medical'. That component was not in the private members bill to which I referred, and I am delighted that the government adopted the suggestion made by the opposition that the medical requirement be eliminated. A good Samaritan is one who comes to the aid of another who requires any emergency assistance. We posed the question to the government, entirely appropriately: why should a volunteer fireman or lifesaver be excluded because the particular predicament of the person in need could not be described as one requiring medical assistance?

I commend the member for Davenport, incidentally, for bringing forward that measure. I know the Hon. Angus Redford had quite a bit to do with its development, and I am sure he will speak on it. I commend him also for the active part he has played in the development of a number of measures to assist the volunteer and community organisation sector in our state. We do commend the inclusion of clause 39 which ensures that no admission of liability or fault can be inferred from the fact that a person expresses regret for an incident out of which a cause of action arises. This is a measure similar to that which applies under the Evidence Code of California and I believe some other states, although I have seen only the Californian provision. In California, the Evidence Code provides:

> Evidence that a person has, in compromise or from humanitarian motives, furnished or offered or promised to furnish money or any other thing, act, or service to another who has sustained or will sustain [claims], as well as any conduct or statements made. . . is inadmissible to prove [liability of the person].

Certainly, in California under the Evidence Code it is not possible to use evidence of an apology against a person in a subsequent trial.

The Hon. A.J. Redford: What is the difference between an admission and an apology?

The Hon. R.D. LAWSON: Both the Californian provision and the South Australian provision do seek to draw that distinction. The mere fact that you are making an apology will not be used in evidence against you. However, a formal admission of liability is something that ought be admissible because we do not want the situation where people make a formal admission of liability and then subsequently resile from it unless the circumstances are such where that should be permitted by order of the court. The American provisions are described not only as apologies but also as 'benevolent gestures'.

An article entitled 'Saying You're Sorry' by Goldberg, Green and Sander appears in a book *Negotiation Theory and Practice* which has been published by the Harvard Law School. They examine in quite some detail the use of apologies in conflict resolution, and I quote from the abstract:

> In cases where one side simply wants the other side to admit responsibility an apology may be sufficient to resolve the conflict. More often an apology alone is not sufficient to resolve the conflict; however, an apology can reduce tensions and pave the way for more fruitful negotiations. . . The US culture creates at least two obstacles to apologising. First, apologising is often felt to be demeaning or humbling. Refusing to apologise and 'sticking to your guns' is the more psychologically acceptable stance. . . 'Thus it is common for insurance companies and attorneys to advise policyholders against expressing sympathy for a person injured by the policyholder for fear that such an expression will be treated as an admission of guilt.'

The abstract concludes:

> Apologies are also most effective when they are well-timed and combined with compensation. An apology alone will not substitute for compensation when there is substantial injury. Apologies should

be prompt. They should be offered soon after the injury occurs or after the grievance is expressed.

They go on to examine the case of the Delta Air Lines crash in 1986 where quick apologies were made by the company as a matter of policy and substantially fewer lawsuits were filed against the airline than is normally the case. Obviously, that result was seen as beneficial.

We support the measure relating to expressions of regret. The discussion paper issued in July included the Statutes Amendment (Liability for Personal Injury) Bill. That bill significantly amended section 17C of the Wrongs Act, which deals with the liability of occupiers of premises. However, that bill has now disappeared and there has been no explanation as to whether or not the government intends to, in any way, amend the law relating to occupiers' liability, because there are very many claims—and not large claims but small claims with high cost to the community—of injuries arising out of occupiers' liability. It was that bill also that allowed a parent or guardian to contract, reduce or exclude liability owed to a child or a person under disability, and we note that that has been removed. We are glad to see that that concept has been abandoned, but we still consider that it is necessary for the issue to be addressed, certainly in relation to the recreational services measure contained in another bill.

However, that bill did go further. It provided that, where an occupier of land allows access to his or her land free of charge for recreational purposes, the occupier could be protected from liability for breach of duty by erecting a notice that warns that people enter at their own risk. The discussion paper said that this particular proposal was 'based on the concept that people should be able to choose to undertake recreations at their own risk'. That was an excellent suggestion, which the opposition would have supported. We would like the minister, certainly during committee, to indicate whether or not the government proposes to pursue a proposal of that kind or some similar provision.

This bill, being as it is one of three bills introduced as a package, still only scratches the surface. Serious changes to the law of negligence are still needed. The recommendations of the so-called eminent persons group, chaired by Mr Justice Ipp, will be eagerly awaited. It is worth recalling that a very experienced Queensland judge, when retiring earlier this year (and I am here speaking of Mr Justice Thomas), said:

> We [meaning the judiciary] have allowed the tests of negligence to degenerate to such a trivial level that people can be successfully sued for ordinary human activity. We now have a compensation orientated society in which people know that a minor injury may be a means of getting more money than they could possibly save in a lifetime. Some of us (the judiciary) have enjoyed playing Santa Claus forgetting that someone has to pay for our generosity.

The latest issue of the *Australian Law Journal* contains a very interesting item by Chief Justice Spigelman of New South Wales. It has been referred to in the House of Assembly in speeches, but I think that it is worth reminding members of the council of it. The Chief Justice of New South Wales states:

> Over a few decades—roughly from the 60s to the 90s—the circumstances in which negligence would be found to have occurred and the scope of damages recoverable if such a finding were made appeared to expand considerably.

The Chief Justice further states:

> There seems little doubt that the attitude of judges has been determined to a very substantial extent by the assumption, almost always correct, that a defendant is insured. The result was that the broad community of relevant defendants bore the burden of damages and costs awarded to an injured plaintiff. Judges may have proven more reluctant to make findings of negligence if they knew that the consequence was likely to be to bankrupt the defendant and deprive him or her of the family home.

Chief Justice Spigelman accepts that there has been, what he determined as, an 'imperial march' in the law of negligence. He traces the beginning of this imperial march to the decision of the Privy Council in the Wagon Mound case in 1967 and its triumph in the High Court case of Wyong Shire Council v Shirt, where it was held that any event that was not 'far-fetched or fanciful' can be regarded, for the purposes of the law of negligence, as foreseeable—a fairly extraordinary test when responsibility is said to take steps to avoid foreseeable injury, and 'foreseeable' is defined as anything that is not 'far-fetched or fanciful'.

Accordingly, all of us are legally liable for practically every risk of harm that can occur, and the only exceptions are those that are 'far-fetched or fanciful'. The march is almost inexorable although, as Chief Justice Spigelman notes (certainly in relation to nervous shock cases), the tide appears to be turning. For example, in a case currently on appeal to the High Court of Annetts v Australian Stations Pty Ltd (a decision of the Western Australian Supreme Court handed down on 21 November), the court dismissed an action for negligence based upon a highly unusual and sad set of circumstances, which flowed from the death of James Annetts, a young jackeroo at a station in the remote Kimberleys who, with a colleague, left the station (they were there unattended) and perished in the desert.

When a representative of the Western Australian police telephoned the home of Annetts' parents and informed them of this tragedy, his mother sustained a psychiatric illness, which was claimed to be foreseeable. In a very learned judgment the court ultimately dismissed that action, notwithstanding that it was highly arguable on existing authorities that recovery should have been allowed. In the case of Morgan v Tame (a decision of the New South Wales Court of Appeal, which was handed down in May 2000), a judge had held that the police were liable in negligence for the psychiatric injury suffered by a plaintiff who was involved in a car accident.

In the course of investigating the accident, the police prepared a report in which they incorrectly filled out and showed the plaintiff as having a blood alcohol reading of .14. However, that was the reading of the other driver involved in the accident. The correct reading of the plaintiff was nil. When she was informed by the police that this entry was made she sustained a psychiatric injury and was held to be entitled to recover. Again, that is a matter that is the subject of an appeal to the High Court. The important point is that, as Chief Justice Spigelman has explained, the inexorable tide of the law of negligence seems to be receding, and the courts are more reluctant than they were previously to extend continuously as they have been the dominion of the law of negligence. If parliaments in the past had grasped the nettle and introduced legislation to limit some of these measures, we might not have the insurance crisis that we have today. It is now time for us to grasp that nettle and when the Ipp Report comes down we will certainly be urging the government to have an appropriate legislative response that is based upon principal. It will be an important extension to this measure. I support the second reading.

The Hon. G.E. GAGO secured the adjournment of the debate.

PRICES (PROHIBITION ON RETURN OF UNSOLD BREAD) AMENDMENT BILL

Received from the House of Assembly and read a first time.

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): 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 amends the *Prices Act 1948* by inserting a new regulation-making power to ensure that a prohibition on the return of unsold bread can be enforced, whether or not financial relief or compensation is given to or received by the retailer.

This bill was originally introduced by the previous government in the Spring 2001 session of Parliament. The bill lapsed when Parliament was prorogued.

In the 1980s the practice whereby some bakeries entered into arrangements with retailers that bakeries would redeem unsold bread increased significantly. The practice suited large retailers and larger bakeries, which could absorb these losses. Smaller bakeries were unable to bear the cost of dumping or giving away the bread, and there was public concern about the food wastage caused by this practice.

The regulations that came into force in 1985 separately prohibited the sale of bread by the retailer to the supplier and the return of bread whether or not financial relief or compensation was given to or received by the retailer.

The *Prices Regulations 1985* were due to expire on 1 September 2001 and under the automatic revocation program could not be further postponed. In the process of re-making the 1985 regulations, Parliamentary Counsel identified parts of the regulations relating to the return of bread as being outside the regulation-making power of the *Prices Act 1948*.

The regulations that were made in August 2001 were drafted in such a manner that ensured that they were within power and, to the extent possible, had the same effect. However, there is a risk that the coverage of these regulations is not identical to that of the 1985 regulations.

In particular, a possible gap was identified in the prohibition. The prohibition covers situations in which the retailer returns bread to the supplier and is given or receives direct or indirect financial relief or compensation. However, it may not cover the situation in which there is no financial relief or compensation to the retailer.

Industry representatives have indicated that it is desirable to have regulations identical to the 1985 regulations, that will clearly prohibit the return of unsold bread to the supplier even when no financial relief or compensation is given to or received by the retailer. The regulation-making power requires amendment to accommodate new regulations in the same form as the *Prices Regulations 1985*.

Accordingly, this bill extends the regulation-making power in the Act in a manner that will enable new regulations to be made that exactly mirror the 1985 regulations with which industry was satisfied.

I commend this bill to the House.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides for commencement of the measure on a day to be fixed by proclamation.

Clause 3: Amendment of s. 51—Regulations

This clause amends the principal Act so that regulations may be made prohibiting the return of unsold bread by a retailer to the supplier of the bread (whether or not financial relief or compensation is directly or indirectly given to or received by the retailer in respect of that bread).

The Hon. A.J. REDFORD secured the adjournment of the debate.

AIR TRANSPORT (ROUTE LICENSING—PASSENGER SERVICES) BILL

Received from the House of Assembly and read a first time.

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I move:

That this bill be now read a second time.

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

Leave granted.

This bill empowers the government to control the provision of scheduled air services on routes wholly within the state. It provides the Minister for Transport with the power to declare a route then to require airlines to compete for a licence to operate it.

This is a very significant step for the government to take and it is not taking it lightly. It is important therefore to understand the circumstances that have led to it.

Until 1979 the Commonwealth effectively exercised this power at both the national and intrastate levels. However, in 1979, after the constitutionality of its intervention in intrastate markets was brought into question, the Commonwealth restricted itself to the operational regulation of intrastate airlines which had been specifically provided for in 1937 through enabling legislation by the states.

Since 1979, scheduled air services within South Australia have operated without economic regulation of any kind. Subject to their meeting the Commonwealth Civil Aviation Safety Authority's operational requirements, airlines have been free to enter or withdraw from any route they choose.

Some other states chose to replace Commonwealth economic regulatory powers with powers of their own. Some, including Queensland, New South Wales and Western Australia, still exercise those powers and issue route licences of one sort or another. However, South Australia, under successive governments since that time, has preferred to allow market forces to determine which routes are operated and the level of service on each of them.

Until recently that policy has generally served the state well. A number of studies have suggested that while the number of operators and the routes they served initially mushroomed after 1979, a process of commercial rationalisation has generally produced good outcomes for regional communities.

While there have been a large number of regional airline failures and significant shrinkage in the state's regional route structure, generally failure of one airline created opportunities for another. Routes lost were a result either of close proximity to a larger community with better air services or of improved road access to Adelaide itself. While average aircraft size decreased, the frequency of services generally increased. Additionally, our regional air fare structure has remained generally below those of the regulated states.

Unfortunately, these circumstances have changed over the last several years culminating in the virtually simultaneous conjunction of the terrorism events in New York last September and the collapse of Ansett. However, even before these events, the regional airline industry was suffering unprecedented instability caused by declining passenger patronage, its low capital base and increased operating cost pressures.

As a result, the number of regional airlines operating in South Australia has declined from ten only five years ago to four, one of which is operating under administration pending sale. Additionally, all four are suffering difficult market conditions and, consequently, are risk-averse in the context of maintaining marginal routes or expanding their businesses to take on new routes.

Similarly, the number of routes operated within the state has shrunk to a core of only eight, the loss of any of which would impose significant disbenefits on the communities concerned. However, all are operated without assistance, and are either profitable or regarded by their operators as likely to return to profitability in the short-term.

If services are lost on any of the smaller remaining routes, we cannot now, as we have been able to in the past, assume that market forces will induce another operator to take them up. The start-up costs involved in acquiring aircraft to serve a vacated route may be enough to deter another operator from implementing a replacement service.

Under these circumstances, the government may intervene usefully by declaring such routes and issuing single-operator licences to operate them, and this bill provides the power for the government

to do that. Potential operators, knowing that they will have a defined period during which they will have sole rights to the route and to recoup their investment, will have more confidence in making the associated business decisions. The ultimate beneficiaries of course will be the regional communities that retain their air services through adverse market conditions, or regain services that operators previously have withdrawn.

This is not then about subsidising regional air services, but bringing more stability to those of them that are only marginally profitable. This government believes that providing financial assistance to commercial airlines is not an appropriate role for governments—State or Federal—and that ultimately air services must be viable if they are to continue.

The government has consulted extensively with regional airlines, industry associations, regional councils, Commonwealth government agencies and regulators and relevant state government agencies. That was essential to ensure that the bill is to be workable for the industry it seeks to serve, and that it will work in the interests of regional communities for whom air services are so important. Some very practical comments have been received, and incorporated into the bill. I am pleased also to report that the bill has received widespread support for the outcomes it seeks to achieve—that is, to bring some measure of stability to those routes which are marginally viable but will clearly only support a single operator.

The bill is very simple in its construction:

Parts 1 and 2 contain the process by and circumstances under which the Minister may declare a route, the details of the declaration such as its commencement and term, and the number and conditions of the route service licences expected to be made available. This is important and makes it clear that a declaration will only be made when certain criteria are satisfied which ensure that the declaration is in the public interest in order to encourage an operator or operators of air services to establish, maintain, re-establish, increase or improve air services on the route. It is not intended that routes will be declared which are large enough to support competing services, or large enough that the Minister can be reasonably sure, even in the absence of a declaration, that another operator will implement services on it if the existing operator withdraws.

Part 3 specifies the requirement for a route service licence to operate a declared route, the process of applying for a licence, the conditions of a licence, and other details pertinent to the process of awarding and administering licences. Important aspects of this part are the requirement for the Minister to table in Parliament full details of the licence within twelve sitting days of its award in order to ensure transparency of process; the requirement for the Minister to offer the licence to any existing operator on fair and reasonable terms before making a general invitation for applications to operate the route; and, most importantly, explicit reference to the fact that award of a route service licence does not constitute any sort of warranty of the licensee's operational fitness as that role remains the sole responsibility of the Commonwealth Civil Aviation Safety Authority.

Part 4 deals with the circumstances under which route licence holders may appeal decisions of the Minister to the Administrative and Disciplinary Division of the District Court. This makes it clear that, although the previous parts incorporate considerable flexibility for the Minister to agree or not to such matters as the transfer of licences to other parties, the variation of licence conditions, the surrender of licences, the suspension or cancellation of licences and so on, all such decisions may be appealed by the licensee. This will ensure that these matters are not arbitrarily decided but must instead be the subject of a process of negotiation and agreement between the parties. This, in turn, will ensure that the benefits of the air service to the communities it serves remain the ultimate objective of the process.

Part 5 contains the normal provisions of a bill of this nature.

The bill, in its entirety, is intended to increase the confidence of regional air operators in making the difficult business decisions involved in serving marginal routes in South Australia. This is to ensure, to the extent possible, that the risks inherent in providing scheduled air services to our small communities are minimised. That is vital if we are to achieve a stable network of commercially sustainable air services so necessary to meet the government's economic and social development objectives throughout the state.

Explanation of Clauses

PART 1

PRELIMINARY

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

The measure will come into operation on a day fixed by proclamation.

Clause 3: Interpretation

This clause sets out the meaning of various terms used for the purposes of the measure.

Clause 4: Prescribed criteria

This clause sets out various matters the Minister must take into account in making a decision regarding the number of route service licences that should be awarded for a particular route and to whom a licence should be awarded. These include the extent to which a monopoly may result, the benefits in maintaining and developing air services and competition, steps that may need to be taken to promote efficient operation of air services and the public benefits that may accrue if air services are maintained or encouraged within the state.

PART 2

DECLARED ROUTES

Clause 5: Declared routes

Under this clause the Minister may declare by notice in the *Gazette* that a particular route between two airports within the state is to be a declared route for the purposes of the measure. A declaration may be for a period of up to three years and may be extended for a further period of three years, after which time, the Minister must make a new declaration if the route is to continue as a declared route. The *Gazette* notice must include details of the route, the number of licences expected to be granted in relation to the route, any conditions that may attach to the licence and information on how to apply for a licence in relation to the route.

In deciding whether to declare a route the Minister must be satisfied that it is in the public interest and be made in order to encourage, establish or improve scheduled air services on the route. The Minister must also take into account such things as the public demand for scheduled air services on the route, the intentions of any operator or potential operator of air services on the route, any economic or social costs that may be suffered by the community if no declaration is made, the extent to which scheduled air services may improve if a declaration is made, alternative methods of transport that may be available if a declaration is not made, and financial issues associated with the operation of a scheduled air service on the route.

PART 3

ROUTE SERVICE LICENCES

Clause 6: Requirement for licence

A person must not operate a scheduled air service on a declared route unless the person holds a route licence issued by the Minister under this measure. There are some exceptions to the requirement to hold such a licence. These include where the air service is a charter service, the licensed operator is unable to provide the service due to an emergency or technical difficulties with the plane, or the terms of the licence contemplate an alternative or additional air service.

Clause 7: Applications for licences

An application for a licence must be made in the manner and form required by the Minister. The Minister may require such further information of an applicant as is necessary and relevant.

Clause 8: Conditions

This clause sets out the conditions that may be attached to a route service licence. These include the term of the licence, requirements as to the performance and service levels and flight schedules in relation to a route, the fares that may be charged in relation to a route, the provision of infrastructure or expenditure by the holder of the licence, reporting requirements and the grounds for suspension or cancellation of a licence. In addition, it will be a condition of each licence that the holder of the licence have appropriate CASA certification. Conditions imposed by the Minister may be varied by the Minister.

Clause 9: Special terms

A route service licence may provide that the licence holder has exclusive right to operate scheduled air services on the route. However, such a right does not affect the ability of another person to operate an air service of a kind specified by the regulations or the licence itself (including a scheduled air service).

Clause 10: Assignment of rights under licence

A route service licence holder must only assign, transfer, subcontract or otherwise deal with the licence with the consent of the Minister, who must be satisfied that adequate provision will be made for the operation of services under the terms of the licence before consent is given.

Clause 11: Special fees

The Minister may require payment of a fee for the lodging of a tender for a route service licence or administering a route service licence.

Clause 12: Existing operators

If the Minister makes a declaration of a declared route in relation to which there is an existing air service operator, the Minister must offer to grant a route service licence to the existing operator on fair and reasonable terms before making a general invitation to the aviation industry for applications for route service licences. An existing operator has 14 days in which to accept the offer.

Clause 13: Report to Parliament

Within 12 days of awarding a route service licence, the Minister must cause a report to be laid before both houses of Parliament that includes details about to whom the licence has been awarded, the term of the licence, the performance and service levels, flight schedules and the fares to be charges under the licence.

Clause 14: Other matters

The holder of a route service licence may surrender the licence with the consent of the Minister.

The awarding of a route service licence does not constitute a warranty or representation by the Minister or the Crown that the person is fit to, or capable of, operating an air service in a safe or reliable manner, and no liability may attach to the Minister or the Crown

PART 4
APPEALS

Clause 15: Appeals

This clause sets out the basis on which a person may appeal to the Administrative and Disciplinary Division of the District Court against a decision of the Minister under the measure. These include decisions of the Minister in relation to a variation of licence conditions, the refusal of consent to transfer or assign or otherwise deal with the licence under clause 10, the fixing of conditions of a licence offered to an existing operator under clause 12, the refusal by the Minister to allow the surrender of a licence or the suspension or cancellation of a licence by the Minister.

PART 5
MISCELLANEOUS

Clause 16: Authorised officers

This clause provides for the appointment of authorised officers and sets out the powers of an officer in relation to the administration, operation or enforcement of the measure.

Clause 17: Delegations

The Minister may delegate a function or power of the Minister under the measure.

Clause 18: Exemptions

This clause allows the Minister by notice in the *Gazette* to exempt certain persons or specified classes of service from the provisions of this measure.

Clause 19: Annual reports

An annual report must be provided to the Minister on the operation and administration of this measure. The Minister must cause copies of the report to be laid before both houses of Parliament within 12 sitting days of receiving it.

Clause 20: Immunity of persons engaged in administration of Act

No personal liability attaches to a person engaged in the administration of this measure, who acts in good faith in the exercise of his or her duties. Any such liability attaches instead to the Crown.

Clause 21: False or misleading information

It is an offence for a person to make a false or misleading statement in relation to any information that is provided under this measure.

Clause 22: Continuing offence

A person convicted of an offence against this measure may be liable for an additional penalty for each day during which an act or omission continues up to one-tenth of the maximum prescribed penalty.

Clause 23: Liability of directors

If a body corporate is guilty of an offence, each director is guilty of an offence and is liable to the same penalty as the principal offence unless it is proved that the offence did not result from the failure of the director to take reasonable care to prevent the commission of the offence.

Clause 24: Evidentiary

This clause sets out evidentiary provisions in relation to certain matters under the measure that may be certified by the Minister.

Clause 25: Obligations under other laws

Nothing in this measure affects an obligation of a person to hold a licence or registration which is otherwise required by law.

Clause 26: Regulations

This clause sets out provision for various regulations that may be made under the measure.

The Hon. A.J. REDFORD secured the adjournment of the debate.

NUCLEAR WASTE STORAGE FACILITY (PROHIBITION) (REFERENDUM) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 17 July. Page 578.)

The Hon. A.J. REDFORD: On behalf of the opposition, I indicate to the Legislative Council that we oppose the second reading of this bill as it is the opposition's view that this bill is no more and no less than a political stunt on the part of the government.

This bill seeks to amend the Nuclear Waste Storage Facility Prohibition Act. That act does a number of things. Firstly, it prohibits the construction of a nuclear waste storage facility. Secondly, it prohibits the transportation of nuclear waste. Thirdly, it prohibits public money from being used to encourage or finance any activity associated with the construction of a nuclear waste storage facility, and it also directs the Environment, Resources and Development Committee to inquire into the impact on the environmental and socioeconomic wellbeing of the state. The act also has some ancillary provisions regarding corporate offences and powers of the court and empowers public authorities to remove facilities and provides other powers in relation to the general purposes of that act.

This bill seeks to amend that act principally by doing three things. Firstly, by extending the definition of 'nuclear waste' to include category A, B and C radioactive waste as defined in the code of practice for the Near-Surface Disposal of Radioactive Waste in Australia 1992, approved by the National Health and Medical Research Council. Secondly, it establishes or seeks to establish a referendum of electors if the minister forms an opinion that an application is likely to be made for a licence to construct or operate a facility and, thirdly, it sets out the referendum questions and allows for regulations to be promulgated in that respect.

Before proceeding to any details, I think that I should set out what is meant by the terms 'intermediate level radioactive waste' and, secondly, 'low level radioactive waste'. I use as my source the document issued by the Commonwealth Department of Education, Science and Training entitled 'Safe Storage of Radioactive Waste: the National Store Project'. In the document, low level radioactive waste is defined as follows:

> Waste containing short-lived beta and gamma emitting radionuclides and normally very low levels of alpha emitting radionuclides. Low-level radioactive waste is waste that is suitable for disposal in the national repository. Shielding is not normally required for handling and transport. It includes items such as wrapping material and discarded protective clothing and laboratory plant and equipment. Disposal in near-surface structures is commonly practised overseas. In some cases, the level of radioactivity is below the limit that regulations set as radioactive material. This category of waste corresponds to Categories A, B and C waste in the NHMRC Radiation Health series, No 35 1992.

Intermediate level radioactive waste is defined in the same document, as follows:

> Waste that contains significant levels of beta and gamma and possibly alpha emitting radionuclides. Intermediate level radioactive

waste is not suitable for near-surface disposal. Australian intermediate level radioactive waste consists of historical waste from mineral sands processing, disused sealed sources and industrial gauges, reactor components, irradiated fuel cladding, and waste from the processing of spent fuel and ion-exchange resins and filters (for example, as a result of reactor operation). This waste sometimes requires shielding during handling and transport. This category of waste corresponds to the long-lived low and intermediate level radioactive waste as defined in the IAEA Safety Guide, number 111-G-1.1, 1994, and Category S in the NHMRC Radiation Health Series, number 35, 1992.

This bill is now described far and wide as the 'Get Trish Draper' bill. It is a bill designed solely for the purpose of putting Labor in a position to win her seat at the next federal election.

The Hon. J.S.L. Dawkins: Well, they had better improve their work then.

The Hon. A.J. REDFORD: I agree. The bill has no other purpose than the political. In introducing the bill in another place the minister said that the current act allows for storage and disposal of material such as contaminated laboratory equipment, glassware, paper, plastics and soil. He went on to say:

> This bill has been introduced into the house to amend the act to prohibit all nuclear material including low-level waste generated outside of South Australia being transported into the state and placed in a repository.

In fact, the bill goes a lot further, because it would also have the effect of preventing the establishment of a storage facility for low level waste, i.e., category A, B or C. Further, if one looks at the juxtaposition of the Radiation Protection and Control Act with the bill before us there is a confusion of legislative policy. For instance, section 44 of the Radiation Protection and Control Act provides that the minister can exempt a person from compliance with that act; for example, the establishment of a storage facility for low level waste in this state, despite the prohibition set out in section 8 of the act.

For the benefit of members, I point out that section 8 provides:

> A person must not construct or operate a nuclear waste storage facility.

It goes on to establish a penalty of a term of imprisonment of 10 years or a fine of $500 000, in the case of an actual person, or $5 million, in the case of a body corporate—a very harsh penalty for breaching that prohibition—and it is the penalty already prescribed in legislation which is part of our statute law.

This bill will extend the prohibition to the construction or operation of a facility to store low level waste. Thus, technically, if low level waste is generated in the future, those who are charged with the responsibility of storing that waste are committing a very serious offence indeed. Their only escape is section 6(b) of the act and possibly section 7. It seems that, despite the government's sole aim of advancing a political agenda, a real potential effect of this bill is to make those who are responsible for the storage of future waste unable to store it. I must say that that view is open to legal debate and must be addressed if this bill is to proceed. Indeed, no-one appears to have given much thought to what effect the extension of the definition of 'waste' in this bill might have on the operation of section 13 of the principal act. For example, section 13 of the act (which is the current law) provides:

> Despite any other act or law to the contrary, no public money may be appropriated, expended or advanced to any person for the purpose of encouraging or financing any activity associated with the construction or operation of a nuclear waste storage facility in this state.

The extension of the definition in this bill to very low levels of nuclear waste means, in effect, that, if anyone in government looks at how we are in the future likely to store low level waste, they will be committing an offence and will be in breach of the act. That is but one example of why this bill is no more, and no less, than a political stunt. Lest I be misunderstood, I will explain it in simple terms. Last week, the *Advertiser* published a comprehensive list of suburbs in this city and other population centres where low level nuclear waste and intermediate level nuclear waste is currently stored.

If this bill is passed, and the definition of 'nuclear waste' as set out in this bill is adopted, anything the government does to address an issue about the storage of both the low level and intermediate waste would be contrary to law, and that would be a rather ridiculous position in which to place any government of any persuasion. At the outset, I will briefly summarise the opposition's basis for opposing this bill and then seek to deal with it in more detail later.

First, it is nothing more, nor nothing less, than a political exercise for the purpose of unseating the Liberal member for Makin, Trish Draper. Secondly, the trigger for the proposed referendum is left entirely in the hands of a politically motivated minister. Thirdly, the precise terms of the trigger are unclear. The bill provides that an application under commonwealth law for a licence or exemption, etc. to construct or operate a facility for the storage of long-lived, intermediate or high level waste generated outside South Australia. That is the stated trigger in the bill, but what it does not say is whether that application is to be made by the commonwealth or to the commonwealth, and it does not identify any specific law that might trigger this rather serious expenditure. It just says:

> An application likely to be made under a law of the commonwealth.

For the sake of an expenditure, one would think there would need to be some clearer definition of what might trigger the minister coming to that view. Indeed, one might think (and this is an example of how this bill was so hastily drafted and so politically motivated) an application, for example, by the former member for Playford, John Quirke, to the government to establish a nuclear storage facility, and the minister might immediately announce that he is not going to approve it. If one looks at the terms of that provision, the trigger would be applied and the minister, in those circumstances, would be able to initiate the referendum.

The fourth basis of our opposition is that the cost (estimated to be in the range of $6 million to $10 million) of such a referendum is entirely unjustified. Fifthly, based on current polling, the result is already known: the only purpose would be to give funding to the ALP to run a campaign, and one would suspect that that campaign would be run very close to the next federal election. Sixthly, it trivialises an important and very difficult issue: that is, what do we do with our nuclear waste in the future—is there a better way and place to store this material? Indeed, this whole process to date has been trivialised by the government and, in particular, this bill.

Seventhly, the extension of the definition of 'nuclear waste' has an unintended consequence, and I have referred to that in more detail earlier. Eighthly, the use of the word 'code' in the definition allows the proposed legislation to be amended without any recourse to this parliament. On my

reading, if the code is changed, there is an argument that the definition of 'nuclear waste' would be changed also. Indeed, parliament ought to retain control over what is or is not defined to be nuclear waste. Ninthly, the actual questions are designed to achieve a specific answer. For example—and the minister has given three possible choices, and one can assume that is for political reasons only.

There is no other basis upon which he can pick which question. One question is: 'Do you approve of the establishment in South Australia of a facility for the storage or disposal of long-lived intermediate nuclear waste generated outside of South Australia?' One might contrast the inevitable result of that referendum with this question: 'Do you approve of the storage of nuclear waste in, say, Adelaide, Bedford Park, Highbury, Kent Town, Loxton, Mawson Lakes or Norwood, or any of the other place that the *Advertiser* and the minister revealed to parliament last week. Indeed, I understand that nuclear waste is stored at Thebarton near where I live.

One might wonder what the member for West Torrens is doing to remove nuclear waste from the storage, given the vociferous and outspoken and, indeed, in some cases, personal comments he has made in another place and on other occasions in relation to this topic. Indeed, I will read with avid interest the member for West Torrens' letters to the editor and contributions in this week's and next week's *Messenger* to see exactly what he is doing to remove the nuclear waste that is so close to our homes, our children and other places.

Before going into too much detail, I think I should talk about a couple of myths in relation to radioactive waste. The first myth is that the storage of radioactive waste is inherently dangerous. We know that that is simply not the case. Waste is stored throughout the world and, indeed, in places in Europe it is stored very close to major population centres. The storage of waste by itself has caused no human health problems, provided proper safeguards are in place.

The Hon. T.G. Roberts: Who has done the survey?

The Hon. A.J. REDFORD: I have a document here (which the honourable member probably has not read) which is entitled *Radioactive Waste: the Seven Biggest Myths*, which has been referred to extensively in another place and referred to in many documents. We all know that the old cold war warrior from the left—the old 1960s dinosaur—has not caught up with some of this more recent material, and I will be happy to share it with him during the break tomorrow. The fact of the matter is that nuclear waste is stored in many parts of the world. I know that the member likes reading interstate and national papers: if he had read the local *Advertiser* last Thursday, he would have found that there is a nuclear waste storage facility near him.

The Hon. T.G. Roberts interjecting:

The Hon. A.J. REDFORD: I did not see Millicent there, but I am sure that the member drives through, or past, nuclear waste facilities. Whatever silly things he might have said or done in the past, no-one has ever accused him of being affected by those radiation emitting facilities that he has so comfortably lived with throughout most of his life.

The second myth is that radioactive waste from Lucas Heights is a New South Wales problem. It is clear that the radioactive waste that is generated in Lucas Heights benefits all Australians. Indeed, the figures (from Medicare data for 1997-98) show that the estimated number of patients who received reactor derived benefits from Lucas Heights was in the order of 325 000 Australians; indeed, nearly 20 000 South Australians received benefit from it. So, we all have a responsibility in that respect.

Another myth that I wish to deal with today is the issue that the presence of radioactive waste in South Australia will affect our clean, green image—and I will expand on this tomorrow. The first point I make is that many of these facilities are scattered throughout the world, as I said earlier. Indeed, a number of nuclear facilities are located in France in the wine growing regions, particularly in the Champagne region. I know that he is a stalwart and a battler for the left and that he is out there carrying the flag, but I have never seen the Minister for Police (Hon. Patrick Conlon) refuse a French red or a French champagne based on the fact that the grapes might have been grown somewhere near a nuclear storage facility. They are just some of the myths.

Another criticism I have of the opposition is its gross politicking without endeavouring to try to deal with the issue in any serious or rational manner. In that respect, I draw the attention of members to a document issued by the commonwealth Department of Education, Science and Training in April this year entitled 'Safe storage of radioactive waste—the national store project'. We all know that the commonwealth is going through a process of detailed and serious consultation on what Australia should or can do in relation to the storage of nuclear waste. During the course of that process, last year the commonwealth issued a document on appropriate places for the storage of Australia's nuclear waste and, following that report, the federal government asked all Australians to put in submissions containing their views.

It is clear that one of the areas identified as an appropriate place to store this waste was South Australia. It is interesting to note that the submissions put to the federal government prior to April this year were from, first, six South Australian individuals including three from country towns although none from the outback where it has been suggested this stuff might be stored. A submission was put in by Ben Aylen of SA Nuclear Free Future—the Hon. Terry Roberts probably assisted him to draft that and I am sure that he will own up if he did—and the other submission was put in by the Hon. Iain Evans regarding South Australia's position.

I find it is an almost despicable act of hypocrisy that, despite all the debate that took place in parliament last year, all the rhetoric, media releases and scare campaigns run by the then leader of the opposition and the now Premier, not one person whom I can identify, who forms part of this current government, chose to make one submission to the federal government about an alternative appropriate means of storing nuclear waste. That is a very sad indictment on this government if it should ever seek to stand on any high moral ground or take some constructive part in what is a very difficult issue.

The Hon. J. Gazzola interjecting:

The Hon. A.J. REDFORD: Not one submission from this division of the South Australian Labor Party was put in.

The Hon. J. Gazzola interjecting:

The Hon. A.J. REDFORD: The Hon. John Gazzola says, 'We don't know; we're just opposing it.' I look forward at the end of my contribution to what the Hon. John Gazzola's proposals might be about how we should continue to store nuclear, intermediate and low level nuclear waste in the future. I will be interested to see whether he supports the retention of nuclear waste in the member for West Torrens' electorate, for example. I see him nodding over there. I am not sure that that might not be driven by some factional

difference that he might have, but I would have to say that I very much look forward to the Hon. John Gazzola's input about what should happen regarding the future storage of low and intermediate nuclear waste.

The fact of the matter is that this opposition will not let the government hide behind political slogans and games in a tawdry attempt to knock off the member for Makin, to get her out of her seat through the device of this bill. As I said, this bill serves only one purpose and that is to play the political game of getting the member for Makin, Trish Draper, because other than that it has no real effect at all. I received a significant amount of material late yesterday in relation to this matter. I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

CO-OPERATIVES (MISCELLANEOUS) AMENDMENT BILL

Received from the House of Assembly and read a first time.

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I move:

That this bill be now read a second time.

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

Leave granted.

The purpose of the bill is to make amendments to the *Co-operatives Act 1997* (the Act). It is the same bill as the lapsed Co-operatives (Miscellaneous) Amendment Bill 2001.

The Act provides for incorporation and regulation of co-operatives and aims to promote co-operative principles of member ownership, control, and economic participation. It incorporates provisions consistent with co-operatives legislation of other jurisdictions, to facilitate interstate trading and fundraising by co-operatives.

In 2000, Queensland made amendments to cure anomalies identified since commencement of its consistent legislation and because of amendments to the *Corporations Act*. These amendments have been used as a model for proposed amendments to the South Australian Act.

The bill also incorporates a few additional amendments that are, or proposed to be, made by other jurisdictions.

Key features of the bill are:

A trading co-operatives is provided greater flexibility by removing the consent of the Corporate Affairs Commission so it may make information for prospective members available at the registered office of the co-operative, and also at other offices, under section 72 of the Act.

The Act allows a co-operative to have rules to require members to pay regular subscriptions. An amendment will permit calculation of a member's subscription to be based on the member's patronage. For example, a co-operative may introduce a rule that would require members who use the co-operative more than others to pay a larger subscription.

A provision is to be included which will regard expelled members similar to inactive members for repayment of share capital. This will allow the amount paid up on an expelled member's shares to be applied as a deposit, debenture, or if the member consents, a donation with the co-operative.

Section 144 of the Act requires a disclosure statement to be provided to a member before issue of shares to the member. The bill corrects some deficiencies so the provision will apply to the first issue of shares to a member, and the disclosure statement will require approval by the Corporate Affairs Commission before issue consistent with other disclosure requirements of the Act. As an alternative, the disclosure statement for a co-operative's formation meeting may be used, providing its contents are current. Any significant changes occurring after the release of a disclosure statement would require the lodgement of a new statement that reflects the current situation.

The bill includes application of *Corporations Act* provisions designed to provide protection for members of co-operatives for the first issue of shares and the issue of debentures. These are restrictions on advertising and publicity, consent of any expert referred to in a disclosure statement, holding subscription moneys on trust, and return of moneys where minimum subscriptions stated in a disclosure statement are not received.

A provision has been included to provide protection for members in the event, for example, of consideration of any takeover of a co-operative. The amendment (new section 180A) precludes a member from voting who has agreed to sell, transfer, or dispose of the beneficial interest in, the member's shares.

New provisions will follow the concession afforded to companies, so that a co-operative that has less than 50 members may pass a specified resolution without a general meeting being held, if all members sign a document that they are in favour of the resolution. There is a requirement for minutes to be entered in appropriate records within 28 days of the meeting to which they relate. Currently, there is no time specified for the recording of the minutes. This will assist members of a co-operative by requiring that all records of meetings are to be available in a timely manner.

Amendments are proposed to allow more flexibility in the composition of the board of a co-operative. A provision will remove the present requirement for a 3:1 ratio of member directors to independent directors. This ratio is included in furtherance of the co-operative principle of democratic member control. However, it can be impractical for co-operatives that require 2 or more independent directors, resulting in boards that are larger than desirable. The ratio is substituted with a requirement that member directors are to constitute a majority on a board, with provision for a co-operative's rules to specify that there be a greater number of member directors than a majority. This is supplemented by a requirement so the number of member directors for a quorum at a board meeting must exceed the number of independent directors by at least 1, or a greater number if provided for in rules.

As a practical and accountability measure and consistent with the requirements placed on a public company, the bill requires a co-operative, for example, one that may have a board that does not include any independent directors and is therefore not subject to the aforementioned restriction, to have at least 3 directors, and for all co-operatives to have at least 2 directors who ordinarily reside in Australia.

A new provision will make it transparent that provisions of the *Corporations Act* dealing with employee entitlements apply to co-operatives. The object of the provision is to protect entitlements of a co-operative's employees from agreements and transactions that are entered into with intention of defeating the recovery of those entitlements.

The bill includes provisions consistent with New South Wales Co-operatives legislation for a director's right of access to co-operative books, auditor's entitlement to notice of general meetings and to be heard at general meetings, and members right to ask questions of the auditor at an annual general meeting.

The bill provides greater clarity about the manner a co-operative may distribute surplus or reserves to members, by providing for share holding to be considered on issue of bonus shares or dividends.

Provisions are included to give greater flexibility so it is not mandatory a liquidator provide monetary security when winding up a co-operative on a certificate of the Corporate Affairs Commission. The bill follows a principle applying to registration of liquidators by ASIC, to permit application of policy that a liquidator may alternatively maintain professional indemnity insurance for performance of duties.

The Act applies a superseded offence of the *Corporations Act* for incurring certain debts. The bill replaces this with the offence applying to companies to place a more positive obligation on directors of a co-operative to prevent insolvent trading.

Any proposal for a South Australian co-operative and an interstate co-operative to merge or transfer engagements must be approved by special postal ballot of members, unless the Corporate Affairs Commission and the interstate Registrar consent to it occurring by board resolution. The bill provides that consent may also be given to a proposal proceeding by special resolution.

Other amendments are minor or to clarify legislative intent.

In summary, the amendments are necessary to retain consistency with co-operatives legislation of other jurisdictions.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

The measure will be brought into operation by proclamation.

Clause 3: Amendment of s. 4—Definitions

This clause amends or inserts certain definitions in connection with other amendments to be made to the Act. The definitions of "financial records" and "financial statements" are consistent with interstate legislation and the *Corporations Act 2001*. The Act is now to make specific provision for the office of "secretary" of a co-operative.

Clause 4: Amendment of s. 11—Modifications to applied provisions

A reference to ASIC in any of the applied provisions of the *Corporations Act 2001* is always going to be a reference to the Corporate Affairs Commission.

Clause 5: Amendment of s. 14—Trading co-operatives

A trading co-operative is a co-operative that gives returns or distributions on surplus or share capital. However, it is not clear whether a trading co-operative must *actually* give such returns or distributions in order to remain as such. This is to be clarified (so that a trading co-operative will be a co-operative whose rules allows for such returns or distributions). A trading co-operative must also have at least 5 members. An amendment will allow a lesser number to be prescribed in an appropriate case.

Clause 6: Amendment of s. 15—Non-trading co-operatives

Clause 7: Amendment of s. 16—Formation meeting

These are consequential amendments.

Clause 8: Amendment of s. 17—Approval of disclosure statement

The Commission must approve a disclosure statement before a meeting to form a new co-operative. Section 17 of the Act is to be amended so that the Commission will be able to amend, or require amendments, to a statement, or require additional documents, and will be able to grant an approval with or without conditions.

Clause 9: Amendment of s. 19—Application for registration of proposed co-operative

This is a consequential amendment.

Clause 10: Amendment of s. 67—Circumstances in which membership ceases—all co-operatives

This amendment adopts more accurate terminology.

Clause 11: Amendment of s. 69—Carrying on business with too few members

This is a consequential amendment.

Clause 12: Amendment of s. 72—Co-operative to provide information to person intending to become a member

Section 72 of the Act provides that the board of a co-operative must provide each person intending to become a member with certain information about the co-operative. A co-operative may comply with this requirement by making the information available at the registered office of the co-operative, although, in the case of a trading co-operative, this requires the consent of the Commission. The requirement for this consent is to be removed, and it will now be possible to make the information available at *any* office of the co-operative.

Clause 13: Amendment of s. 73—Entry fees and regular subscriptions

This amendment will allow a member's regular subscription to be based on the amount of business the member does with the co-operative.

Clause 14: Amendment of s. 77—Repayment of shares on expulsion

This will allow greater flexibility for the repayment of an amount paid-up on shares if a member is expelled from a co-operative.

Clause 15: Amendment of s. 134—Interest on deposits and debentures

Clause 16: Amendment of s. 135—Repayment of deposits and debentures

These are consequential amendments.

Clause 17: Amendment of s. 136—Register of cancelled memberships

Section 136 of the Act requires a co-operative to keep a register of prescribed particulars relating to persons whose membership has been cancelled. The register must be in a form approved by the Commission. This approval is unnecessary given that the regulations can regulate the content of the register.

Clause 18: Substitution of s. 144

These amendments make various provisions relating to disclosure statements when members acquire shares in co-operatives.

Clause 19: Insertion of s. 145A

Certain provisions of the *Corporations Act 2001* will be applied in relation to the first issue of shares to a member of a co-operative.

Clause 20: Amendment of s. 150—Bonus share issues

Section 150 of the Act allows a co-operative to raise additional capital from members by compulsory share acquisition. This amendment will make it clear that the section does not apply to bonus share issues.

Clause 21: Amendment of s. 171—Purchase and repayment of shares

A co-operative is not be allowed to purchase shares, or repay amounts paid up on shares, if this is likely to cause insolvency, or if the co-operative is indeed insolvent.

Clause 22: Substitution of heading

This is consequential.

Clause 23: Substitution of s. 174

This amendment will clarify the application of the voting provisions of the Act to all votes on all resolutions.

Clause 24: Insertion of s. 180A

A member of a co-operative will not be entitled to exercise a vote if the member has sold, or disposed of the beneficial interest in, the member's shares, or agreed to do so.

Clause 25: Insertion of new Division

A new set of provisions will allow the members of a co-operative with less than 50 members to vote on certain resolutions by circulated document.

Clause 26: Amendment of s. 199—Annual general meetings

The first annual general meeting of a co-operative is to be held within *18* months of incorporation.

Clause 27: Amendment of s. 205—Minutes

The Act currently requires minutes of meetings to be entered in appropriate records, and then confirmed at the next relevant meeting. It is now to be prescribed that the minutes will need to be so entered within 28 days after the meeting.

Clause 28: Amendment of s. 208—Qualification of directors

The Act currently requires that there be at least three member directors for each independent director. This has been impractical in some cases. An amendment will require a *majority* of directors to be member directors. The rules will be able to require that a greater number of directors than a majority must be member directors.

Clause 29: Amendment of s. 209—Disqualified persons

Section 209 of the Act provides that certain persons must not act as directors of a co-operative. A relevant circumstance includes a case where the person has been convicted of certain offences against the *Corporations Act 2001*. A reference to section 592 of that Act (Incurring of certain debts; fraudulent conduct) is to be included.

Clause 30: Amendment of s. 210—Meeting of the board of directors

An earlier amendment concerning the number of independent directors of a co-operative is to be supplemented by a requirement that, for a board meeting, the member directors must outnumber the independent directors by at least one, or such greater number as may be stated in the rules of the co-operative.

Clause 31: Amendment of s. 211—Transaction of business outside meetings

This is a consequential amendment.

Clause 32: Insertion of new Division

The Act is now to make specific provision for the office of "secretary" of a co-operative.

Clause 33: Amendment of s. 223—Application of Corporations Act concerning officers of co-operatives

This amendment applies a relevant provision of the *Corporations Act 2001*.

Clause 34: Insertion of new Division

This amendment will make it clear that the provisions of the *Corporations Act 2001* dealing with employee entitlements apply to co-operatives.

Clause 35: Substitution of heading

Clause 36: Amendment of s. 233—Requirements for financial records, statements and reports

Clause 37: Amendment of s. 237—Protection of auditors, etc.

These amendments reflect changed terminology under the *Corporations Act 2001* in relation to financial statements, reports and audit.

Clause 38: Amendment of s. 244—Annual report

This amendment effects certain technical amendments with respect to the annual report of a co-operative. A co-operative will be required to "lodge" an annual report with the Commission (rather than "sending" it to the Commission), and the annual report will need to include a notification concerning who is the secretary of the co-operative. The terminology is also revised so as to refer to a "financial report".

Clause 39: Insertion of s. 250A

The Act currently restricts the use of "Co-operative" or "Co-op" by a body corporate registered under another Act. The Act will now also provide that a person other than a co-operative must not trade, or

carry on business, under a name or title containing the word "co-operative" or the abbreviation "Co-op", or words importing a similar meaning. However, the provision will not apply to certain entities already specified in section 247 of the Act.

Clause 40: Amendment of s. 254—Limits on deposit taking

Section 254*(a)* authorises deposit taking by a co-operative that was authorised by its rules immediately before the commencement of the Act to do so. An amendment will clarify the intention that the co-operative must continue to have rules authorising it to accept money on deposit.

Clause 41: Amendment of s. 258—Application of Corporations Act to issues of debentures

The Commission may grant exemptions from the application of certain provisions of the *Corporations Act 2001* applied by section 258 of the Act. Consistent with other provisions of the Act, the Commission is to be given power to grant an exemption on conditions.

Clause 42: Insertion of s. 258A

It is appropriate to apply two additional sections of the *Corporations Act 2001* in relation to the issue of debentures—section 722 (Application money to be held in trust) and section 734 (Restrictions on advertising and publicity). (This approach is consistent with proposed new section 145A.)

Clause 43: Amendment of s. 261—Application of Corporations Act—debentures (additional issues)

These amendments address additional issues relating to the issue of debentures. An amendment will make it clear that debentures may be re-issued to employees, as well as members. The specific power to issue debentures provided by the *Corporations Act 2001* will also be applied, so as to ensure complete certainty in relation to this matter.

Clause 44: Amendment of s. 268—Distribution of surplus or reserves to members

It is to be clarified that bonus shares may be issued on the basis of business done with a particular member, or on the basis of shares held by a member, and that the issue to members of a limited dividend is for shares held by the members.

Clause 45: Amendment of s. 275—Maximum permissible level of share interest

Section 275(2) allows the Commission to increase the maximum 20 per cent shareholding in a co-operative in respect of not only a particular co-operative, class of co-operatives or co-operatives generally, but also in respect of a particular person. However, subsections (4) and (5) also provide a process for an increase in respect of a particular person. Subsection (2) may therefore be amended to delete the reference to "a particular person".

Clause 46: Amendment of s. 302—Requirements before application can be made

Clause 47: Amendment of s. 305—Transfer not to impose greater liability, etc.

These amendments provide greater consistency with language used in the *Corporations Act 2001*.

Clause 48: Insertion of s. 306A

A co-operative may apply to transfer its incorporation to a company or an association. A certificate of incorporation for the new body is conclusive evidence that the requirements of the Division relating to the incorporation have been complied with. It is necessary to ensure that a copy of this certificate is given to the Commission.

Clause 49: Amendment of s. 310—Winding up on Commission's certificate

A co-operative may be wound up on the certificate of the Commission in certain cases. In such a case, the Commission may appoint a person as the liquidator of the co-operative. An amendment will allow the appointment to be made on conditions determined by the Commission. Another amendment will allow greater flexibility with respect to the security (if any) to be provided by a liquidator appointed by the Commission in these circumstances.

Clause 50: Insertion of s. 310A

It is helpful to specify that a co-operative may be deregistered in the same way and in the same circumstances as a company under the *Corporations Act 2001* may be deregistered.

Clause 51: Amendment of s. 311—Application of Corporations Act to winding up

This is a consequential amendment.

Clause 52: Amendment of s. 333—Application of Corporations Act with respect to insolvent co-operatives

This amendment will now provide for the application of section 588G of the *Corporations Act 2001* (Director's duty to prevent insolvent trading by company), in a manner consistent with proposals interstate.

Clause 53: Amendment of s. 347—Provisions for facilitating reconstructions and mergers

This is a consequential amendment.

Clause 54: Amendment of s. 370—Commission to be notified of certain changes

This amendment will require a registered (non-participating) foreign co-operative to provide the Commission with information about any alteration to its registered address or name. Presently, such requirements only apply to a registered (participating) foreign co-operative (being a co-operative registered in a participating state).

Clause 55: Amendment of s. 376—Requirements before application can be made

Any proposal for a South Australian co-operative and an interstate co-operative to merge or transfer engagements must first be approved by special postal ballot of members, unless the Corporate Affairs Commission and the interstate Registrar consent to it occurring by board resolution. The amendment provides for a further alternative so that consent may be given to such a proposal proceeding by special resolution.

Clause 56: Amendment of s. 384—"Co-operative" includes subsidiaries, foreign co-operatives and co-operative ventures

Clause 57: Amendment of s. 426—Disposal of records by Commission

Clause 58: Amendment of s. 432—Certificate of registration

These are consequential amendments.

Clause 59: Amendment of s. 443—Secrecy

This updates a reference to ASIC.

Clause 60: Amendment of s. 449—Co-operatives ceasing to exist

This is a consequential amendment.

Clause 61: Amendment of s. 450—Service of documents on co-operatives

Section 450 of the Act relates to the service of documents on co-operatives. In the case of service of a document by post on a foreign co-operative, one option is to address the document to a place in the state where the co-operative carries on business. This cannot always be easily ascertained. Another option will therefore be to address the document to the co-operatives' registered address in its home jurisdiction.

Clause 62: Amendment of Schedule 4

Clause 63: Amendment of Schedule 5

These are consequential amendments.

The Hon. CAROLINE SCHAEFER secured the adjournment of the debate.

ADJOURNMENT

At 5.47 p.m. the council adjourned until Tuesday 20 August at 2.15 p.m.