LEGISLATIVE COUNCIL

Thursday 17 October 2002

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

LUCAS HEIGHTS NUCLEAR REACTOR

A petition signed by 284 residents of South Australia, concerning nuclear reactors at Lucas Heights and praying that the council will call on the federal government to halt the nuclear reactor project and urgently seek alternative sources for medical isotopes and resist at every turn the plan to make South Australia the nation's nuclear waste dumping ground, was presented by the Hon. Sandra Kanck.

Petition received.

VOLUNTARY EUTHANASIA

A petition signed by 20 residents of South Australia, concerning voluntary euthanasia and praying that this council will reject the so-called Dignity In Dying (Voluntary Euthanasia) Bill; move to ensure that all medical staff in all hospitals receive proper training in palliative care; and move to ensure adequate funding for palliative care for all terminally ill patients, was presented by the Hon. T.J. Stephens.

Petition received.

A petition signed by 31 residents of South Australia, concerning legalising voluntary euthanasia and praying that this council will legislate for voluntary euthanasia, which will allow a willing doctor to assist a person who is hopelessly ill and suffering intolerably to die quickly and peacefully under certain guidelines, was presented by the Hon. Sandra Kanck.

Petition received.

CHILD SEXUAL ABUSE

A petition signed by 243 residents of South Australia, concerning the statute of limitations in South Australia for child sexual abuse and praying that this council will introduce a bill to address this problem, allowing victims to have their cases dealt with appropriately, recognising the criminal nature of the offence; and see that these offences committed before 1982 in South Australia are open to prosecution as they are within all other states and territories in Australia, was presented by the Hon. A.L. Evans.

Petition received.

RECONCILIATION FERRY

A petition signed by 51 residents of South Australia, concerning a proposed reconciliation ferry and praying that this council will provide its full support to the ferry relocation proposal, prioritise the ferry service on its merits as a transport, tourism, reconciliation, regional development and employment project and call for the urgent support of the Premier and requesting that he engage, as soon as possible, in discussions with the Ngarrindjeri community to see that this exciting and creative initiative becomes reality, was presented by the Hon. Sandra Kanck.

Petition received.

JOINT PARLIAMENTARY SERVICES

The PRESIDENT: I lay on the table a report of the administration of the Joint Parliamentary Services 2001-02.

PAPERS TABLED

The following papers were laid on the table:

By the Minister for Agriculture, Food and Fisheries (Hon. P. Holloway)—

Regulation under the following Act—
Fees Regulation Act 1927—Overseas Students

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

Reports, 2001-2002—
River Murray Catchment Water Management Board
Soil Conservation Boards
South Australian Soil Conservation Council
South-East Catchment Water Management Board
Torrens Catchment Water Management Board.

LEGISLATIVE REVIEW COMMITTEE

The Hon. CARMEL ZOLLO: I lay on the table minutes of evidence of the committee on regulations under the Fisheries Act concerning the giant crab quota system.

DNA TESTING

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

URANIUM MINING

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development): I lay on the table the Report of Independent Review of Reporting Procedures for the South Australian Uranium Mining Industry. I seek leave to make a ministerial statement on the report.

Leave granted.

The Hon. P. HOLLOWAY: On Monday 6 May this year, the government announced an independent review into the reporting of spills at South Australia's three uranium mines. Those mines are at Beverley, Olympic Dam and Honeymoon.

The establishment of the review fulfilled Labor's election campaign promise to review the way spills are reported, and followed the confusion and secrecy with which the former government had responded to a series of incidents during the previous four years. Those spills included 420 000 litres of uranium bearing copper concentrate slurry at Olympic Dam in December 2001 and 62 000 litres of uranium bearing fluids at the Beverley mine in January 2002.

Retired senior public servant Hedley Bachmann was appointed to conduct the independent review. Mr Bachmann served as Chief Executive of the Department of Marine and Harbours, the Department of Labour, and as the Deputy Director General of the Premier's Department.

Mr Bachmann was supported in his deliberations by representatives of the Environment Protection Authority, the radiation section of the Department of Human Services (which is now part of the EPA), the Office of Minerals and Energy Resources, and the Workplace Services Unit. Mr Bachmann was asked to consider the following:

- The severity of the consequences an incident may have on the public, employees and the environment.
- Transparency in the effective disclosure of environmental incidents.
- Mechanisms for keeping the commonwealth informed.
- Consistency of reporting obligations and incident assessments between operations.
- Best practice incident reporting in the industry.
- Directions given by former ministers.

As part of his review, Mr Bachmann met with and received submissions from a range of individuals and organisations, including the operators of the Beverley, Olympic Dam and Honeymoon uranium mines, relevant government departments and agencies, and conservation and environmental groups.

Mr Bachmann's report, which has been handed to the government, contains eight key recommendations. They are:

1. A register of incidents should be kept at each mine site. Incident registers should be available to the regulatory agencies, as required, and made available for perusal at the three-monthly ISL Radiation Review Committee meetings held between mine management and government regulatory agencies.

2. In order to allow the release of information about incidents which may cause, or threaten to cause, serious or material environmental harm or risks to the public or employees, the government should revise and appropriately amend the secrecy/confidentiality, etc. clauses in the legislation referred to in Appendix B (see report). Information on individual persons should not be disclosed.

3. The incident reporting requirements as set out in Appendix D (see report) should be adopted. If legislative changes occur which affect the reporting requirements, they will need to be further reviewed having regard to any legislative change made.

4. The Chief Inspector of Mines should be required to forward a copy of any incident report form received to Environment Australia and the Department of Industry, Tourism and Resources.

5. Current reporting arrangements should be varied to ensure that all agencies are informed at the same time. Mr Bachmann recommends that required incidents be reported to the three agencies by facsimile or email.

6. An incident reporting form (see appendix E in the report) should be adopted by all regulatory agencies involved in the regulation of mining and milling of uranium ore.

7. If the Mining Act and Radiation Protection and Control Act continue to apply, public notification should be made of those incidents which cause or threaten to cause serious or material environmental harm through the Minister for Mineral Resources Development or the Office of Minerals and Energy Resources.

8. A protocol should be put in place such that when a significant incident arises a lead agency and a lead minister are identified (as has been done in the area of water contamination, involving the Department of Human Services and SA Water).

The government has already begun to act on some of Mr Bachmann's recommendations. A working party consisting of representatives from government departments and agencies, including Primary Industries and Resources SA, the Department of Environment and Heritage, and the Environment Protection Authority has started work on identifying disclosure and secrecy provisions in legislation administered by their respective portfolios. This project is being coordinated by the FOI reform project manager within the Department for Administration and Information Services. This has been suggested in recommendation 2 of the Bachmann report. The Chief Inspector of Mines has also begun assessing existing procedures to make sure the forwarding of incident reports to Environment Australia and the commonwealth Department of Industry, Tourism and Trade—recommendation 4 of the Bachmann report—can operate in the most effective manner.

State cabinet is now considering the best ways to adopt and implement Mr Bachmann's remaining recommendations. The ultimate result will be world leading reporting standards. The Rann government fully understands the serious concerns expressed by South Australians about the series of spills at the state's uranium mines during the past few years. The government, using the recommendations contained in Hedley Bachmann's report will ensure the operators of South Australia's three uranium mines achieve and adhere to the highest standards of incident reporting. Unlike the former Liberal government, the Rann government will ensure there is transparency and accountability in the reporting of spills.

MURRAY MOUTH

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I table a ministerial statement by the Hon. John Hill on the issue of Murray Mouth sand removal.

QUESTION TIME

PUBLIC-PRIVATE PARTNERSHIPS

The Hon. R.I. LUCAS (Leader of the Opposition): I seek leave to make an explanation before asking the Minister for Correctional Services a question about public-private partnerships.

Leave granted.

The Hon. R.I. LUCAS: Yesterday, the Minister for Correctional Services said by way of a personal explanation:

> Yesterday, I may have inadvertently caused the council to understand that the former Liberal government's Mount Gambier prison contract was, in the view of this government, in some way a form of PPP, as contemplated within the guidelines released on 1 September this year. This is not the case, and it was not my intention.

I remind members of what the Minister for Correctional Services said in response to a question I asked on Tuesday, and I quote directly from the minister's response:

> My understanding is that the building was publicly funded but that the partnering arrangement for the management of that prison was a public-private partnership.

I repeat: was a public-private partnership. It continues:

> Group 4 won the contract for the management of the prison, but it had public partnership at senior management level. The Public Service maintained the public interest, if you like, in relation to the management of those services. It was a style of public-private partnership.

Most independent observers who looked at the minister's response on Tuesday would have found it hard to see that there was anything inadvertent in his response. He made it quite clear on Tuesday that it was a form of public-private partnership. My questions are:

1. Who advised the minister after Tuesday's question time that his statement was wrong, that he had misled the parlia-

ment and that he should come to the parliament and correct the statement that he made?

2. Given that the minister's latest position is that this is not now a public-private partnership, will the minister indicate what aspect of the management contract means it is no longer to be considered by the minister a public- private partnership?

The Hon. T.G. ROBERTS (Minister for Correctional Services): I thank the honourable member for his clarification in relation to my statement. The situation, as I explained, was that the circumstances—

The Hon. Caroline Schaefer interjecting:

The Hon. T.G. ROBERTS: The government had a position in relation to privatisation, which was strict adherence to the private sale of public assets and, in relation to services within the prison system, the use of private organisations to take over the role and function of the public management of prisons. The circumstances in which we have developed our PPPs means that we have a whole different procedure and protocol compared to that of the previous government. When the member asked the question in relation to whether it was a PPP, I said that it was a style of PPP developed under the previous government with public-private participation in a project that had previously been carried out by the public administration of prisons.

It is quite easy to be pedantic about public-private partnerships in relation to the previous government's position and our own, and again I refer the honourable member to the definition I gave in relation to our stated position through a set of principles by which we are adhering to—

The Hon. R.I. Lucas: What aspect of the contract makes it not a PPP in your definition?

The Hon. T.G. ROBERTS: We will not be using private management in any of our public operations in relation to prisons.

The Hon. R.I. Lucas: So it is the just the management?

The Hon. T.G. ROBERTS: It is the definition, as I have outlined, and if the shadow minister wants any further clarification I will refer that to the Minister for Government Enterprises, who will undoubtedly bring back a reply.

The Hon. R.I. Lucas: What about the first question?

The Hon. T.G. ROBERTS: I think I have answered the question.

The Hon. R.I. Lucas interjecting:

The Hon. T.G. ROBERTS: In relation to the clarification of the statement, that program is worked out by the government internally and I do not think it should be shared with those who want to create mischief between what is a realistic position in relation to the government's position with PPPs and what the mischiefmakers might want to expose in relation to the determination of our position as opposed to their own.

The Hon. A.J. REDFORD: What are the key features of the Mount Gambier prison contract that make it a privatisation rather than a PPP?

The Hon. T.G. ROBERTS: I will refer that question to the minister in charge and bring back a reply.

DNA TESTING

The Hon. R.D. LAWSON: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Attorney-General, a question about DNA testing.

Leave granted.

The Hon. R.D. LAWSON: A press release issued today by the Attorney-General and the Premier states:

> In our view DNA testing is the fingerprinting of the twenty-first century.

The statement goes on to announce a government decision to allow the DNA testing of certain persons. The government has indicated that it proposes to amend a bill before the parliament in certain respects. It is the case currently that all persons arrested in South Australia and taken into custody are, as a matter of course and pursuant to powers contained in section 81 of the Summary Offences Act, both fingerprinted and photographed. One might ask: if it is fair enough to fingerprint people and if, as the Attorney-General and the Premier are saying, DNA testing is the fingerprinting of the 21st century, why does the government not support the DNA testing of all those people who are presently fingerprinted under South Australian law? My questions to the Attorney are:

1. What is the reason that the government has refused to support DNA testing of all persons in South Australia who are routinely fingerprinted and who are arrested?

2. Will he indicate whether he has made any application to the commonwealth Minister for Justice—who is the commonwealth minister responsible for the national CrimTrac database system—as to what would be the requirements of the commonwealth minister in relation to complementary legislation passed in this state; in particular, has he sought an indication from the commonwealth authorities that they would accept the DNA testing of all persons arrested and taken into custody in South Australia?

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

The Hon. A.J. REDFORD: As a supplementary question, will the Attorney-General provide copies of all correspondence pertaining to the DNA issue over the past four months between his office and the office of any federal counterpart concerning the CrimTrac system?

The Hon. T.G. ROBERTS: I will refer that question to the Attorney-General in another place and bring back a reply.

SCHOOL COMMUNITY LIBRARIES

The Hon. CAROLINE SCHAEFER: I seek leave to make an explanation before asking the Minister for Regional Affairs a question about school community libraries.

Leave granted.

The Hon. CAROLINE SCHAEFER: Over the years it has become the custom in many smaller communities to combine the community library with the school library, therefore giving access to much greater and better facilities for communities. Libraries have become much more than simply places to borrow and exchange books: they provide access, for instance, to computers. In many cases, and particularly in times of low income (such as farmers are experiencing now), I have seen people accessing magazines, fax sheets and all those sorts of things from their community school library. Naturally, funding is provided for the community component of that library partially by local government and partially by state government, and that has been the practice for some time.

The library assistants are paid, generally, by three agencies—by the Department of Education, the state govern-

ment and local government—in order that the libraries can stay open at times that are suitable to the community, not just school hours. It has come to my notice that funding for staffing has been cut by some 20 per cent in a number of school community libraries. The one that I have instanced here is the Lock school community library, which will mean that the school community library will close other than for school hours.

Some of the people who access this library, which is the only one in that local government area, travel a round trip of about 280 kilometres from Port Kenny in a number of cases, so essentially it will mean that these people do not have access to a community library. During the time that the Minister for Regional Affairs has been in office I have found his role to be somewhat puzzling. During estimates he admitted to the fact that he has no control over any budgetary decisions in any portfolios, but he went on to say:

> As Minister for Regional Affairs I must explain to constituents how the decision will impact on regional areas.

I do not have the direct quote, but he also went on to tell us that, as I understand it, his job was more or less a conduit between the rest of cabinet and regional communities. I therefore ask the Minister for Regional Affairs:

1. What input did he have into the decision to slash this funding by 20 per cent?

2. Did he in fact fight for the rights of isolated communities?

3. Was a regional impact statement prepared?

4. Will he or did he ever explain to the people of the Lock community or any other community why this funding will be cut?

5. What will he do to see that community school library funding is reinstated?

The Hon. T.G. ROBERTS (Minister for Regional Affairs): If I was cynical I could have referred this question to the minister for education or perhaps another minister to answer, but in this case I think I should answer the questions in relation to my portfolio and refer the others to the minister for education. It is a good question in relation to how regional and isolated communities, small towns and regional centres are equipped. In a lot of cases programs are running whereby local government, local communities and organisations acting on behalf of and within local communities can access funds from Networking the Nation and other commonwealth and state programs.

I am not familiar with the circumstances about the local community library and its connection with school community libraries but, as the honourable member says, it is typical of what happens in small isolated regional towns where services are at a premium to be maintained, that is, to connect school resourcing to community resourcing to make sure there is no doubling up. In many cases applications for funding depend on whether the facility is connected to a broader range of facilities that are accessible to the broader community.

In many cases schools are now becoming resource centres for regional communities, and I think all of us would applaud that. The traditional use of a school was from 8.30 to 4.30, and all the resources of that school, including the playgrounds in many cases, were kept out of bounds for security purposes. We now have a more enlightened approach, where communities are taking ownership of school playgrounds and school facilities, and I would encourage that. If the issue is to do with how my portfolio, the Office of Regional Affairs, can assist and whether we were involved in the decision to cut funds, I certainly would have to say that the answer is no, I was not involved, nor was I contacted for any input into any decision if in fact it has occurred. I accept the honourable member's position that it has. I will make inquiries as to how and why community library funding has been cut.

One of the roles of my office is to look at alternative funding streams which may not be considered by a single agency but which may be accessible by cross-agency cooperation, and I will give an undertaking to do that. There would not have been a regional impact statement because it was not a cabinet decision, from my understanding. It seems to me to have been a decision made in another portfolio and the impact was not passed on to my office. I will work across agencies to try to get an explanation as to how the decision was made, and I will try to look at ways of transferring funding, if it is required, from cross-agency support and I will bring back a further explanation.

The Hon. CAROLINE SCHAEFER: I have a supplementary question. Now that the minister has found out that certain departments are not informing him how some of these issues affect rural and regional communities, will he take steps in cabinet to see that he is not removed from the decision-making process again?

The Hon. T.G. ROBERTS: I will demand an explanation and I will demand that I be informed of the impacts on regional areas of any cuts made by any portfolio or agency without explanation.

FARRER MEMORIAL MEDAL

The Hon. CARMEL ZOLLO: I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question on the Farrer Memorial Award.

Leave granted.

The Hon. CARMEL ZOLLO: The Farrer Memorial Medal is recognised as one of the most prestigious awards within the field of agricultural science in Australia. I understand that in September a South Australian wheat breeder was awarded this honour and presented with this medal at the University of Adelaide. Can the minister provide some details to the council regarding the award, the winner, Professor Gil Hollamby, and his work?

Members interjecting:

The PRESIDENT: Order, the Hon. Mr Redford!

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I can provide the information and I am very pleased to do so because the recipient of that award, Gil Hollamby, has made a substantial contribution to this state. The Farrer Memorial Trust was established way back in 1911 to honour the memory of William James Farrer, who was Australia's pioneer wheat breeder. The Farrer Memorial Medal has been awarded annually since 1941 to provide encouragement and inspiration to Australia's agricultural scientists.

Professor Hollamby first began breeding wheat in 1961 when he became Assistant Plant Breeder at Roseworthy College. Over the years he has had many notable achievements in his field of expertise. The varieties that Professor Hollamby has released include blade, dagger, Excalibur, machete, spear, stiletto and trident, named after cold steel weapons in Roseworthy tradition—and I noticed today that barley varieties in Queensland are named after cricketers. The wheat varieties that Professor Hollamby has been responsible for are all high yielding and bred to suit South Australia's weather and soil conditions. They are selected for adaptation

to soils deficient in trace elements or having potentially toxic levels of boron. Other important cultural advantages have been resistance to various rusts, to blotch and to cereal cyst nematode.

Professor Hollamby, through association with the Cereal Laboratory at the South Australian Research and Development Institute, has also been successful in breeding for various qualities that are demanded by specific markets. These include high flour extraction rates, better protein quality, and more dough extensibility coupled with a range of dough strength and hardness.

The variety spear became Australia's most widely grown wheat variety during the 1990s. In those years with high grain returns such as 1997-98, Professor Hollamby's varieties represented a staggering gross value to the Australian economy of more than $1 billion. Last year Professor Hollamby was recognised as the unsung hero of South Australian science as part of National Science Week. This award recognises the ability to effectively communicate, as well as the quality of the science.

Professor Hollamby has been one of Australia's most successful and respected plant breeders, not only due to his dedication and obvious achievements but also due to his constant efforts to communicate with growers, industry, students and the wider community. It is a well-deserved accolade to one of our state's great achievers. I congratulate Professor Gil Hollamby and thank him for his significant contribution to our economy and to our community.

GENETICALLY MODIFIED FOOD

The Hon. IAN GILFILLAN: I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question about the co-existence of GM crops and GM-free zones in South Australia.

Leave granted.

The Hon. IAN GILFILLAN: Yesterday, I asked the minister a question on genetically modified crops in South Australia. In his lucid response, he indicated that South Australia could have commercial GM crops imposed on the state before it has time to establish GM-free zones, and I quote from his answer:

> One of the disturbing things I heard at the Primary Industries Ministerial Council is that work is being undertaken on segregation issues, that is, how one would have a parallel stream of GM modified crops on the one hand and non-GM crops on the other. Work on that is likely to take at least 12 months to develop.

This is an issue that has been disturbing to many farmers for some time now. It would, in fact, be disturbing to them that their Minister for Agriculture has only just learned of this fact. The minister went on to draw this conclusion:

> I think that does raise the issue that if the Office of the Gene Technology Regulator in Canberra were to approve the full commercial use—

The Hon. A.J. Redford interjecting:

The PRESIDENT: Order! The Hon. Mr Redford is over-excited today. He will come to order.

The Hon. IAN GILFILLAN: I do not mind Mr Redford making his comments, but I want the attention of the minister—if that is not asking too much. The minister said:

> I think that does raise the issue that if the Office of the Gene Technology Regulator in Canberra were to approve the full commercial use of GM canola prior to the growing season next year in 2003, of course, that could well mean that approval would be given prior to those principles being established and, certainly, I believe that would be an unsatisfactory situation.

The minister then spoke of the select committee:

> It is my view and, I believe, the view of the government that the select committee that has been established by the House of Assembly should be given the opportunity to work through these many issues before we see the possibility of any commercial application of crops in this state, and that is something the government will be addressing in the near future.

The minister further stated that the issue of GM-free zones is clearly one of the terms of reference of the current select committee. However, the GM-free zones are conspicuously absent from the terms of reference of the select committee. On the matter of the pre-election promise to establish GM-free zones, the minister said:

> We are certainly not shying away from that promise.

In the light of these expressed concerns and undertakings by the minister, I ask him:

1. What does the government intend to do to safeguard the South Australian farming community from the premature imposition of genetically modified crops?

2. What steps has he taken or will he be taking to establish, as promised, GM-free zones?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): At present, all I can do is to repeat the point I made yesterday, that GM-free zones could be introduced into this state under the constitutional provisions and under the terms of the commonwealth Gene Technology Act only if policy principles were in place, and at this stage they are not. So, the legal advice that has been given is that any legislation that might do that would be ultra vires, but clearly the government will have to look at what measures are available to it to ensure that the proper procedures (that were referred to in my answer yesterday) had been completed before the introduction of commercial GM crops.

The honourable member in his question made the comment that I had just learnt of this fact. I am well aware that the issues in relation to segregation are important and have been around for a long time. One would hope, in terms of the timetable, that all that work will be completed prior to the Office of the Gene Technology Regulator (OGTR) giving approval in relation to the issue of GM crops. I understand that that approval has not yet been given, so I suppose it is still hypothetical whether or not GM-free canola will be given approval to be introduced for the 2003 growing season. I guess it will depend on the OGTR.

In answer to the other part of the honourable member's question in respect of what I am doing in relation to this matter, one of the things I intend to do is to meet with officers of the OGTR as soon possible—perhaps during the next parliamentary break—to get more information about exactly how the OGTR intends to operate in relation to getting input from the states to make these decisions.

I understand that, under the terms of the commonwealth Gene Technology Act, there is a time limit of about 170 or 180 days in which the OGTR has to make the decision from the time of receiving an application. I presume that it will certainly have to make a decision before next year's growing season. There are issues that will need to be raised in relation to the intentions of the commonwealth. It may not be possible for the select committee to complete its inquiry and put proposals forward to the state before GM crops are approved for commercial release. We will have to wait to see subject to the OGTR approvals, whether it is a hypothetical issue or a real issue.

I guess the government will then have to consider the issues. In fact, I have asked my department to examine

exactly how we may be able to manage this issue. I was referring to this yesterday when I said that the government will need to examine these matters. It is an important issue and one that clearly needs to be addressed. If GM crops are to be introduced for commercial use in this state, it is essential that proper procedures are put in place and that all the issues in relation to the introduction of those crops are examined. The government is keen to see that happen, but exactly how it will go about that, of course, is dependent on what constitutional options are open to us, and that is what the government is examining at the moment.

The Hon. IAN GILFILLAN: I have a supplementary question. The minister indicated that legislation introduced in this state to prevent GM-free zones would be ultra vires and that he has legal advice on that opinion. I have a legal opinion which is contrary to that. I ask the minister: what is the source of his legal advice and is he prepared to make it available to the council, and is he prepared to seek further advice on that issue?

The Hon. P. HOLLOWAY: In clarification, that advice was sought in relation to the honourable member's own bill. If he refers back to my second reading contribution on the Gene Technology (Temporary Prohibition) Bill introduced by the honourable member, I referred in more detail to the advice the government received, which was specifically in relation to that matter.

One of the key points is that it does, of course, depend on the purpose of the legislation. Under the terms of the arrangement between the commonwealth and the states, any state role within the regulation of GM crops would have to be related to marketing issues and not to environment or health issues. That is my understanding of the commonwealth act and the arrangement between the commonwealth and the states. Of course, that is where the policy principles developed by the Gene Technology Ministerial Council come in, and the advice to which I have referred relates to that. Those principles would have to be established before a GM-free zone could be put in place.

There are a number of complex legal questions involved and it is a matter of the advice received on the particular steps to be taken. The advice that I received was in relation to the Hon. Ian Gilfillan's bill. Clearly, if it is approached another way other options may be open to the government about how this matter could be addressed, and that is what the government is currently looking at.

The Hon. J.F. STEFANI: As a supplementary question, will the minister confirm to this council whether the assessments made in the Labor Party's policy paper are correct—that is, that the official government figures for South Australia for the food industry are likely to reach $15 billion by 2010 and that the economic benefits from GM food production by 2010 are likely to be only $200 million?

The Hon. P. HOLLOWAY: Certainly, under the state food plan the objective is to increase the value of the state's food production to $15 billion by 2010. I do not have the figures in front of me in relation to the value of GM crops, but I would not be surprised if it was of the order of that just given by the Hon. Mr Stefani. Certainly, the following point needs to be made: I know that at a number of forums people involved in the food industry in this state have expressed concern about the impact GM crops might have on their commercial interests—in other words, on our capacity to sell into particular markets. The people who have these concerns are not what one might normally describe as being radical in such matters. A lot of people who have significant business interests within this state are concerned about the impact that the growing of GM crops here may have on other industries and on our customers' perception of us.

All these issues need to be worked through by the community, because it obviously would be important that any take-up of GM crops in this state should not prejudice our very important food trade within other markets. That is clearly a key issue. That is why, when the gene technology agreement was being reached and the commonwealth established its act and the state act was established, environmental and health issues were to be examined by the Office of the Gene Technology Regulator at the commonwealth or national level. However, marketing issues were to be left to the states so that local communities could make their own judgment.

Clearly, one of the established roles of the select committee is to look at how this might be achieved: how can the local or farm communities that have to make these decisions be empowered in terms of the information available to them to make these choices? It is important that that process be put in place so that the communities that have most to gain and lose by this choice have all the information they need to make these decisions.

The other point worth making is that the case before the Office of the Gene Technology Regulator at present is that of Roundup Ready canola. It is not just grain farmers who will need to make that choice. If that choice were made and those commercial crops were grown, what impact would that have on other markets and other farmers in other industries? That is one of the more complex and difficult issues that would need to be addressed in this whole debate. I, for one, certainly as a minister who has responsibility in these areas, will be looking forward to any advice that the select committee can bring in relation to those issues.

The Hon. J.F. STEFANI: As a further supplementary question, will the minister indicate whether he agrees with his own party's policy paper in relation to the industry's assessment which is: 'The industry has a dismal track record on disclosure?'

The Hon. P. HOLLOWAY: I assume the honourable member is referring to the science industry—the industry that is promoting GM crops. The only comment I make on that is that the debate we need to have—the debate that the select committee will facilitate—will benefit if those companies involved make available a much greater level of information than they have hitherto. It would be in the best interests for everyone to make informed decisions on this very important subject. The growth of GM crops will be extremely significant for this state. There is potential for great benefits. There are also certain marketing risks in relation to our markets. These matters have to be carefully addressed and we need as much information as possible, particularly for the farmers who ultimately have to make the choice, so that the right choices can be made.

MURRAY RIVER

The Hon. A.L. EVANS: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, on behalf of the Minister for Environment and Conservation, a question about the Murray River.

Leave granted.

The Hon. A.L. EVANS: It goes without saying that the Murray River is Australia's most important inland water

resource. It is a river system that moves through three states. Recently the government of South Australia started work to open up the mouth of the Murray River at Goolwa, and Tauwitchere where huge volumes of sand have built up. The project, which will cost $2 million, was approved by the Murray Darling Basin Commission. The project will take six months and there is no guarantee that it will succeed in keeping the Murray River mouth open.

The real problem is that each section of the Murray is unique and cannot be managed in the same way as another section. The top end is flooded and the bottom end is too dry. Industries like rice and cotton in New South Wales are extracting huge amounts of water, and South Australia is paying the price. My questions to the minister are:

1. Will the government consider a radical proposal to approach the federal government to investigate a system to place total management and control of the Murray River under one central body controlled by the federal government in view of the failure of the present system and, if not, why not?

2. Will the government consider seeking a response for such a proposal from the governments of the states through which the Murray River passes?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I will pass those very important questions on to the Minister for Environment and Heritage and bring back a reply.

GOVERNMENT OFFICES

The Hon. D.W. RIDGWAY: I seek leave to make a brief explanation before asking the Minister for Regional Affairs a question on government offices in Murray Bridge.

Leave granted.

The Hon. D.W. RIDGWAY: It recently came to my attention that the Department for Environment and Heritage has made plans to reduce the number of crown land offices in Mount Gambier, Kadina and Murray Bridge. One of the options under consideration is to close the Murray Bridge office, with a full-time staff of 3.6, and move one full-time position to the Berri office. These changes will have serious repercussions for the staff and residents of the Murray Bridge region. Permanent staff members will either relocate or be redeployed, and temporary staff members consequently will become unemployed.

For the region it will mean that the farmers and leaseholders, who always have been able to conduct their business in a regional office, will now have to travel to one of the main offices—quite unacceptable when you consider the changes proposed to the crown lease perpetuals, given that up to 50 per cent of the farms in certain regions of the Mallee are leasehold properties. It is bizarre and unexplainable that, while the government is planning the closure of one of its offices, it is also proposing to spend $2.2 million over the next four years to establish an Office of Regional Affairs and create an additional two ministerial offices, one of which will be located in Murray Bridge. My questions are:

1. Has a regional impact statement been done on the closure of this office?

2. Will the minister explain the reasoning behind the decision to close one government office while making plans to establish another one in the same town?

The Hon. T.G. ROBERTS (Minister for Regional Affairs): I thank the honourable member for his question. I will refer a part of that question to the responsible minister, the Hon. John Hill, in another place. With respect to the second part of the question about the Department of Regional Affairs opening an office, I can make more detailed comment. We have made the decision to establish offices in Port Augusta and Murray Bridge. The funding for 2002-03 for the establishment of those two offices in those two places is $459 000, which represents approximately $230 000 per office.

The funding for these two offices includes staff, transport, utilities and other expenses. A decision was made by cabinet and the government to establish these two offices to enable people in regional areas to make contact with government services through the Office of Regional Affairs. I am not familiar with the decision, as I said in relation to the previous statement, but I will endeavour to bring back a reply after consultation with the relevant minister.

The Hon. J.S.L. DAWKINS: As a supplementary question, will the minister clarify whether these offices to be established in Murray Bridge and Port Augusta are ministerial offices of the Minister for Regional Affairs or regional offices of the Office of Regional Affairs?

The Hon. T.G. ROBERTS: I can clarify that. It is confusing; I realise that. They are offices of the Office of Regional Affairs and not ministerial offices associated with the Minister for Regional Affairs.

SHARKS

The Hon. T.J. STEPHENS: I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question about sharks.

Leave granted.

The Hon. T.J. STEPHENS: Six young men have lost their lives on the West Coast to white pointer sharks over the past two years. The most recent tragic death is that of scallop diver Paul Buckland in April this year. The interim shark response plan put in place by the Kerin Liberal government outlined the process that should be followed in managing situations of a rogue shark, and it gives police and fisheries officers an exemption under section 59 of the Fisheries Act 1982 to destroy a shark if necessary where there is a continued direct threat to human life.

The plan indicated the steps that should be taken, but it desperately needs to be tightened and formalised in legislation so that the response to an attack is direct, immediate and automatic. Still today no legislation is in place that addresses the issue of the presence of a rogue shark. The minister received a letter from Paul's brother, David Buckland, on 14 June 2002 in which Mr Buckland urged the minister to tighten the white shark response plan and stop the practice of berleying for sharks. I am aware that several other families of victims of shark attack also wrote to the minister seeking similar action and, at a further meeting held at the Streaky Bay council on Friday 21 June, concerned fishermen repeated a call to the minister to conduct his promised review of the white shark response plan with a view to enshrining in legislation the legal directives for the speedy response to a rogue shark.

In his letter (dated 22 July) responding to David Buckland's letter, Minister Holloway said:

> The department will consider these issues and your suggestions as part of the review of the white shark response plan and the two exemptions that allow for berleying.

Further in his letter, Minister Holloway acknowledged the following:

> . . . a balance is required between public safety and the protected status of these sharks, however that protection does not exclude some response to dangerous sharks in inshore waters.

This year more and more people are working on or in these waters. The tourism season is fast approaching with more people than ever out surfing, fishing, boating and diving. The government has had ample time to review the white pointer shark response plan and enact legislation that will help make our waters safe. My questions to the minister are:

1. Where is the report on the effectiveness of the white pointer shark response plan and review of the actions taken immediately after the tragic death of Paul Buckland in April which the minister promised to conduct and which I would assume has been completed over the past six months?

2. When will the actual review of the white shark attack response plan, as promised to David Buckland in July, be completed and circulated for public discussion?

3. Will the government enshrine in legislation a response plan to allow for the immediate removal of a rogue white pointer shark?

4. If not, does the government intend to wait until yet another fatal shark attack occurs in the waters of South Australia?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I thank the honourable member for his question. He is right that, after the tragic shark attack that we had earlier this year, I ordered a review by my department of the response plan that had been put in place previously. That review is still under way. As a matter of fact, I raised it with the Director of Fisheries just a couple of weeks ago and he told me it was nearing completion. He has quite a few other things on at the moment, with the Caulerpa issue in West Lakes, the river fishery and other issues, but he assures me that it will be finished very soon, as I am keen that we should get some resolution to this. A number of issues were associated with that plan.

The honourable member mentioned the berleying issue that we have in this state. Following that attack, I made some inquiries and found that a number of charter operators have been licensed to carry out shark observation operations. I am informed that most of those operations are in marine park protected areas. Those operators have to abide by a strict code of practice, and the number of days on which they may be issued with a licence is very limited. Unfortunately, I do not have the information with me now. I can provide the honourable member with information about exactly what those conditions are and the very limited number of days on which they can operate. There are some very tight conditions in relation to that issue. Those licences were issued some time back and whether they will be renewed is something that will be considered as part of this response plan.

The honourable member referred to a meeting in Streaky Bay which was attended by the Director of Fisheries, and I believe a shark expert from CSIRO also attended that meeting. One of the things the department is looking at is getting more information about shark behaviour. There is debate within the fishing and diving community as to whether sharks are territorial in nature or whether they are more nomadic, and views are split on this. From information I have read it appears that both types of behaviour are common among sharks and, clearly, the more information we can get about that, the more useful it would be in determining an appropriate response in dealing with sharks.

In relation to rogue sharks that provide a threat to humans, there is no doubt that adequate powers exist for the destruction of those sharks, and police and fisheries officers are authorised to destroy sharks that pose a threat to any humans. Of course, the problem is identifying those sharks and dealing with them. It is that issue that specifically needs to be addressed by the shark response plan, but my advice is that powers exist to destroy any shark that is posing a genuine threat to humans.

Of course, an additional question comes into this. Sharks are a protected species in commonwealth waters, so commonwealth as well as state acts come into play here. Any action that the state government might take in relation to sharks would probably bring into play the Environment Protection and Biodiversity Conservation Act of the commonwealth. Clearly, any action the state might propose in relation to great white shark responses would have to consider any impact they might have under that commonwealth act.

What we want here is a practical solution; people such as divers who operate in the water are entitled to some protection. It would probably be fair to say that one of the issues that come up here is that sharks have now been protected for some time. There is no doubt they were greatly endangered, but their numbers are increasing, and the numbers of other species they feed on, such as seals, are also increasing. Most people would say it is a very good thing that seals are increasing, but it means more food for sharks. That raises the potential that these sorts of issues will increase in the future.

That is why we need to review the shark response plan in light of those facts. It is a fairly complex issue if for no other reason than the scientific information we have in relation to shark behaviour is probably not as comprehensive as we would like in order to make these sort of decisions. I will get some advice for the honourable member in relation to the progress on that review, and hopefully we will have it shortly.

EMERGENCY SERVICES

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I table a ministerial statement on the emergency services review made by the Minister for Emergency Services in another place.

TANUNDA PRIMARY SCHOOL

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I table a ministerial statement on the subject of the sale of the former Tanunda Primary School made by the Minister for Education and Children's Services.

EDUCATION, CAPITAL WORKS

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I table a ministerial statement on capital works figures made by the Minister for Education and Children's Services.

ATSIC ELECTIONS

The Hon. G.E. GAGO: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation a question on the current ATSIC elections.

Leave granted.

The Hon. G.E. GAGO: ATSIC elections occur around South Australia this Saturday, 19 October. Can the minister

outline the importance of the ATSIC elections and what the minister has been doing to promote these elections?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): It is in the interests of everyone to try to increase the participation rates of people voting in the ATSIC elections to bring about broader participation and—

The Hon. Diana Laidlaw: What is the voting average now?

The Hon. T.G. ROBERTS: I am not sure.

The Hon. Diana Laidlaw: But you want it increased?

The Hon. T.G. ROBERTS: Yes. The ATSIC elections occur this Saturday with some mobile polling booths already in place in remote areas. These elections are extremely important because those elected will provide direct contact between government and the communities they represent. There is no doubt that indigenous people are under-represented at all levels of formalised government, and voting in ATSIC elections gives our Aboriginal communities the opportunity to have a strong and representative body.

More than 100 people have been nominated for 32 positions on the three ATSIC regional councils that cover South Australia. It is pleasing to see the number of indigenous women that are nominating, and that has increased by almost 20 per cent compared with the 1999 elections. Women comprise 55 per cent of the candidates in metropolitan Adelaide in the regional council contest. While voting for the ATSIC Regional Council is not compulsory, I have strongly urged all indigenous people to vote and to have their say. In addition to being part of the democratic process, a high voter turnout will send a message to all levels of government that ATSIC remains a vital force for indigenous people.

I, as minister, and the government have been working with the federal government and ATSIC to promote these elections, and over the past week ads have been run in regional, metropolitan and indigenous newspapers with a joint message from the government and ATSIC encouraging all those eligible to vote in this election to do so. I take this opportunity to thank the current elected members of ATSIC who have provided me with guidance and advice about important issues since I have become Minister for Aboriginal Affairs.

I also take this opportunity to clarify an explanation that I said was confusing in relation to the offices of regional affairs and/or ministerial offices.

The Hon. Diana Laidlaw: Is this a personal explanation?

The Hon. T.G. ROBERTS: Yes, in relation to the question asked by—

The Hon. A.J. Redford: You are just trying to run down question time.

The Hon. T.G. ROBERTS: No, it is an explanation.

Members interjecting:

The PRESIDENT: Order!

The Hon. T.G. ROBERTS: With respect to the explanation I gave to the Hon. John Dawkins as to whether the offices being set up in Murray Bridge and Port Augusta were ministerial offices or offices of regional affairs, they are ministerial offices that will be used by the Office of Regional Affairs and other ministers in regional areas to service those areas in relation to the issues that they face, and to try to coordinate cross-agency activity. In effect, they are ministerial offices and not strictly speaking offices funded by the Office of Regional Affairs.

The Hon. J.S.L. Dawkins: Are they offices of the Minister for Regional Affairs?

The Hon. T.G. ROBERTS: Yes, as opposed to offices funded by the Office of Regional Affairs.

EDUCATION, HIGHER

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I lay on the table a ministerial statement relating to MCEETYA Meeting—Higher Education Review, made earlier today in another place by my colleague the Minister for Employment, Training and Further Education. I have looked for an explanation of it but I could not find one, so I will table it.

GREEN ENERGY PAYMENTS

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries, representing the Minister for Government Enterprises, a question in relation to green energy payments.

Leave granted.

The Hon. M.J. ELLIOTT: My question relates to the findings of a recent report of the Australian Eco-Generation Association. This report found that the decision to award renewable energy certificates to old large-scale hydro generators would significantly reduce the opportunity to develop new renewable energy projects in Australia.

It finds that the level of new renewable energy projects will be considerably lower than expected because of lack of market competition, and that large-scale hydro generation will have the ability to earn a significant number of renewable energy certificates for pre-existing plants and without any additional investment.

When a generator produces green energy, the electricity produced is allocated renewable energy certificates. These RECs have a commercial value and act as an incentive for green energy generation. When a retailer purchases power from a generator, it has the choice between selling that power as green power or claiming these RECs and using it as conventional power.

The Australian Eco-Generation Report estimated that 23 per cent of the current mandated renewable energy target market for RECs for the next two decades can be met without hydro projects undertaking any new generational investment. This will cost electricity consumers $1.1 billion without these payments delivering any additional greenhouse abatement.

What it essentially means, as I understand it, is that, because of existing power getting these RECs, no new renewable projects are needed to meet the MRET market until the year 2008; and only 45 per cent of the RECs required for the entire program 2020 need to be met by additional targets.

That affects projects here in South Australia. One example is a proposal by Auspine in the South-East to set up an electricity generator at a cost of $120 million which would use waste materials from the sawmills and waste products from the forests, generating 60 megawatts of electricity here in South Australia and providing additional competition in what is a limited competition market in this state.

This project has been put at a significant disadvantage because of the fact that these effective subsidies are going to existing generators rather than encouraging new projects. We ask the state government, which had been critical of the Prime Minister for his opposition to the Kyoto agreement, to intervene with the federal government on this matter to look to see whether the REC scheme can be modified to encourage

new renewable energy generation rather than providing what is a cash bonus to existing generators. And, given that 98 per cent of South Australia's energy currently comes from non-renewable sources, will the state government guarantee that any incentives it offers for green energy will be specifically targeted at developing new renewable energy sources?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I will refer that question to the Minister for Energy and bring back a reply.

REPLIES TO QUESTIONS

PICHI RICHI TOURIST TRAIN

In reply to **Hon. J.F. STEFANI** (8 July).

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

The government has maintained consistently that taxpayer funds should not be put at risk by re-entering insurance markets or by subsiding insurance premiums.

The government has introduced a comprehensive and far-reaching package of reforms to bodily injury damages law. The legislative package, which passed through the parliament on 29 August 2002, is designed to make insurance against bodily injury damages more affordable and accessible. The reforms are also intended to provide a mechanism whereby people can take responsibility for their own choices.

Importantly for the Pichi Richi tourist attraction and many other small businesses and not-for-profit community groups, the government has received some advice from the Insurance Council of Australia that the proposed reforms will assist in reducing claims costs. This is a necessary precursor to any reduction in insurance premiums. The Government also expects that the reforms will bring about greater certainty for insurers leading to more competition in insurance markets.

BRANCHED BROOMRAPE

In reply to **Hon. D.W. RIDGWAY** (15 July).

The Hon. P. HOLLOWAY: The Minister for Environment and Conservation has provided the following information:

The Branched Broomrape Eradication Program aims to sow roadsides and start the process of restoring vegetation as soon as possible after fumigation. It is important that seasonal conditions are favourable to optimise the chance of success of this process.

Two native grass species, an Enneapogon and a Chloris, with the common names black heads and windmill grass are being sown.

These grasses have been selected as they best match a number of criteria, viz:

- The seed has been collected locally
- They will rapidly stabilise the roadsides
- They are not hosts of branched broomrape
- They are resistant to the suite of herbicides that may be applied at a later date to control hosts of branched broomrape
- Their mature growth habit will not create a road hazard
- Their mature growth habit will not create an engineering hazard
- The seed is available.

These grass species and the rehabilitation process is approved by the Native Vegetation Council as part of the plan for the treatment of infested roadsides.

It is anticipated that there will be colonisation of the roadsides by other local species including trees as time goes by. This approach helps maintain the purity of local provenances of the native vegetation.

EDUCATION DEPARTMENT, INVESTIGATIONS UNIT

In reply to **Hon. M.J. ELLIOTT** (17 July).

The Hon. P. HOLLOWAY: The Minister for Education and Children's Services has provided the following information:

1. I am advised the role of the Special Investigations Unit is to investigate serious complaints of misconduct against employees, investigate Whistleblower complaints, and to investigate employee grievances raised with the Chief Executive relating to administrative decisions. The unit also assists principals, preschool directors and other site managers deal with other forms of complaint.

I am advised the majority of complaints dealt with by the unit fall in the areas of alleged child abuse, theft, misuse of government resources and interpersonal conflict.

2. At this point in time Special Investigations provides services to both the Department of Education and Children's Services and the Department of Employment, Further Education, Science and Small Business. Transition discussions are continuing.

3. The present government favours open discussion and debate of issues and looks to maintain open and constructive relationships with the public, the unions and the media.

In maintaining proper standards DECS is required to follow up breaches of appropriate standards and confidentiality to ensure the public is able to maintain a high level of confidence in the education system and the management of staff and student information.

4. I am advised the unit investigates issues which might breach conduct standards specified in legislation, including for example in Part 2 of the Public Sector Management Act. Further, the unit investigates issues which might come within those areas specified as cause for disciplinary action within the Public Sector Management Act, the Education Act and the Technical and Further Education Act. The most common areas of investigation fall within the meaning of 'improper conduct'.

5. I am advised that since late 1997 the number of staff within the unit has remained at the same level. The only exception to this was the addition of a further investigations officer in July 1998 as a consequence of the amalgamation of services of the former DETAFE and the original DECS. That officer joined the unit to address conduct issues arising from the TAFE sector of DETE.

The present staff consists of a Manager, three Investigations Officers and a Clerical Officer.

The cost of unit operations is within the normal range of salaries, and goods and services in line with the stated numbers of staff.

6. I am advised the unit has not contracted any work out, but has made use of the services of the Government Investigations Unit as required. On one occasion, the Department paid the Government Investigations Unit for the outsourcing of an investigation which the latter was unable to undertake at the time required within its own resources.

7. No.

STATE BUDGET

In reply to **Hon. J.F. STEFANI** (26 August).

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

Work on the State budget effectively began on Wednesday 6 March 2002, the day on which this Government came into office. The Budget was formulated during a number of meetings of the Expenditure Review and Budget Cabinet Committee following a series of bilateral meetings held between Ministers and the Treasurer. Cabinet approved the Budget on Thursday 6 June 2002. Work continued from that date on preparation of the Budget documents with the final documents, including any adjustments made by the Treasurer within the terms of Cabinet's approval of 6 June 2002, completed on 8 July 2002 when key documents were settled for printing.

LAKE GEORGE FISHERY

In reply to **Hon. A.J. REDFORD** (28 August).

The Hon P HOLLOWAY: The current moratorium on fishing in Lake George is intended to:

- protect the remaining fish populations;
- maximise the opportunity for successful fish population reproduction to occur; and
- allow fish habitat conditions to improve.

PIRSA Fisheries and SARDI Aquatic Sciences, in cooperation with local commercial and recreational fishers, have undertaken four surveys of the fish populations in the Lake during the following time periods:

- November and December 1999;
- November and December 2000;
- August 2001; and
- March 2002

Early surveys have shown that Lake George has extremely low fish abundance of mullet (almost nil). As such, the moratorium on fishing in the Lake has been maintained until there are clear signs of

fish population and habitat recovery. It is important to note that the fishery is likely to provide a nursery ground for a number of other smaller fish species.

The key objectives of the current survey program are to:

1. determine the relative abundance of pre-recruit and sub-adult fish populations in the Lake George system; and
2. determine water quality in the Lake George system.

As part of the established annual fish population monitoring program a further survey is intended to be undertaken in February and March 2003. PIRSA Fisheries will re-evaluate the moratorium following this survey work. However, it is not considered likely that there will be significant fish population recovery in the Lake in the short term.

It is considered likely that the most significant impediment to fish population recovery in the Lake at present is the heavy siltation close to the entrance of the Lake to Rivoli Bay. This problem is being exacerbated by the low freshwater flows from Drain M into the Lake. To address these issues may require further hydrographic survey work in the Lake George system and possible dredging to ensure water flow between Rivoli Bay and the lakes is not impeded. This has been done before, but the effect does not last due to siltation.

TRANSPORT AND ART

In reply to **Hon. DIANA LAIDLAW** (29 August).

The Hon. P. HOLLOWAY: The Premier and Minister for the Arts has provided the following information:

The Arts Statement has been completed and will be posted on the Arts SA website as soon as the redevelopment of that site is completed later this year.

The public art project Lie of the Land, to which the Hon Diana Laidlaw referred in her question of 29 August 2002, is currently the subject of a planning application lodged with the Adelaide City Council. A report on the project is yet to be presented to the Councillors and I understand this is currently being advanced.

Since the concept was endorsed in November 2001, time has been spent working through design development issues and in addressing the requirements of the Native Title Act 1993 in relation to the Kaurna Native Title Claim (SG6001/2000) that exists over the site. These requirements have been met, allowing the project to be advanced.

EUROPEAN CARP

In reply to **Hon. D.W. RIDGWAY** (29 August).

The Hon. P. HOLLOWAY: Two officers from PIRSA Fisheries conducted a workshop with licence holders in the river fishery at Loxton on 14 August 2002 to explore possible management arrangements for the fishing for European carp, redfin, and other non-native species, as well as bony bream and yabbies.

Fishers were informed at that meeting that under revised regulations to be implemented on 1 July 2003, commercial access to native species including Murray cod and callop will be removed, and gill nets will not be a permitted method of fishing.

It is proposed that the limited number of fishers operating under the new scheme of management will not be restricted to defined reaches of the River, and will have broad access to most of the mainstream of the River, its backwaters and floodplains. There will however, continue to be restrictions of access to existing sanctuaries and sensitive wetland areas, and negotiated access to floodplains that are under the control of private landowners and management groups. There may continue to be Public Fishing Areas adjacent to riverside towns where commercial fishing may also be restricted.

Fishers will be allowed to use existing fishing devises other than gill nets, and the use of hauls nets and specialised fyke nets will be permitted. The use of hand nets, brail nets, gaffs and other devices to remove fish from large traps and enclosed waters will also be considered.

The fishery is not expected to be a large fishery, and it is expected that it will be limited to no more than six licence holders. Licences will not be transferable, as it is a fishery that is targeting on a noxious fish on which there are many national initiatives and programs that have a common objective to control and remove the species from our waterways.

Licence fees are likely to be nominal, perhaps around $1000 per year as a contribution to administrative and management costs associated with the licences.

I am currently revising the criteria of entry to the new fishery with consideration being given to existing river fishery licence holders as a priority as part of the restructure arrangements.

HOUSE OF ASSEMBLY TAPESTRIES

The Hon. DIANA LAIDLAW: I seek leave to make a personal explanation.

Leave granted.

The Hon. DIANA LAIDLAW: Yesterday, in the House of Assembly, the member for West Torrens Mr Tom Koutsantonis made—

Members interjecting:

The Hon. DIANA LAIDLAW: Well, you may call him a welsher. He certainly—

The PRESIDENT: Order! This matter has been raised. If it is raised again, the person who raises it will be seated and will not complete—

The Hon. DIANA LAIDLAW: I am talking about ignorance and disdain for the truth, in terms of Mr Koutsantonis.

The PRESIDENT: You are trying my patience. Stick to your personal explanation with no reflections.

The Hon. DIANA LAIDLAW: Mr Koutsantonis raised the subject of the House of Assembly tapestries; most of us call them the women's suffrage tapestries. He said that he wished them to be removed from the chamber. He then went on to make an 11-line statement. In those 11 lines, on three occasions, he accused me of interfering in the affairs of the House of Assembly, telling me that I should butt out and mind my own business.

In terms of a personal explanation I wish to indicate that Mr Koutsantonis had apparently taken offence at a memo which I had sent to all members of parliament based on a letter from the Speaker to all women members of parliament seeking their views on the removal of the women's suffrage tapestries.

As part of my personal explanation, I want to indicate why I sent that letter. It was never my intention to butt into the business of the House of Assembly. I simply wanted all members of the House of Assembly, most of whom were not present in 1993 when the House of Assembly passed a unanimous motion dedicating space in the House of Assembly for the tapestries, to celebrate women's suffrage, and then further to celebrate the passage of legislation through the House of Assembly and through the parliament as a whole, which was the forerunner of remarkable reform for women and families in this state well ahead of anywhere else in Australia or world wide.

I want to indicate that I wrote that letter not only because I am at one with the Hon. Dorothy Kotz but I am one of two women members who were members in 1993 and are still serving. I was also the shadow minister at the time and, at the request of the Hon. Anne Levy, I was a member of the advisory committee asked to commission the tapestries.

I was then minister when the tapestries were hung in the chamber according to the motion of the House of Assembly that space be dedicated. I was also one of many women who actively raised funds for these tapestries to the undertaken, and those funds were raised on the understanding that space be dedicated for these tapestries. Everybody who gave,

including my family, did so based on that understanding.

Finally, I want to indicate that I did write, as a matter of background information and indicating that I considered it would be a betrayal of trust if those tapestries were removed from that chamber, because I am very conscious that in terms of bequests or sponsorship—

The PRESIDENT: The member is starting to debate this issue. Please stick to the personal explanation.

The Hon. DIANA LAIDLAW: I just indicate that in terms of bequests or sponsorship, the terms on which money is given must be honoured, not breached. Finally, I am very pleased in terms of my memo to have received a reply from the Premier indicating his support for those tapestries to remain in the House of Assembly chamber. I ask him to speak to his hot-headed young member, the Hon. Mr Koutsantonis.

The PRESIDENT: Order! You will resume your seat.

GAS PIPELINES ACCESS (SOUTH AUSTRALIA) (REVIEW) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 16 October. Page 1078.)

The Hon. M.J. ELLIOTT: I rise to indicate that the Democrats support the second reading of this bill, and I note that South Australia is acting as the lead legislator on what has been an agreement throughout Australia on this matter.

The Hon. CARMEL ZOLLO secured the adjournment of the debate.

CRIMINAL LAW (SENTENCING) (SENTENCING GUIDELINES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 28 August. Page 951.)

The Hon. R.D. LAWSON: I rise to indicate that the Liberal opposition will be supporting the passage of this legislation and its second reading, and that we will be proposing amendments to which I will refer. The community is concerned, and quite rightly so, about criminal sentencing. The Liberal Party has always been committed to policies which ensure that community concern is reflected in the sentencing practices of the courts.

This bill was the flagship of Labor's much vaunted law and order policy at the last election. We do not believe that this measure will achieve very much. In effect, it empowers the Supreme Court to do what the court is already doing, and the likely effect of this bill on the level of sentences imposed is likely to be minimal. We doubt that a measure of this kind, without the amendments suggested by the opposition, will indeed enhance community confidence in the sentencing process.

However, that said, the government did go to the election with this policy clearly on its agenda. We believe that it is entitled to implement the policy, even if it is a flawed policy, and even if, as I would suggest, it is a hypocritical policy. This bill is hypocritical because, for months before the election, the Labor spokesman on legal issues was assiduous in attacking judges' sentences which appeared to be lenient. He was promising to all who would listen on talkback radio that, if Labor were elected, sentences would be tougher.

It is in that respect that this bill fails to deliver. The then shadow attorney-general consistently attacked judges' sentences. Since the election, the Premier has joined with his now Attorney-General in attacking a number of sentences and a number of judges. What is Labor's solution to this problem? Its solution is to establish guideline sentences and to hand sentencing policy to the judiciary, the very people it has been attacking.

This bill will enable three judges sitting collectively as the Full Court or the Court of Criminal Appeal to lay down sentencing policy. Surely, it is inconsistent for the government on the one hand to be attacking judges and then, on the other hand, saying, 'There is a problem with sentences. We won't resolve it here as elected representatives in parliament; we will hand over these policies to the judges collectively.' Rather than increasing community involvement in sentencing, this bill, as it stands, will reduce community involvement.

I emphasise that the bill hands over sentencing policy to the judiciary. Of course, judges have had and will continue to have as individuals in individual cases a discretion in relation to the cases which come before a particular judge. The policy hitherto has been determined by the legislature—by the elected representatives of the community in parliament. The policy is laid down either through the legislation, which imposes the penalties, or through the Criminal Law (Sentencing) Act, which lays down in very great detail the matters to which the court must have regard in laying down the sentence in particular matters.

It is interesting to see the genesis of this policy from Labor. In the 1997 election, the policy announced in September of that year was as follows:

> Under a Labor government, the penalty for burglaries and break-ins involving torture, offensive weapons, gangs or the use or threat of violence would be a mandatory increase in the non-parole period of 10 years. A Rann government would ensure that criminals who commit these unspeakable crimes are hit with much more severe penalties.

Whatever you might think of that policy, the Labor Party later abandoned the policy together with the notion of mandatory increases.

I have heard the Attorney-General explaining on a number of occasions—usually on talkback radio—that the reason Labor abandoned mandatory sentencing after the 1997 election was that the judges and the lawyers would get around mandatory sentencing; that they would conspire by various devices. The Hon. Michael Atkinson said that there was nothing wrong with the policy but that it was the judges and lawyers who would together contrive or conspire to evade it.

He also said that they would find offenders guilty of particular offences for which there was not a mandatory penalty, and he said that the legal profession—the judges and lawyers together—would use a number of other discretions and devices to conspire to destroy the effectiveness of mandatory sentencing. It is interesting that in this bill the very same Attorney-General is now handing over to the judges—the very people who would have destroyed the effectiveness of the 1997 Labor policy—the control of sentencing policy.

One of the principles upon which this legislation is based is the proposition that sentences should be consistent. The opposition certainly agrees with the notion of consistency in sentencing. Consistency is important for the purpose of maintaining community confidence in the criminal justice system. It is also important in ensuring that it is a system where justice applies.

We certainly support any notion that consistency be embraced. Of course, it should not be thought that the courts at the moment are not alive to the fact that sentences should be consistent. Indeed, all the principles of sentencing reinforce the notion that there should be a degree of consistency. The people in the community who are complaining about criminal sentencing are complaining not about inconsistency but about leniency. The people who are most vociferous in their complaints about the criminal justice system say that judges are too soft and that they do not take into account community concerns when arriving at sentences.

It is fair to say—and the Attorney-General would probably agree—that most sentences imposed across the judicial system on a daily basis are fair and reasonable, and I am here speaking of the sentences imposed by magistrates and judges at every level of our court system. Of course, there are some sentences which attract notoriety and which tend to undermine confidence in the system. You only need a couple of those sentences in any one month to have a good deal of unease being expressed. Any mechanism which might remove unduly lenient sentences is to be commended.

However, those people to whom the Attorney-General seeks to appeal are not simply calling for consistency: as I said, they are calling for tougher sentences. A good illustration of the effect of legislation of this kind is the recent decisions in New South Wales of Judge Finnane in the so-called ethnic rape cases. In one of those cases, the judge sentenced the ringleader of the gang engaged in these rapes to a term of imprisonment of 55 years.

The Hon. Diana Laidlaw: Do you think that is unreasonable?

The Hon. R.D. LAWSON: I make no comment upon the appropriateness of the sentence. However, clearly 55 years would be outside the range of any guidelines of the kind sought to be laid down here. I think I am right in saying that in relation to that particular offence no guideline was laid down in New South Wales, because the court of appeal in New South Wales does regularly exercise the power to lay down guidelines sentences. I would surmise that the judge was sentencing well outside the scope of any kind of guidelines of the type likely to be laid down. Of course, it has already been announced that there will be an appeal in relation to that sentence, so we do not at this stage know whether it will withstand the scrutiny of an appeal court. It ought to be noted and put on the record that one effect of guideline sentences might be to preclude a judge from imposing in those exceptional cases a sentence of a kind that may well be warranted by particular circumstances.

It is probably also fair to say that from time to time the courts ought, in an exceptional case like that mentioned in New South Wales, to lay down a sentence which is way outside the guidelines to send a very clear message to the community on both sides of the issue—to those who might be minded to criminal behaviour that the consequences can be very severe, indeed and, to others who seek to ensure that the courts listen to the community, that their concerns are heard.

Courts sometimes have regard to the second reading explanation of bills. They can do so only in limited circumstances, usually where there is some obscurity or ambiguity in the language of the legislation. I sincerely hope that the judiciary does not have regard to the minister's second reading explanation in this case. Actually, the Attorney took singular pride in this explanation. He said that, unlike most other second reading explanations which are prepared by the department, he himself had a personal hand in this one. I am not surprised; it has an unmistakably undergraduate air about it. The sarcastic reference in the explanation to the notion of instinctive synthesis is typical. The Attorney described it as a mystic process, Delphically pronounced.

One does not have to agree with the notion of instinctive synthesis. However, on reading the Attorney's explanation, one is inspired with no confidence whatsoever that he has any understanding of this expression. The term was first used in the case of the Queen against Williscroft in 1975 in the Victorian Supreme Court. It was there said:

> Ultimately, every sentence imposed represents the sentencing judge's 'instinctive synthesis of all of the various aspects involved in the punitive process'.

In that case, the court was rejecting the notion of two stage sentencing. That is a process by which the judge determines what the appropriate sentence should be at the first stage and then, at a second stage, takes any deductions for, for example, contrition, for pleading guilty or for any other of those mitigating circumstances. So, the Victorian Supreme Court was rejecting that notion. There has been a good deal of judicial discussion in recent times about it, most recently in the case of the High Court case of the Queen against Wong, which was decided earlier this year. Justice Kirby was critical of instinctive synthesis, and he favoured the two stage approach. He certainly did in another case of Cameron against the Queen, also decided earlier this year. It is interesting to note that, on the other hand, both Justices McKew and Hayne of the High Court have expressed support for instinctive synthesis.

However, those matters have little significance in relation to the matter before the council. As I said, this bill will empower the court to do the very things that it currently is doing and has done over a number of years in a number of cases. However, it will add a power to the Director of Public Prosecutions, the Attorney-General or the Legal Services Commission to apply for the laying down of a guideline sentence. That is a new initiative. To date the court itself has exercised its own initiative in relation to guideline sentences. The bill authorises the Director of Public Prosecutions, the Attorney, the Legal Services Commission or an organisation representing the interests of offenders or victims of crime to appear and be heard in the proceedings.

Whilst it is a welcome initiative to enable an organisation representing the interests of offenders or victims of crime to be heard, unless those organisations are appropriately resourced and staffed, it is unlikely that he will be able to have the statistical and other scientific information to enable them to effectively represent the interests of the community before the Full Court on the establishing of sentencing guidelines.

My proposed amendment establishes a sentencing council, which will have the resources and expertise necessary to make effective and ongoing representations on behalf of the community. I applaud the inclusion of victims of crime in the class of organisations eligible to apply, but I believe they ought to be bolstered. It is important that, if the sentencing guidelines are to be established or reviewed on the application of the Attorney-General, namely, if there is to be political intervention in a particular case, the proceedings be separate from other proceedings in the Full Court.

The Hon. A.J. Redford interjecting:

The Hon. R.D. LAWSON: My colleague the Hon. Angus Redford makes a few observations about it and I am sure he will shortly express a view to the council on this aspect.

There are two sides to this story. On the one hand we could insist that proceedings for the laying down of guideline judgments take place only in the context of an actual fact situation in relation to a particular offence. On the other hand, another view is that, if the court is to be expected to lay down a guideline with general application that only peripherally or not at all refers to a particular offender, it is unfair to involve a litigant in what is, after all, public interest litigation in which the offender has but a passing interest.

It is interesting to note that the powers of the Full Court in proposed section 29C include a power to inform itself in any way it thinks fit on any question affecting the formulation or revision of sentencing guidelines and that it is not bound by the rules of evidence in relation to such a matter. That is a somewhat unusual provision in most of the criminal jurisdiction where strict rules of evidence are customarily applied. However, when one goes to the situation we are now being asked to embrace, namely, the Full Court laying down matters of policy—not deciding individual cases on the facts before it—that it ought to be able to have regard to statistical and other data laid before the court not necessarily complying with all the rules of evidence.

It is worth saying that legislation in Western Australia, which gave the Supreme Court in that jurisdiction power to lay down guideline sentences, has been singularly unused by the court. However, similar legislation appears in both New South Wales and Victoria. The New South Wales experience is interesting because, as the Attorney notes in his second reading speech, this legislation is based upon the New South Wales legislation. The Attorney-General said:

> The New South Wales guideline system appears to have been a resounding success.

It has been such a resounding success that Premier Bob Carr a couple of weeks ago announced its abandonment in favour of a stricter form of mandatory sentencing called mandatory guideline sentencing and the establishment of a sentencing advisory council.

The Hon. Diana Laidlaw: Did he do that before or after the Attorney made his speech?

The Hon. R.D. LAWSON: After. Contrary to the claim that the New South Wales guideline system has been a resounding success, it has been found that the window-dressing in New South Wales has not been a resounding success and Bob Carr has put some new decoration in the window. The claim about its being a resounding success is overblown, to say the least.

In New South Wales on 4 September this year a new plan called standard minimum sentencing was announced, which in effect does away with the guideline sentencing that has been a resounding success. It also establishes a sentencing council, and the amendments I will be proposing embrace that very sensible notion. The Premier of New South Wales said that a sentencing council would give the community, in particular victims of crime, a stronger voice in the sentencing of criminals. He said—and this is an eminently sensible suggestion—that the council will monitor sentences handed out by the courts, making sure they meet community expectations. Mr Carr in New South Wales is seen to have adopted much of the policy proposed by the Australian Labor Party in South Australia in 1987 but subsequently abandoned on the grounds that the legal profession and judiciary would have contrived to defeat the proposal.

It is interesting to see also that in the state of Victoria, in legislation introduced on 11 September this year, the Bracks government introduced legislation to amend the sentencing act and empower the court of appeal to give guideline judgments and to establish a sentencing advisory council. It would appear that guideline sentences are popular around the country, notwithstanding their limited success to date in enhancing community support for the criminal sentencing scheme.

I now move to a couple of other points before coming to my comments on the amendments proposed, which would be a singular improvement in our view. I acknowledge receipt from the Law Society of a submission from the criminal law committee of the society regarding this bill.

The Law Society makes the point—and I will not read the whole of the letter—that its criminal law committee supports the maintenance of sentencing discretions. The society says (and we would agree) that it is a fundamental principle of the common law that allows each case to be decided on its merits, but in the context of maintaining parity with like cases and a proportion of sentencing in dissimilar cases. The Law Society makes the reasonable suggestion that the Aboriginal Legal Rights Commission and the Law Society itself should be included as organisations with standing to appear before the Full Court when it considers a guideline sentencing matter.

In our view it would be better to have something like the sentencing advisory council, which itself could (and probably should) include representatives not only from the legal profession but also from organisations such as the Aboriginal Legal Rights Movement, which does, regrettably, have an all too considerable interest in matters within the criminal justice system. The Law Society proposal is that a standing committee be established within the legislation to appoint, in effect, a public defender from the ranks of the profession to appear in each guideline case. I believe that the underlying principle to which the Law Society is referring, namely, some outsider, is important.

However, I emphasise that the sentencing advisory council, if it is to have the effect of restoring some community confidence in criminal sentencing, should be largely composed of people with a community background and from a community perspective rather than from the perspective of the legal system as such. The legal system will be well represented in any guidelines sentencing application through the judiciary, the Director of Public Prosecutions (or the Attorney-General) and the Legal Services Commission.

What we seek to inject into the system is greater community input. The functions of the sentencing advisory council that we seek to have established are to provide reports to the Full Court, to provide statistical information, to provide information on current sentencing practices, to conduct research and to disseminate information, to gauge public opinion on sentencing matters (which is very important), to consult widely on sentencing matters and, also, to advise the Attorney-General on sentencing matters. We certainly seek the support of all members of the council for the proposal to establish the sentencing advisory council.

I regret that I have not yet had an opportunity to discuss this issue with the Attorney-General, but I indicate publicly that I will be doing that. I would like to think that the Attorney and the government will support the establishment of a sentencing advisory council and will support the amendments proposed. With those brief remarks, I indicate support for the second reading.

The Hon. A.L. EVANS: I support this bill in so far as it seeks to establish or review sentencing guidelines for the Full Court. Importantly, the insertion does not compromise the integrity of the court in so far as it is not contrary in any way to the doctrine of the separation of powers. The bill allows the Full Court of the Supreme Court to set sentencing guidelines on its own motion or on the application of the Attorney-General, the DPP or the Legal Services Commission. These bodies are given standing either to establish sentencing guidelines or to be able to appear before the court if the court is considering establishing or reviewing sentencing guidelines.

My concern is that a fundamental body has been overlooked. The Aboriginal Legal Rights Movement provides Aboriginal legal services across South Australia. It is the second largest criminal defence organisation in South Australia, yet the bill does not include the body as having standing to appear before the Full Court when it is considering sentencing guidelines. Aboriginal people are highly represented through the courts. Members of this community comprise 15 per cent of the total number of those appearing before the court, as well as representing up to 25 per cent of the total number of people currently serving time in prison. It would appear to me that the Aboriginal Legal Rights Movement should be given standing in relation to appearing before the court if the court is considering establishing or reviewing sentencing guidelines.

The Hon. IAN GILFILLAN: I indicate that the Democrats do not support this bill and, as an indication as to why that is, I refer members to a headline which appeared on page 1 of the *Advertiser* of 8 March, as follows:

Judges to be told 'Don't be soft.'

Those seven or eight words—depending on how one grammatically counts it—really indicate the motive behind so much of the legislation and the public statements coming from both the major parties in South Australia in this contest to mollify a stimulated impression, through the media, that the public is demanding so-called tougher sentences.

The Hon. T.G. Roberts: You haven't believed the *Advertiser* before, so why are you believing it this time?

The Hon. IAN GILFILLAN: I have not been a defender of the *Advertiser*. I do not want to be drawn into that debate, Mr President.

The PRESIDENT: Very wise.

The Hon. IAN GILFILLAN: I believe that my point is relevant. Also, a headline appeared in the same newspaper (the *Advertiser*) on 6 April quoting Chris Kourakis QC, President of the Law Society, with respect to points of law, as follows:

More prisons are not the answer to reducing crime.

The *Advertiser* also printed, as a lead letter, a contribution from Rick Sarre who, very loosely, made precisely that point. However, we oppose the bill for two reasons: first, it represents what we see as an erosion of the separation of powers upon which our democracy is based; and, secondly, we are concerned that this will lead to an increasingly rigid criminal justice system that will not adequately meet the needs of the community. The Criminal Law (Sentencing) (Sentencing Guidelines) Amendment Bill adds a new division to part 2 of the Criminal Law (Sentencing) Act 1998.

The proposed division sets out a procedure for the development of sentencing guidelines. Sentencing guidelines may be in a form and to a level of detail determined by the court that establishes them. They may consist of loose guidelines or more complex sentencing matrices. Under the bill, the Full Court would be able to establish sentencing guidelines for offences in general and for particular classes of offence. The guidelines may also set out parameters for offenders in general or a particular class of offender. The guidelines may indicate an appropriate range of penalties and how particular aggravating or mitigating factors should be reflected in the sentence.

The bill also specifically provides that guidelines may indicate reductions in penalties where defendants plead guilty, cooperate with the authorities or have, in some way, reduced the burden on the criminal justice system or crime in the community.

The process with which these guidelines can be established is a further concern to the Democrats. The Full Court may establish or review sentencing guidelines of its own initiative or on application of the Director of Public Prosecutions, the Attorney-General or the Legal Services Commission. Currently, the latter two are excluded from this process. In addition to this, the DPP, the Attorney-General and the Legal Services Commission may be heard at the review, as can an organisation which represents the interests of offenders or victims of crime and which has a proper interest in the proceedings, in the opinion of the Full Court.

I will make some observations, given that the shadow attorney-general has referred to his amendment and the Hon. Mr Evans mentioned the lack of formalised representation of indigenous organisations. As we are opposing the bill, we will be voting against it; however, as a first reaction, it does appear to me that the amendment proposed by the shadow attorney-general has merit. As I indicated to him in a private conversation, I believe the membership of that committee should certainly prescribe some representation on the advisory council of at least one, and probably more than one, organisation representing the Aboriginal community.

I refer back to the situation in the current bill. The inclusion of the Attorney-General in the group of those who are able to apply to the Full Court to review sentencing guidelines is problematic. It sets the scene for the Attorney-General to exercise undue influence in the development of sentencing guidelines. I repeat my concern about the media. The current Attorney-General has a 'gift'—I believe it is an innate ability—to capture the late night radio audience through radio stations. In those circumstances, I believe he is exercising a reasonable right for any member of parliament. However, that communication and discussion in an open forum is often very emotional and targeted to certain prejudices in the community, and should not form the background for an elected member who has this opportunity to directly intervene in the consideration of sentencing.

In order to promote accountability of government, hinder corruption and protect the fundamental freedoms of citizens from the will of the government of the day, it is essential to keep separate parliament's power to make laws, the executive's power to administer laws and the judiciary's power to hear and determine disputes according to the law. This separation is designed to protect the people from a concentration of power and the ability of individuals or groups to manipulate government for personal gain and to ignore the will of the people. The will of the people is not necessarily expressed by callers to late night radio. Calls to late night radio and other media are often triggered by the events of the past day or week. If that was the sort of pressure that is then taken into the bodies that are determining policy for senten-

cing, I believe it would be seriously to the detriment of justice in this state.

Given our Westminster system, where the government generally controls one house of parliament, there is already an uncomfortable degree of overlap in both membership and function between the executive and the parliament. However, I note with some pleasure the trend toward minority government experienced in this state. This bill will cause further tension between the judiciary and the executive. As I read this bill, a quote came to my mind:

> It would be unfair to convey the impression to the community that the introduction of longer sentences will reduce the crime rate and make them more secure.

These wise words were attributed to Ms Frances Nelson QC in an article that appeared in the *Advertiser* in May this year. It saddens me to hear the Attorney-General on late night radio extolling the virtues of his tough on crime agenda. I would have hoped that someone entrusted with the role of Attorney-General of this state would be more interested in developing strategies to reduce crime in our community rather than shamelessly trying to shore up votes.

Although the development of sentencing guidelines under this bill would remain in the hands of the court, the process it sets up would bring undue pressure on the court to comply with any recommendation of the Attorney-General. It would also leave the parliament completely out of the process. With the current government's obsession with increased prison sentences, I fear we will end up with an increasingly rigid criminal justice system that will not adequately meet the needs of the community. Mr Chris Kourakis QC, the President of the South Australian Law Society, commented:

> If guidelines are too restrictive, they can cause greater anomalies than they solve.

There is a great deal of debate in the community about the value of increased prison sentences. It seems that, while they are seen as a quick fix by many, they alone will not produce a safer society.

I was interested to read in the *Criminal Law Journal* a paper by Justice G.L. Davies of the Court of Appeal in Queensland. The paper, entitled 'Do current sentencing practices work?', was published in August 2000. In it Justice Davies explains the relationship between sentencing goals and the extent to which imprisonment achieves those goals. Sentencing goals are generally accepted as, first, punishment or retribution; secondly, deterrence of the offenders and others; thirdly, rehabilitation; and, fourthly, incapacitation to commit further crime. The article continues:

> There is no doubt that gaol punishes an offender. No matter what some may say from time to time, gaols are very unpleasant places . . . But if retribution implies bringing home to convicted persons that they have received their just deserts it may be seriously doubted that it does that. Criminals, no less than the rest of us, have a capacity for self delusion and self justification. In many, if not most, cases, they are more inclined to feel that society has treated them unjustly than that they have been justly punished.
>
> That is not to deny the importance of punishment. Those of us who are law-abiding citizens need to feel that those who are not, especially those who deliberately harm others, are justly punished. Public confidence in the legal system requires that. But we must guard against a thirst for blood in which the media indulge from time to time and in which politicians often indulge at election time. And we must be particularly careful not to confuse that thirst with a belief that longer gaol sentences deter others or that imposing longer gaol sentences on that very small percentage of offenders who are caught and convicted will reduce the crime rate. Unfortunately the public is not informed on such questions, remaining dependent, on the whole, on the kind of media reporting and political competition for votes—

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): Order! I ask the members on my left to conduct their conversation out in the lobby or keep the level of conversation down.

The Hon. IAN GILFILLAN: Thank you, Mr Acting President. I hope you took that stand because you wanted to hear what I was saying, which is a particular compliment that I really appreciate. I repeat the last sentence of the quote because, as was the total of this quote, it is extraordinarily relevant to the current situation in South Australia. I quote Justice G.L. Davies of the Court of Appeal in Queensland, in an article of August 2000. The last sentence of the quote is:

> Unfortunately the public is not informed on such questions—

that is, the questions of the appropriateness of gaol sentences—

> remaining dependent, on the whole, on the kind of media reporting and political competition for votes that we have mentioned.

I might add here that I believe that it is within the Attorney-General's power to assist in creating a more realistic public perception of the workings of our criminal justice system in South Australia. I would encourage him to do so, and would join him in such an effort; however, I fear there is not the necessary political will in this Labor government as existed in previous Labor governments.

Mr Rick Sarre from the Law and Criminology Department at the University of South Australia commented that the government's approach to law and justice was of little benefit. In a letter to the *Advertiser* to which I referred earlier, responding to the announcement of the legislation before us, he wrote:

> Over the past two decades in South Australia, there has been a consistent and appreciable rise in the volume of criminal law, the extent of police powers, and the level of criminal penalties and remand rates, and no evidence that 'more of the same' approach, on its own, has made any difference to levels of crime or our fear of crime.
>
> What is consistently confirmed in the literature the world over, by contrast, is that a government that funds research and then carefully targets its crime prevention initiatives reaps the greatest rewards, namely, fewer crimes and less victimisation. Well-researched rehabilitation programs, too, have been shown to have desirable effects in reducing recidivism and preventing repeat victimisation.

On the way to my office today I picked up the latest copy of the *Big Issue*. Members may know that this street press publication takes an active role in helping homeless Australians earn an income. This week's edition has an article written by the Editor-in-Chief of the London edition of the *Big Issue*, Mr John Bird. The article entitled 'Law and disorder' is of particular relevance to the debate today. Mr Bird states that the prison system is failing both prisoners and the rest of society. He makes the interesting point that when the general public considers the event of a miscarriage of justice it is usually associated with innocent people who end up in prison. However, he asked the question, 'Is it not a miscarriage of justice when someone convicted of a crime comes out of gaol worse than when they went in?'

The point that I seek to make in this debate is beyond the inappropriateness of the Attorney-General's proposed role in this legislation. It is that the trend towards more rigid sentencing frameworks is of questionable value. The more effective method of reducing crime in our community is to rely on a more dynamic criminal justice system that addresses the causes of crime. In conclusion, although this bill could be worse, it is a step in the wrong direction and we oppose it.

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

LEGAL SERVICES COMMISSION (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 16 October. Page 1080.)

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I thank members for their support of this bill. The Hon. Terry Cameron and the Hon. Ian Gilfillan each asked whether the removal by clause 4(b) of the word 'local' from the requirement that the commission establish and maintain offices and facilities may adversely affect or have an impact on rural areas. The answer to each question is no. The removal of the requirement to establish and maintain offices described as local is a corollary to another change made by this bill in clause 4. Clause 4(a) removes the requirement for the commission to establish an office called the legal services office. That is because the commission has not in its 24 years of existence had an office of this name and does not intend to. Instead, all of its offices use the name 'Legal Services Commission of South Australia'.

The removal of the requirement to establish a legal services office without further change may mean the act does not allow the commission to establish a head office. The easiest way to remedy that is to change the only remaining part of the act that refers to the establishment of offices now expressed in section 10(1)(e) as a requirement of the commission to establish such local offices and other facilities as the commission considers necessary or desirable to accommodate the establishment of a head office. To this end the bill amends section 10(1)(e) so that it allows the commission to establish any kind of office it considers necessary or desirable. That is the only reason the word 'local' has been removed. It has nothing to do with the abolition of local offices.

The new section 10 simply requires the commission to establish such offices and other facilities as the commission considers necessary or desirable without limiting the way it does it. This construction will not affect the commission's present office configuration of a head office in Adelaide and branch offices in other areas. The commission's discretion about where it establishes its offices and facilities and what they are is unchanged. What informs that discretion that the establishment of an office or facility is necessary and desirable is the requirement in section 11(b) that the commission use its best endeavours to make legal assistance available to persons throughout the state. The government has no intention of amending section 11(b).

The commission's discretion about how it configures its office is not affected by this bill, and I point out that it is the commission's decision, not the government's, where it will have offices and how it will provide its services. I can assure honourable members that the amendments in clauses 4(a) and 4(b) will not have any impact on existing local offices or the establishment of future local offices. It will not affect rural service provision by the commission or affect its ability to provide services.

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

GAS PIPELINES ACCESS (SOUTH AUSTRALIA)(REVIEW) AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 1098.)

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I thank members for their contribution to the second reading of this bill. The Council of Australian Governments (COAG) agreed in February 1994 to general principles of competition policy reform to enable third parties in particular circumstances to gain access to essential facilities.

COAG, as part of that commitment to reform, agreed to more specific proposals for the development of free and fair trade in natural gas. The commonwealth and all states and territories agreed in November 1997 to legislate so that a uniform national framework applies for third party access to all gas pipelines. The Gas Pipelines Access (South Australia) Act 1997 is the lead legislation that was passed pursuant to the signing of the COAG natural gas pipelines access agreement by ministers of all Australian jurisdictions on 7 November 1997.

Under the agreement, South Australia became the lead legislator. Other jurisdictions, except Western Australia, agreed to apply the uniform provisions of the Gas Pipeline Access (South Australia) Act 1997—schedule 1, usually referred to as the law, and schedule 2, which is the code—by means of application legislation. Western Australia applies only the code but, with respect to the law, agreed to enact legislation, having an essentially identical effect.

The Gas Pipelines Access (South Australia) Act 1997 facilitates the development and operation of a national market for natural gas; prevents abuse of monopoly power; promotes a competitive market for natural gas in which customers may chose suppliers including producers, retailers and traders; provides rights of access to natural gas pipelines on conditions that are fair and reasonable for the owners and operators of gas transmission and distribution pipelines, and persons wishing to use the services of those pipelines; and provides for resolution of disputes.

Schedule 2 of the act establishes the National Third Party Access Code for Natural Gas Pipeline Systems. In late 2001, the relevant ministers agreed to amend the code. As lead legislator, these agreed amendments are required to be passed by the South Australian parliament. The agreed amendments are contained in the Gas Pipelines Access (South Australia) (Reviews) Amendment Bill 2002. The proposed amendments will:

1. Clarify the time within which an application to review a relevant decision of a regulator may be made.
2. Expand the category of persons entitled to apply for review of a decision.
3. Ensure that the code registrar is notified of decisions relating to the classification of pipelines.

I note the comments of the Leader of the Opposition, on behalf of the opposition, supporting this bill, and I thank all members for their contributions and indications of support.

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

GAMING MACHINES (GAMING TAX) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 15 October. Page 1045.)

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I understand that everyone who wished to speak in this debate has exercised that right. I would like to thank all honourable members for their contribution to the debate, and I acknowledge the support of members for the bill, even where some reservations were expressed.

During his contribution to the debate, the Hon. Julian Stefani asked for details of money collected from gaming machines for the period from January to June 2002, and the dates on which this revenue was collected. I can advise the council that the tax liabilities for hotel and club gaming machine venues for this period were as follows. In January, it was $18.352 million; in February, $17.205 million; in March, $16.206 million; in April, $17.832 million; in May, $17.880 million; and, in June, $18.758 million.

These levels of tax liability relate to gaming activity in a licensed venue in the preceding month. Gaming machine tax is payable in the 7th day of the month, or the following working day if the 7th falls on a weekend. Almost the entire amount of revenue is collected on the 7th of the month, with only very minor amounts collected on other days as a result of prepayments or late payments of tax.

I also note that, in relation to January through to April, the above amounts payable by venues included a 0.5 per cent of net gambling revenue surcharge that applied to all gaming machine venues to recover the revenue shortfall below the industry-guaranteed amount for 1996-97. Pursuant to the act, the shortfall had been fully recovered and the surcharge ceased to be collected from May 2002 in relation to the April activity. The surcharge component raised around $250 000 per month.

I also wish to take this opportunity to correct statements made by the Hon. D. Laidlaw in her second reading contribution. Ms Laidlaw indicated that, under the Gaming Machines Act, funds are provided to the Sport and Recreation Fund of $2.5 million per annum; the Gamblers' Rehabilitation Fund, $3 million per annum; and the Community Development Fund, $19.5 million per annum.

The reference to the Gamblers' Rehabilitation Fund is incorrect. That $3 million annual allocation is provided under the act to the Charitable and Social Welfare Fund, not the Gamblers' Rehabilitation Fund. The Charitable and Social Welfare Fund, better known as Community Benefits SA, provides one-off project funding to charitable and social welfare organisations to improve the wellbeing and quality of life for disadvantaged individuals and communities across the state.

I note that the Gamblers' Rehabilitation Fund receives $3.3 million per annum, being $1.5 million from a contribution from hotels and clubs with gaming machines and $1.8 million from government appropriation. This government contribution includes an additional $1 million per annum from 2002-03 provided by the government in the recent state budget.

I note that, at the close of the former Treasurer's second reading contribution, he referred to issues which he felt should be looked at in further detail, including the drafting of the legislation for the new surcharge and the impact on businesses that are structured as trusts where there are changes to beneficiaries.

I understand that these and other issues were raised by the former Treasurer when he spoke on the Stamp Duties (Gaming Machine Surcharge) Amendment Bill. I will respond to these issues in closing the second reading debate of that particular bill. With those comments, I again thank members for their contribution to the debate.

Bill read a second time.

STATUTES AMENDMENT (BUSHFIRES) BILL

Adjourned debate on second reading.

(Continued from 16 October. Page 1065.)

The Hon. R.D. LAWSON: I rise to support this bill which will have the effect of creating a new offence specifically in relation to the lighting of bushfires. Currently, there is an offence of 'intentionally or recklessly or attempting to damage the property of another by fire or explosion' within the Criminal Law (Consolidation) Act. The penalties for that offence, which are contained in section 85 of the act, are based upon a graduated scale: where the damage caused is under $2 500, the maximum penalty is two years imprisonment; where the damage is between $2 500 and $30 000, five years imprisonment; and the penalty for intentionally or recklessly damaging or attempting to damage the property of another by fire, where the damage is more than $30 000, is, in fact, life imprisonment. A very significant sentencing discretion is given to the courts.

The Country Fires Act also creates an offence of 'lighting a fire during a bushfire season in circumstances where the fire endangers or is likely to endanger the life or property of another.' The maximum penalty for that offence is two years imprisonment or an $8 000 fine.

This act is very limited in what it does. It does not alter the penalties in relation to what might be termed 'arson' under the Criminal Law (Consolidation) Act and, bearing in mind that the maximum penalty for causing more than $30 000 damage is already life imprisonment, it might be seen as somewhat difficult to increase the penalty, although the occasion could have been used to change the graduated scale of penalties. However, that opportunity was not taken.

The bill creates a new offence of 'intentionally or recklessly causing a bushfire,' and that offence will be inserted into the Criminal Law (Consolidation) Act. The maximum penalty for that offence is 20 years imprisonment. It is a little anomalous that the maximum penalty for intentionally or recklessly causing a bushfire will now be less than the maximum penalty for causing a fire which happens to cause more than $30 000 damage (which is not very much these days) under the existing law.

The bill provides, entirely properly, that no offence is committed if damage is caused only to the property and vegetation on the land of the person who started the fire or if damage is only caused to the property of another person who authorised or consented to the fire to take account of common agricultural practice in rural South Australia, where burn-offs are a frequent feature of life. No offence is committed if the bushfire results from operations genuinely directed at extinguishing or controlling a fire because, as members would be aware, the practice of back-burning is commonly employed by the Country Fire Service and others in seeking to control bushfires.

This bill will also amend the Criminal Law (Sentencing) Act by inserting certain additional matter into section 10 of that act which sets out the matters to which a sentencing court should have regard, namely:

> That the primary policy of sentencing should be to bring home to the offender the extreme gravity of the offence and to exact

reparation from the offender to the maximum extent possible under the criminal justice system for harm to the community.

This new provision has two examples provided in the bill, namely:

Example 1: The court may, with the consent of the victims of the offence or the victims of the kind of harm the offence could have caused, require the offender, under appropriate supervision, to meet with the victims. Secondly, the court may direct the offender, whether in prison or on parole or undertaking community service, to participate, under appropriate supervision, in programs to rehabilitate the fire-damaged land or other property.

These are both worthy sentiments, and the Liberal opposition certainly supports any measures which will bring home to offenders the consequences of their offence.

However, we express some scepticism about the effectiveness in the wider scheme of things of measures of this kind. We support the principle of restorative justice, and we acknowledge that these methods of bringing the offender to confront his or her victims are an important element in that process. However, the measures that the government has introduced to address the problems of bushfires lit deliberately in our community is not very strong nor has there been to date much commitment, in the form of resources, to prevent arson attacks and also the reckless lighting of bushfires.

Education and resources are needed and the community, of course, has a large part to play. The government should not rely only on rhetoric in discouraging offenders from committing these crimes, which have a devastating effect on our community. Only last weekend we saw in New South Wales the first large fires in this current bushfire season in this country—fires which may well have been caused by the reckless acts of some people. Perhaps reckless or perhaps careless, but certainly fires which were preventable.

Better education and understanding by not only farmers, community members but also workers are very important. The criminal law has a part to play in that, but the government must commit resources if we are to have an effective strategy to reduce the incidence of bushfires. This government has been very big on the rhetoric of law and order but it has not been big on delivering the resources that are essential to have an effective law and order policy.

Notwithstanding the tough talk of the Premier on law and order, the first act of this government in its first budget was to cut spending on crime prevention, to cut the very programs which out in the community are reducing antisocial and criminal behaviour by young people by, for example, drawing together community resources like local councils, community organisations, Neighbourhood Watch, service clubs, local traders and the like. In targeted crime prevention strategies, what is the first thing the government does? It cuts by more than 80 per cent the funding to that program.

In the Correctional Services area, where many of the people who are currently released from prison reoffend, the first act of the new Minister for Correctional Services was to cut a number of programs which were having a significant and positive effect on reducing the rate of recidivism. What we have with this government is a lot of talk about law and order but, when it comes to delivering the resources necessary to have effective strategies, its performance is sadly lacking. Talk is cheap; actually delivering worthwhile policies requires more than just talk. It is fair to say that the provisions contained in this bill are largely talk and not much action.

It is worth drawing attention to the fact that the new offence of causing a bushfire applies not only to those who intentionally cause a bushfire but also to those who are recklessly indifferent as to whether their conduct caused a bushfire. I am glad to see that the government accepted opposition suggested amendments in relation to the concept of recklessness, because that concept is not widely understood in the community, although most people know that there is a distinction between a careless action and a reckless action. However, 'reckless' is not a term that is defined in the legislation and nor can even a lawyer easily find in relation to the expression its precise connotation in a particular context. That is necessary. It is like the word 'reasonable'. It is one that is, in a sense, incapable of being further defined. However, I am glad to see that by using the concept suggested by the opposition—namely, 'being recklessly indifferent'—we have reinforced the notion that it is likely that people cannot be prosecuted for an offence which carries a maximum penalty of 20 years imprisonment unless their conduct is truly culpable.

It is also worth mentioning that the bill's second reading explanation expressed the view that there are significant problems—and the words 'significant problems' are a direct quote from the second reading explanation—with the current law of arson, which grades the penalty according to the damage caused. However, having noted that there are some significant problems with such a scheme of penalties, on this occasion the government has not seen fit to do anything about it.

One of the difficulties with the current provision about which nothing is done is that it is necessary for the prosecution to call evidence of damage, and evidence of damage may be very easy to obtain in relation to some cases but, certainly at the lower end of the scale, there can be some difficulty for the prosecution which it would be best to avoid.

Of course, the other element is this: the culpability of an offender is not necessarily directly related to the damage caused. The person who throws a lighted match into a petrol tanker may fortuitously cause no damage at all or, if an explosion occurs, may for exactly the same act create huge loss of life and damage. I would certainly argue that the culpability of those offenders is the same and that using the amount of damage caused as the criterion for penalty is illogical. It is fair to say that the reason why the government has not seen fit to change that penalty is the Premier's commitment to the rhetoric of law and order. In order to change the penalty he would presumably have to, in effect, reduce the maximum life penalty where the damage exceeds $30 000. In effect, he would be seen to be reducing a penalty in circumstances which would be logical but which would be inconsistent with his law and order rhetoric.

I commend to all members of the council the debate on this issue that occurred in the House of Assembly, where a number of members, I must say mainly from the Liberal Party, gave very graphic and personal accounts of the ravages of bushfire on our community and the scourge posed by those who either deliberately or recklessly cause damage. I commend also to all members the comments of the Liberal spokesperson on emergency services (the member for Mawson, Robert Brokenshire) who outlined a number of important strategies that ought be adopted to really address the wider issue of criminal and reckless behaviour in relation to fires. I indicate support for the second reading.

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

STATUTES AMENDMENT (STAMP DUTIES AND OTHER MEASURES) BILL

Adjourned debate on second reading.

(Continued from 16 October. Page 1071.)

The Hon. R.I. LUCAS (Leader of the Opposition): I rise on behalf of Liberal members to support the second reading of this bill. I will address most issues this afternoon, but I will seek leave to conclude my remarks later in order to address one aspect of the legislation following further reflection over the weekend. This bill covers a range of changes to the tax law. I will deal with them broadly in line with the second reading explanation, with the exception of the changes to the Payroll Tax Act. The first series of amendments relate to the first home owner grants scheme. The department is being asked to provide retrospectively the framework for the existing arrangements for the provision of first home owner grants to South Australians.

The opposition supports the retrospective application of these laws. Perhaps it is a knee-jerk response sometimes from members of parliament to never support retrospective legislation. There are a number of occasions when we do and this is one of those occasions where the parliament is being asked to support the retrospective application of these provisions. The one point I make at the outset is that, whilst I can understand from a tax law viewpoint that the new government decided to delay this legislation until a number of measures could be put and considered together, which has the advantage of its being an omnibus bill rather than a number of individual ones, one of the by-product effects of that is that there is sometimes unnecessary delay in the introduction of legislation. The First Home Owners Grant section of this bill is a perfect example of that.

I am aware that the legislation was drafted some time ago and really should have been introduced as soon as the new parliament came together because in essence here we are in October retrospectively approving announcements made by the Prime Minister on 9 October last year. Further announcements were made through the early part of this year. Almost a year later we are retrospectively legislating. We are probably the last or second to last jurisdiction to introduce legislation. Interestingly, I am told that Victoria has decided that it will not legislate for the First Home Owners Grant Scheme and is doing it administratively, but all other jurisdictions have introduced legislation.

The next package of measures relate to changes to the Petroleum Products Regulation Act. The opposition supports these amendments. The brief history is that some time during the last year of the former government the then deputy leader of the opposition, the member for Napier, sought a copy of a report conducted on whether or not the subsidies that had been paid by South Australian taxpayers for country consumers of petrol had flowed through to those consumers—an entirely reasonable question. A report had been conducted. Broadly the report said that those subsidies had flowed through to consumers in country South Australia.

The opposition, again quite properly (I have no concern about this), wanted to see the release of that report. It thought that the government in not releasing it was being secretive. Indeed, we were accused of being secretive on this issue, but the government's position was simply that it was quite happy to release the report and the Commissioner for Taxation was relaxed about releasing the report, but the commissioner advised the government that Crown Law advice said that legislation prevented the release of the report because of the secrecy provisions, so we were prevented from so doing.

I recall discussions I had saying that we would again be unfairly accused by the then irresponsible opposition of being secretive and wanting to conceal this report, and that surely there must be a way of releasing this information without identifying the individual companies. The commissioner reported to Crown Law that the report did not identify individual companies, but nevertheless Crown Law's advice still was that the legislation made it clear that we could not release the report. Certainly it was the former government's view that we were happy to see the legislation changed to try to allow the release of the report and that clearly has been followed through by government officers and is now part of this package.

I place on the record the detail of that because it is easy when one is in opposition to make accusations irresponsibly of secretive governments. I give the assurance that we will not be irresponsible in our accusations of this new government being secretive: we will rely on fact and accuracy and only make that accusation as frequently as the facts will support it. I am sure that government members in this chamber will acknowledge and will be appreciative of the new responsible approach of an opposition in South Australia in relation to these issues—

The Hon. Caroline Schaefer: It will be novel.

The Hon. R.I. LUCAS: It will certainly be novel, as my colleague the Hon. Caroline Schaefer indicates. The next package of amendments relates to the Stamp Duties Act 1923, and eight separate provisions are amended in the stamp duties legislation. In a number of areas it can certainly be argued that there is some improvement in benefit to the taxpayers of South Australia. I instance a couple of examples. In one case the period within which a refund of duty can be paid is extended from one year to five years. The opposition supports that proposal from the government. In another area, an issue that was the cause of some ongoing discussion between my office and the office of the Commissioner for Taxation under the former government was the issue of the first home owner's concession.

The existing law basically states that, for the first home owner's concession to apply, it can only be paid if there is a period of 12 months between the date of the land transfer and of the new home owner occupying the home. Through the buoyant economic conditions that had been developed by the former government, particularly in the housing construction industry in recent times, it became increasingly difficult for first home owners to be able to ensure that they could move into their new home within 12 months of the transfer of the land. We had all sorts of anguish from individual home owners who were being told that, under the existing law, they did not qualify for the first home owner concession. There was, of course, much debate about the legal definition of having moved into their first home.

Some first home owners, as one would imagine, to try to get this concession were seeking to move in perhaps whilst the remaining elements of the home construction were still occurring. There was significant debate in some cases about the actual date of the land transfer. Therefore, there was much debate as some first owner concession seekers were trying to ensure that they complied with this 12 month provision. The government bill extends that to two years which, hopefully, will reduce the number of those cases but, as the Commissioner for Taxation would agree, I am sure that the new Treasurer will still see some cases where people will be

trying to argue their case in relation to this two year provision, even though it is a doubling of the current provision of 12 months. However, the opposition supports this improvement in the legislation in this area. Certainly the former government was considering amendments along these lines as well.

The Stamp Duties Act is being amended in a number of other areas to confirm existing practice. In one area, for example, I understand that the practice of Revenue SA has been to ensure that farmers benefit from the first home owner's concession. If someone was to purchase an operating farm for $1 million, for example, just to use a figure, Revenue SA will ensure that the farmhouse, the value of that house and curtilage, that is the immediate land around the house—and let us say that was worth $150 000 on valuation—would be available for the first home owner's concession.

Even though the operating farm might have been $1 million, because the value of the house was, say, $100 000 rather than $150 00, the first home owner's concession can apply. I understand that, as a result of advice from government officers, Crown Law has, perhaps, raised some question as to whether or not the existing practice is correct, and so the law is being changed to ensure and to clarify that that benefit can continue to be paid, and also recognising that the second reading explanation states:

> . . . provide legislative backing to the previous interpretation and longstanding practice of Revenue SA.

A number of other amendments to this bill again seek to ensure that the existing practices of Revenue SA can be confirmed. There is another provision to allow greater use by taxpayers to transact their business with Revenue SA over the internet and, again, that is something which, I am sure, most taxpayers would support. There was an unusual provision included in this which, basically, is predicated on legal advice provided to the government that, for example, if two financial institutions were to merge their operations, and that if there were no legal document to confirm that merger of operations, stamp duty might be payable on that transaction.

I ask government officers, and the minister in reply, to place on the public record a response to that. My question was that there is a deeming provision within the Stamp Duties Act—and I am going on memory, I thought it was section 71, but it might not be—which ensures that stamp duty can be paid even if there is no legal instrument in terms of a particular transaction. There has been a number of examples where people sought to get around stamp duties law by ensuring that there was no written agreement between two parties but, nevertheless, property changed hands.

A provision (which, I think, is called Clayton's contracts) was written into stamp duty law to allow Revenue SA to impose stamp duty on those contracts or agreements. My question was why that provision could not be used in this case, and I would like the minister to place on the record Revenue SA's response to that question. I must admit that I expressed some surprise that two financial institutions could conclude a merger of their operations without any form of legal documentation. It certainly surprises me, and it is certainly not something based on my experience of these issues that is likely to occur.

I would be interested to know, again from the minister's viewpoint, whether there is some knowledge by a government, either here or anywhere else, where two financial institutions have merged their operations without any written documentation between them. The final area I raise, which might be of interest to my colleague the Hon. Angus Redford given his experience on the Legislative Review Committee, relates to the amendment that seeks to substitute any reference to a prescribed form with another reference to a form approved by the Commissioner. I must admit that, when I first read this, I had some concern. I have asked some questions and I have placed on the record my response.

If I can summarise my view, I am generally agnostic about the change, but it may be an issue on which members of the Legislative Review Committee, given their experience, want to express a view. I can understand the purpose of this: every time some amendment to a prescribed form has to be implemented by the Commissioner for Taxation, the current arrangements are that there needs to be regulation for that and it is disallowable, and a process then has to be followed. The bill seeks to provide that a reference to a form approved by the Commissioner would be the process to be followed.

I did ask what the practice was in all the other tax acts, and I am advised that the words 'forms to be approved by the Commissioner' are already included in the Taxation Administration Act, the Debits Tax Act, the Financial Institutions Duty Act, the First Home Owner Grant Act and the Payroll Tax Act, and the Stamp Duties Act will now join those. I am also advised that the Emergency Services Funding Act, the Petroleum Products Act and the Tobacco Products Regulation Act are a combination of forms approved by the minister and prescribed notices.

It is fair to say that the bulk of the tax law in South Australia does use the phrase 'a form approved by the Commissioner' rather than 'in a prescribed form'. Nevertheless, some pieces of tax legislation remain where 'a prescribed notice' or 'form approved by the minister' are used. Given that the bulk of tax law already incorporates a form approved by the Commissioner, I am sympathetic to the proposed change but, as always, will listen with interest to any contributions from other members on the issue.

The next area of change relates to the Taxation Administration Act 1996. This arises as a result of a Victorian Supreme Court case, Drake Personnel limited v Commissioner of State Revenue 1998. As a result of that, Crown Law, I presume, has provided advice to the government that perhaps there needs to be some clarification of the Taxation Administration Act here in South Australia. Put simply, I am advised that without this change there might be an argument that, if a taxpayer were to win a case against the Commissioner, unlimited taxation refunds going back decades might be payable.

I am advised that the current arrangements are that five years of refunds are payable and under the changes proposed here it is perhaps somewhat closer to six years of refunds, but without this change there is the potential for unlimited refunds should a court case go against the Commissioner of Taxation.

The Liberal Party is prepared to support this change. That is all I have to say this afternoon. On Monday, I will conclude on one last area in relation to the Payroll Tax Act. Until then, I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

STATUTES AMENDMENT (CORPORATIONS—FINANCIAL SERVICES REFORM) 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.

On 21 June 2001, the South Australian Parliament effected a limited reference of corporations power to the commonwealth Parliament. The principal legislation effecting the reference was the *Corporations (Commonwealth Powers) Act 2001*. This legislation was complemented by three other Acts, including the *Corporations (Ancillary Provisions) Act 2001*.

Based on this reference, and similar references from all other states, the commonwealth parliament enacted the *Corporations Act 2001* and *ASIC Act 2001*. This legislation forms the basis of the corporations scheme, under which Australian companies and securities are regulated. The corporations scheme commenced on 15 July last year.

Since the commencement of the corporations scheme, a number of important amendments have been made to the Corporations and ASIC Acts. Most significant of these were contained in the FSR Act, the Financial Services Reform Act, of 2001.

The FSR Act repealed Chapters 7 and 8 of the Corporations Act. Chapter 7 regulated the acquisition of securities and the operation of the securities industry in Australia. Chapter 8 regulated the futures market in Australia, including the approval and regulation of futures exchanges. Participants in the securities and futures industries were licensed, and their conduct regulated, under these provisions.

The FSR Act has replaced the former Chapters 7 and 8 of the Corporations Act with a new Chapter 7 that provides for a single harmonised licensing, disclosure and conduct framework for all financial service providers, and establishes a consistent and comparable financial product disclosure regime applying to financial investment, financial risk and non-cash payment products. These amendments form part of the Commonwealth's Corporate Law Economic Reform Program and constitutes the third tranche of the commonwealth government's legislative response to the financial system inquiry.

The FSR Act amendments have necessitated a number of consequential amendments to the provisions of state legislation, which refer to, or operate by reference to, the repealed provisions of old Chapters 7 and 8 of the Corporations Act, or to concepts or terminology relevant to the repealed provisions. In particular, the FSR Act has introduced the concepts of financial products, financial markets and clearing and settlement facilities. Specific references in South Australian Acts, in particular, the *Stamp Duties Act 1923*, to marketable securities, stock exchanges and securities clearing houses, tied to the former Corporations Act regulatory regime, must be replaced with the equivalent terminology of the new FSR provisions.

These amendments are contained in the *Statutes Amendments (Corporations—Financial Services Reform) Bill 2002*.

Corporate law reform in Australia is an ongoing process. As a consequence, the commonwealth parliament regularly amends the Corporations and ASIC Acts.

As with the FSR Act, these amendments often necessitate consequential amendments to state legislation. Owing to state parliamentary constraints, it is not always possible to enact the necessary consequential amendments before commencement of the relevant commonwealth amendments. This can result in inconsistencies between related state and commonwealth provisions, and may even render inoperative state provisions, that refer to or rely upon concepts or terminology made redundant by the commonwealth amendments.

To address this problem, the Statutes Amendment (Corporations—Financial Services Reform) Bill amends the *Corporations (Ancillary Provisions) Act 2001* to empower the Governor to make regulations to amend provisions in state legislation that refer to or rely upon provisions of the Corporations or ASIC Acts, or terms, expressions or concepts defined in those Acts, which are amended by commonwealth legislation.

To ensure this regulation making power is not used to circumvent the proper Parliamentary processes for amending legislation, it is subject to the following limitations:

- an amendment to state legislation to be effected by a regulation must be necessary as a consequence of amendments to the Corporations or ASIC Acts;
- an amending regulation may not deal with any other matter (except matters of a transitional nature consequent upon the amendment to the Corporations or ASIC Acts); and
- an amending regulation will automatically expire after 12 months (unless revoked or specified to expire at an earlier time).

These limitations will ensure that necessary amendments to state legislation can be made, on an interim basis, without the need for Parliament to enact amending legislation, provided the required amendment to state legislation is consequential in nature, for example, a change in cross-referencing or a change in terminology. A bill will still be necessary in due course to ensure consequential amendments are given permanent effect. Regulations made under the propose provision will be subject to section 10 of the *Subordinate Legislation Act 1978*. Similar amendments are being made in other jurisdictions.

Finally, this bill makes a number of minor amendments to state acts, consequential upon the reference of power, which, owing to parliamentary constraints, could not be made at the time reference legislation was enacted.

I commend this bill to the house.

Explanation of Clauses

PART 1

PRELIMINARY

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides for the commencement of the measure.

Clause 3: Interpretation

A reference in a provision to the principal Act is to be taken to be a reference to the Act referred to in the heading of the Part in which the reference occurs.

PART 2

AMENDMENT OF AUTHORISED BETTING OPERATIONS ACT 2000

Clause 4: Amendment of s. 3—Interpretation

These amendments up-date provisions so that they refer to the *Corporations Act 2001* of the commonwealth.

Clause 5: Amendment of s. 5—Close associates

These amendments ensure that concepts under section 5 of the principal Act are consistent with the terminology and concepts under the new commonwealth provisions.

Clause 6: Amendment of s. 29—Duty of auditor

Clause 7: Amendment of s. 74—Power to appoint manager

These amendments up-date provisions so that they refer to the *Corporations Act 2001* of the commonwealth.

PART 3

AMENDMENT OF BROKEN HILL PROPRIETARY COMPANY'S INDENTURE ACT 1937

Clause 8: Insertion of s. 11

This amendment ensures that concepts under the Principal Act are consistent with the terminology and concepts under the new commonwealth provisions.

PART 4

AMENDMENT OF BROKEN HILL PROPRIETARY COMPANY'S STEEL WORKS INDENTURE ACT 1958

Clause 9: Insertion of s. 13

This amendment ensures that concepts under the principal Act are consistent with the terminology and concepts under the new commonwealth provisions.

PART 5

AMENDMENT OF CASINO ACT 1997

Clause 10: Amendment of s. 3—Interpretation

Clause 11: Amendment of s. 4—Close associates

These amendments ensure that concepts under the principal Act are consistent with the terminology and concepts under the new commonwealth provisions.

Clause 12: Amendment of s. 49—Licensee to supply authority with copy of audited accounts

Clause 13: Amendment of s. 50—Duty of auditor

Clause 14: Amendment of s. 50—Duty of auditor

These amendments up-date provisions so that they refer to the *Corporations Act 2001* of the commonwealth.

PART 6

AMENDMENT OF CO-OPERATIVES ACT 1997

Clause 15: Amendment of s. 9—Exclusion of operation of Corporations Act

These amendments ensure consistency with the terminology and concepts under the new commonwealth provisions, and up-date a cross-reference.

Clause 16: Amendment of s. 258—Application of Corporations Act to issues of debentures

This amendment up-date a cross-reference.

PART 7
AMENDMENT OF CORPORATIONS (ANCILLARY PROVISIONS) ACT 2001

Clause 17: Amendment of s. 22—Power to amend certain statutory instruments

This amendment extends section 22 of the principal Act so that regulations can be made under that section where the Corporations Act or the ASIC Act is being amended.

Clause 18: Insertion of s. 22A

This clause inserts a new section 22A into the principal Act which provides a power to make interim regulations construing references in Acts consistently with the provisions of a Commonwealth Act, or a bill for a Commonwealth Act, that affects those references. The purpose of the new section is to enable affected references to be adjusted in circumstances where it has not been possible to amend the references by Act in the time available. Any regulations made under the new section will expire after 12 months (unless sooner revoked).

Clause 19: Insertion of s. 25A

This clause inserts new section 25A into the principal Act. The new section validates things done on or after the commencement of the *Financial Services Reform Act 2001* of the Commonwealth and before the commencement of the proposed Act. The validation extends only to things that would have been valid and lawful if this bill had been in operation at the relevant time.

Clause 20: Amendment of s. 26—Regulations

This is a consequential amendment.

PART 8
AMENDMENT OF LIQUOR LICENSING ACT 1997

Clause 21: Amendment of s. 7—Close associates

These amendments ensure consistency with the terminology and concepts under the new commonwealth provisions.

PART 9
AMENDMENT OF MOTOR VEHICLES ACT 1959

Clause 22: Amendment of s. 71C—Interpretation

Clause 23: Amendment of s. 99—Interpretation

These amendments ensure consistency with the terminology and concepts under the new commonwealth provisions, and up-date some cross-references.

PART 10
AMENDMENT OF RACING (PROPRIETARY BUSINESS LICENSING) ACT 2000

Clause 24: Amendment of s. 3—Interpretation

Clause 25: Amendment of s. 5—Close associates

These amendments ensure consistency with the terminology and concepts under the new commonwealth provisions, and up-date some cross-references.

PART 11
AMENDMENT OF STAMP DUTIES ACT 1923

Clause 26: Amendment of s. 2—Interpretation

It is necessary to amend various definitions used in the principal Act to provide greater consistency with the terminology and concepts under the new commonwealth provisions. In particular, the new legislation refers to 'financial products', and so it is appropriate to now refer to 'financial products' rather than 'marketable securities' under the principal Act. In view of the potential ambit of the concept of 'financial product', the definition in the principal Act will be able to be adjusted by regulation to exclude any stock, security or interest that should not be subject to the operation of the Act. In addition, the concept of a 'stock market' is to be replaced with the concept of a 'financial market' (being the terminology now used under the commonwealth provisions).

Clause 27: Amendment of s. 31—Certain contracts to be chargeable as conveyance on sale

Clause 28: Amendment of s. 67—Computation of duty where instruments are interrelated

Clause 29: Amendment of s. 71—Instruments chargeable as conveyances operating as voluntary dispositions inter vivos

Clause 30: Amendment of heading

These are consequential amendments.

Clause 31: Amendment of s. 90A—Interpretation

These amendments relate to the definitions that are required for the purposes of Part 3A of the principal Act. The changes are consequential on changes to the concepts, terminology and provisions that relate to financial markets and clearing and settlement facilities.

Clause 32: Amendment of s. 90B—Application of Division

Clause 33: Amendment of s. 90C—Records of sales and purchases of financial products

Clause 34: Amendment of s. 90E—Endorsement of instrument of transfer as to payment of duty

Clause 35: Amendment of s. 90F—Power of dealer to recover paid duty

Clause 36: Amendment of s. 90G—Transactions in S.A. financial products on U.K. stock exchange

These are consequential amendments.

Clause 37: Substitution of Divisions 3 and 4 of Part 3A

Division 3 of Part 3A of the principal Act relates to transfers of marketable securities conducted through clearing house facilities. The Division currently applies to any 'SCH-regulated transfer', which has been any transfer conducted through a particular clearing house recognised under the old *Corporations Law*. The new legislation recognises the fact that other clearing and settlement facilities may be established (and no longer specifically refers to 'SCH'). It is therefore appropriate to amend the *Stamp Duties Act 1923* to provide greater consistency with arrangements that may now be established under the new commonwealth provisions. Given the extent of changes required to be effected because of changes in terminology, it has been decided to replace the Division with a new set of provisions. The new provisions will have a similar effect to the existing provisions, but will now better reflect modern practices with respect to potential business licensees practices (especially in connection with electronic clearing and settlement facilities), and with respect to the potential operators of these facilities. Division 4 is also to be replaced, consistent with the fact that it may be appropriate in the future to extend the scheme that has applied to SCH to other CS facility licensees (on application by the licensee). In undertaking these amendments, it is also appropriate to extend the registration scheme to encompass new market licensees (in addition to the ASX) under the commonwealth provisions.

Clause 38: Amendment of s. 90T—Application of Division

Clause 39: Amendment of s. 90U—Financial products liable to duty

Clause 40: Amendment of s. 90V—Proclaimed countries

Clause 41: Amendment of s. 91—Interpretation

Clause 42: Amendment of s. 97—Calculation of duty

Clause 43: Amendment of s. 101—Exempt transactions

Clause 44: Amendment of s. 106A—Transfer of financial products not to be registered unless duly stamped

Clause 45: Amendment of Sched. 2

These clauses all make consequential, or related, amendments.

Clause 46: Transitional provisions

This clause will ensure the on-going recognition of ASX and SCH under the scheme that applies under Part 3A of the principal Act.

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

HOLIDAYS (ADELAIDE CUP AND VOLUNTEERS DAY) 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 represents a commitment to regional development by the Rann government.

The proposal is aligned to Labor's regional development policies as outlined in the policy document 'The Economy: Growth for a Just Society'.

The bill originated from a request from the Mount Gambier Racing Club for a *local* public holiday for the Club's Gold Cup meeting, a significant regional event held annually in June. The Club proposed that the local public holiday be observed *in lieu* of the Adelaide Cup and Volunteers Day public holiday. The proposal of the Club reflects a perception in regional areas that attendance in

Adelaide for the Adelaide Cup race meeting is not always practical, or that the Adelaide Cup race meeting lacks relevance for those in regional areas. Substitution of the Adelaide Cup and Volunteers Day public holiday for a day of regional significance addresses these concerns.

The Mount Gambier City Council subsequently passed a resolution supporting the proposal for a substituted public holiday for the Mount Gambier Gold Cup. The proposal has received the support of the District Council of Grant as well as the local Chamber.

General consultation on the concept of substitution of public holidays in regional areas was initiated through a discussion paper on the issue titled 'Regional Public Holidays for South Australia'.

The responses to this discussion paper show that support for the concept is very localised and is particularly strong within the country racing sector. It was assessed that take-up of the initiative would be most likely within regions remote from Adelaide.

Cabinet subsequently supported substitution of the public holiday limited to the Mount Gambier region, and for a period of two years. At the end of this period of limited operation the initiative will be evaluated and, based on this evaluation, the merits of more permanent arrangements at Mount Gambier and the potential for expansion of the concept to other regional areas will be assessed.

The key features of the initiative introduced by the Holidays (Adelaide Cup and Volunteers Day) Amendment Bill 2002 are as follows:

- the District Council of Grant and Mount Gambier City Council will be the vehicles for any application for public holiday substitution;
- in keeping with the need to evaluate the success and appropriateness of the initiative, the proposed legislation will apply a two year limit on the operation of the initiative to the Mount Gambier area;
- applications for substitution can only be made in respect of the Adelaide Cup and Volunteers Day public holiday celebrated on the third Monday in May of each year;
- at least four months notice, in advance of the date of the scheduled and proposed public holiday, is required for an application for substitution;
- substitution can only occur subject to adequate community consultation and with substantial community support;
- revised public holiday arrangements will prevail to the extent of any inconsistency over any provision of an award, determination, or enterprise or industrial agreement that operates within the affected region; and
- the Councils will be required to advertise approved substitution arrangements in local and state-wide press.

The bill is framed so that the needs and opinions of all interest groups can be included in any decision on the issue. There needs to be adequate community consultation and substantial community support before the government will recommend to the Governor a proclamation to introduce the initiative in the Mount Gambier area.

The government will bring any proposal to extend the arrangements in Mount Gambier or to expand the initiative back to Parliament, subject to a positive evaluation of the initiative.

This proposed legislation provides a sound balance between implementing a regional initiative that has substantial community support, and not adversely impacting on the Adelaide Cup day event.

The opportunity is also being taken to make drafting amendments to the Act of a statute law revision nature.

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. 3—Days fixed as holidays

Clause 4: Substitution of ss. 3A and 3B

Clause 5: Amendment of s. 4—Special holidays may be proclaimed

Clause 6: Amendment of s. 4A—Bank half-holidays

These clauses make amendments of a minor technical nature. The content of section 3B is brought into section 3 to clarify the meaning of those provisions. Sections 3 and 3A are redrafted so that it is clear that Sunday is always a public holiday and bank holiday. Sections 4 and 4A of the Act are made consistent with other provisions by providing that the Governor may vary or revoke proclamations made under those sections.

Clause 7: Insertion of s. 5A

This clause inserts a new section 5A in the Act. The new section 5A provides that the Governor may substitute another day as a public holiday and bank holiday for the third Monday in May, which is Adelaide Cup and Volunteers Day, in the Mount Gambier area. This allows a substitution to be made to reflect an event of regional significance, given the long distance which must be travelled from regional centres to Adelaide to attend the Adelaide Cup and associated celebrations.

An application for a substitution must be made to the Minister by a council, and the Minister must be satisfied of certain matters. The section provides that a substitution may only be made in the areas of the District Council of Grant, the City of Mount Gambier, and, in certain circumstances, an area adjacent to the District Council of Grant. Notice of a substitution must be published prior to the relevant day. The Governor may vary or revoke a proclamation made under the section.

The section also provides that, to the extent of any inconsistency, a proclamation under the clause prevails over a provision of an award, determination, or enterprise or industrial agreement.

The section will expire two years after the day on which it comes into operation.

Schedule

The schedule makes amendments of a statute law revision nature.

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

ADJOURNMENT

At 5.28 p.m. the council adjourned until Monday 21 October at 2.15 p.m.