LEGISLATIVE COUNCIL

Thursday 23 October 2003

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

PAPERS TABLED

The following papers were laid on the table:

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

Reports, 2002-03—
- Electricity—Technical Regulator
- Code Registrar for the National Third Party Access Code for Natural Gas Pipeline Systems
- South Australian Independent Pricing and Access Regulator

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

Reports, 2002-03—
- Adelaide Entertainment Centre
- Construction Industry Training Board
- South Australian Tourism Commission

Promoting Independence: Disability Action Plans for South Australia—
- Progress Report on Implementation, September 2001
- 2nd Progress Report on Implementation, August 2003.

QUESTION TIME

BIKIE FORTRESSES

The Hon. R.D. LAWSON: I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question about bikie fortresses.

Leave granted.

The Hon. R.D. LAWSON: During the committee stage of the debate on the Statutes Amendment (Anti-Fortification) Bill on Tuesday of this week, I specifically asked the minister whether the government was aware of any application to erect premises that might be the subject of that legislation. The minister said that the government was aware of an application that had been made about 12 months ago to the Charles Sturt council. He said, 'The application was made by a woman who lived in the area. I presume she was associated with an outlaw motorcycle gang', and undertook to get back to the opposition with further information. The Hon. Michael Atkinson called Bob Francis on the same day and informed him:

> I'm ringing to tell you that a member of the Rebels motorcycle gang has lodged a planning application with the Charles Sturt council to build a huge concrete building with massive tilt up concrete walls on the corner of Chief and Second streets at Brompton, exactly where the Rebels planned to put their headquarters three years ago. . .

My question to the minister is: was he aware, at the time that he answered the question posed by me on 21 October, of the application about which the Attorney-General informed Bob Francis that very evening?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I gave the answer to the question during the debate the other day on the advice that was provided to me by the officer from the Attorney-General's Department—who is a very good officer, I must say. I will take the question on notice. Obviously, I am not the Attorney-General and I am not the Minister for Police, and during those second reading debates I am reliant on the advice with which I am provided. Certainly, whatever advice I was given in relation to previous applications I passed on to the honourable member. Obviously, I have no special knowledge or source of information in relation to what should be there. I will seek to ascertain from the Attorney-General's Department whether that application to the Charles Sturt council is, in fact, the same application or some variation of it, or whether a new application has just come in.

WATER RESTRICTIONS

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

Leave granted.

The Hon. CAROLINE SCHAEFER: As members would be aware, South Australian irrigators along the River Murray have had water restrictions imposed due to a lack of flows over the past few months. Thankfully, these restrictions have been eased somewhat due to good rains. The current water restrictions are implemented by limiting the percentage of water allocation that an irrigator can use. Many constituents have expressed to me that this method of water restriction effectively penalises efficient irrigators who have spent money and fully utilised their water allocation, more than inefficient irrigators who could still implement more efficient irrigation techniques.

In addition to these problems, at a briefing given this morning by Mr Rob Freeman, Chief Executive of the Department of Water, Land and Biodiversity Conservation, we were informed that irrigators can expect a huge spike in salt levels as the water from the Darling comes down, and a figure of 1 100 ECs at Morgan was given. My questions to the minister are:

1. Is he aware of the concerns of irrigators, as I have highlighted them in my explanation?

2. Will the minister commit to formulating a more equitable water restriction policy for irrigators before next summer?

3. Is the minister embarking on a policy of informing irrigators to expect high salt levels during their peak irrigation season?

4. Will the minister assure the council that his department, in its capacity as adviser to primary producers, will have greater input than it did last year in the formulation of any such restriction policies in the future?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): The imposition of water restriction policy is, of course, in the province of my colleague the Minister for the River Murray. Nevertheless, the last part of the honourable member's question is not correct. The Department of Primary Industries and Resources has had significant input into the imposition of water restrictions. Indeed, this winter, the head of my department and other officers (those based in the Riverland and in head office) had a series of meetings in relation to water restrictions. Obviously, the ultimate responsibility is with the Department of Water, Land and Biodiversity Conservation.

Of course, I speak to people all the time from the area, and I know their views in relation to irrigation. It is a common view that having this particular type of water restriction imposes upon those who are efficient users, perhaps relative

to those who are less so. However, that is not really the point. I am sure that those who have a water allocation, or a water entitlement, say that they are entitled to that; that it is their property; and why should a government take it away from them. That line was very strongly argued by the Deputy Prime Minister of this country, when we had these debates on water rights.

I know that a lot of effort went into determining what might be the best way of applying water restrictions. Of course, the real dilemma is that we do not have sufficient information. By and large, with the irrigation works that have been provided by the Central Irrigation Trust and the locks and rehabilitation plan, irrigators in this state are the most efficient in this country by a significant margin. If those water delivery systems were in place in all other parts of Australia, I suggest that we would not have the problems in the Murray-Darling Basin that we have now—particularly if all water for irrigation were delivered as efficiently as it is in the Riverland and, hopefully, will be soon in the Lower Murray region.

We have a very efficient water delivery system, but everybody knows that some irrigators within those areas are not as efficient as others. However, until one has the information and the database on actual consumption and need, it is all very well in theory to say that it would be better if we had a system based on actual use rather than entitlement. To do that, one has to know accurately what the use is. In any case, how does one determine efficiency? Who is to determine an inefficient irrigator? How do we get that information?

Obviously—and these are really matters for my colleague—as we improve these schemes (as we have with the Loxton rehabilitation scheme and other schemes that have greatly improved the efficiency of water delivery to farmers) and as we have better metering and so on, we should increasingly have access to that sort of information so that if we have these sorts of situations in the future we can better ration the resource. I would expect that, as we improve our measurement of water, we will be in a position to do that increasingly in the future. I think this year was the first time in this state that water restrictions have been imposed on irrigation and, obviously, with a lack of base data, it was not easy to develop a perfect system. Nevertheless, I think that the Department of Water, Land and Biodiversity Conservation, in consultation with my department, has done a very good job.

Fortunately, water levels within the Murray-Darling Basin catchments have increased, although I think the last figures I saw showed that the level of water in Dartmouth is still at less than 50 per cent capacity, and I think the Hume Reservoir has something just over 60 per cent capacity. Nevertheless, with the good snow and rainfalls, we have been in a position where the Minister for the River Murray has been able to announce increased allocations, and I think he has also indicated the possibility that there could be further easing if we get rain over the remainder of the year.

But, to answer the honourable member's question as it relates to the future, I would say that if we can develop a better system that would be desirable but we will need much better data on which to do it than we have had to date. As far as my department is concerned, we will make our contribution towards ensuring that, if there is the need for future restrictions, we are in a better position to manage those restrictions.

The Hon. CAROLINE SCHAEFER: Mr President, I have a supplementary question.

The PRESIDENT: Before you ask it, when the minister was speaking I noticed that the Hon. Mr Cameron entered the chamber and walked between me and the speaker. It may well have been an accident, but he is warned, anyway.

The Hon. CAROLINE SCHAEFER: I tried about 15 minutes ago to establish what work is being done to get the data necessary to implement a fairer system of water restrictions.

The Hon. P. HOLLOWAY: I will get the accurate information from the relevant department—from my colleague the Minister for the River Murray.

BUSINESS, MANUFACTURING AND TRADE DEPARTMENT

The Hon. R.I. LUCAS (Leader of the Opposition): I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Industry, Trade and Regional Development, a question about a review of the department.

Leave granted.

The Hon. R.I. LUCAS: Members of the opposition have been contacted by concerned staff within the Department of Business, Manufacturing and Trade as a result of the recent review that has been conducted into that department. One staff member within the Office of Economic Development has advised the opposition that they were concerned that they had been advised that the Office for Economic Development was not to be included in the review but subsequently found out that there were recommendations relating to the Office of Economic Development. I am also advised by a staff member within the department that 'World War III', to quote that person, is about to break out within that department. There was a confidential meeting of staff with some 80 to 90 people attending last Thursday—

An honourable member interjecting:

The Hon. R.I. LUCAS: No, the notes say that. The opposition has been provided with a leaked copy of notes taken of that meeting of 80 to 90 people, and I quote briefly from notes that I have made of those leaked notes. The points raised at the meeting basically are: a slash and burn budget; there is a 'dumbing-down' of the department; and the PSA (Jan McMahon) and other unions are now taking an interest in what is happening. Further, my notes say that the process is a waste of taxpayers' money.

First, we have an interim CEO who would put the structure in place. Then we get the real CEO who, like every CEO, will want to have his own structure and the staff level he wants, as they always do, and we will be back into change mode again. Finally, those notes indicate that the minister will be given until next Wednesday to reply. If the reply is not satisfactory, the PSA will commence industrial action. As I said, those remarks are from notes taken at a confidential meeting held last Thursday. In referring to the departmental report, I will quickly mention one of the many recommendations as an example. I refer to the recommendation in relation to the Office of Trade, which states:

> The Office of Trade would provide support to the Export Council, which coordinates and consolidates the state's public sector effort and program expenditure directed to facilitating export growth. The Office of Trade would provide a first point of contact for enterprises focused on interstate or overseas sales, which are seeking information or assistance with government regulatory issues and/or business extension services. Where departmental program funds are provided to enterprises to facilitate export growth, the Office of

Trade would determine allocation of expenditure in consultation with the Export Council. Where consistent with the views of the Export Council, the office may provide assistance with trade missions and fairs. The Office of Trade would also provide practical input to the Economic Analysis and Policy Division in the preparation of submissions to federal inquiries and reviews.

One of my informants notes that submissions from the department, for example, to federal inquiries on free trade agreements, and similar issues, would therefore be a part of the proposed work of the Office of Trade. I think that all members will note that the intended operations of that office are very significant. When one looks at page 19 of the report and the size of the Office of Trade, one sees that it comprises some four members. There will be a reception level officer (ASO2)—Mr President, you would understand the classification levels in the public sector—two persons will be on ASO4 level, which, generally, is someone at an administration level, although it may well be a project officer at a lower level, and the only senior officer, which is the manager, will be an ASO8.

Given the government's stated policy of trebling exports in terms of the economic development of the state, staff are expressing significant concern that the claimed workload for the significant sections of the business department will not be capable of being achieved. Therefore, my questions to the minister are:

1. Have staff within the Office for Economic Development complained that they were advised that the Office for Economic Development was not to be included in this particular review?

2. What response, if any, has the minister made to the deadline outlined by staff at their meeting last Thursday in terms of their industrial concerns?

3. Does the minister agree with staff concerns that the report is unrealistic in assuming that both the number of staff and the classification levels of staff are sufficient to undertake the tasks outlined in the report and to achieve government objectives, such as a trebling of exports over the coming years?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I will refer those questions to the Minister for Industry, Trade and Regional Development and bring back a reply.

Members interjecting:

The PRESIDENT: Order!

TRAILBLAZER WALK

The Hon. G.E. GAGO: I seek leave to make a brief explanation—

An honourable member interjecting:

The Hon. G.E. GAGO: Oh, yes; wait for this one.

The PRESIDENT: Order!

The Hon. G.E. GAGO: I seek leave to make a brief statement before asking the Minister for Correctional Services a very interesting question about the Trailblazer walk and the Department of Corrections' involvement.

Members interjecting:

The PRESIDENT: If it had been part of the honourable member's explanation it would have been opinion.

Leave granted.

The Hon. G.E. GAGO: I beg your pardon, sir. I thank you for your advice. I withdraw and unreservedly apologise. Thank you, Mr President.

The PRESIDENT: The honourable member should listen to this President and not all the others.

An honourable member interjecting:

The Hon. G.E. GAGO: Don't worry; I've got a good finish.

Members interjecting:

The PRESIDENT: Order!

The Hon. G.E. GAGO: Over the weekend the Trailblazer, an event jointly coordinated by Operation Flinders, Recreation SA, Adelaide Rotary Club and Regency TAFE, was held and raised much needed money. I understand that Corrections were involved in helping this event, as they are with many other events that benefit the community. My very interesting question is: will the minister give details of this important event and Corrections' involvement?

The Hon. T.G. ROBERTS (Minister for Correctional Services): I thank the honourable member for her very interesting question.

Members interjecting:

The PRESIDENT: Order! Members on my left will come to order.

The Hon. T.G. ROBERTS: I thank her for the interest she shows in Corrections, because it is not a portfolio area to which many people pay a lot of attention. Community service clients of the Department of Correctional Services have been assisting in a number of projects in the southern area. I visited one about this time last year which involved people painting one of the schools in the area. Support to the Trailblazer Challenge—an event that is jointly coordinated by Operation Flinders, Recreation SA, Adelaide Rotary Club and Regency TAFE—involved community service clients providing in excess of 70 hours of work to make that event a success. The event was held over the weekend of 18-19 October 2003 and involved some 420 participants and teams traversing sections of the Heysen trail. Mr President, you and the Hon. Gail Gago will be interested to know that the event raised 30 000 to 40 000 valuable dollars for Operation Flinders, Arthritis SA and the East Timorese Appeal sponsored by the Adelaide Rotary Club.

On 17 October 2003, community service work was undertaken when seven community clients erected tents and signs along the trail from the Adelaide Oval Pinky Flat area to the Mount Lofty Golf Course. A further five clients also erected signs and tents along the trail from the Mount Lofty Golf Course to the Kuitpo Forest. These events are connecting community service clients to the community and helping them get a better understanding of the needs of the community and the sense of responsibility that comes with the work they do in meeting with a whole range of community sponsors and leaders.

ABORIGINAL HERITAGE

The Hon. SANDRA KANCK: I seek leave to make an explanation before asking the Minister for Aboriginal Affairs and Reconciliation a question concerning the protection of Aboriginal heritage sites.

The Hon. R.I. Lucas: Is this an interesting one too?

The Hon. SANDRA KANCK: It's riveting.

Leave granted.

The Hon. SANDRA KANCK: My office has been informed that a proposed $40 million housing and aquaculture development by Dean Lukin near Port Lincoln was rejected on the grounds that it threatened native vegetation. It is my understanding that the proposed development would also have threatened significant Aboriginal sites and that a departmental archaeologist met with Peter Southam of the

Port Lincoln City council and informed him of the existence of the Aboriginal heritage sites. Despite the Port Lincoln council's being aware of the Aboriginal heritage sites, there was no consultation with the native title claimants regarding them. Indeed, it appears that Port Lincoln council simply failed to consider the existence of the sites in assessing the Development Act application and that the Aboriginal heritage has been protected by the sheer luck of there being native vegetation issues on that site. My questions to the minister are:

1. What obligations are councils under to investigate the possibility of and protection for Aboriginal heritage sites when considering development applications?

2. Having been informed of the existence of Aboriginal heritage sites, is the council obliged to consult with native title holders or claimants regarding those sites?

3. What obligations are developers under to ascertain the existing entities of Aboriginal heritage sites on areas subject to development applications?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I thank the honourable member for her question, her continuing interest in Aboriginal affairs in general and her active involvement with the Port Lincoln community. I have to admit that on occasions in the past some people acted in breach of the act without any knowledge. Ignorance of the act is not a defence. In some cases information has been provided to developers. That is contrary to the act.

Since we have been in government we have moved to correct, on a number of occasions, where that information has been acted upon. The Aboriginal Heritage Act 1988 provides for the protection and preservation of Aboriginal heritage. On a recent visit my attention was drawn to the same area in Port Lincoln which the honourable member mentioned. I was satisfied that there did not appear to be any way the proponents could make progress, although I was not in receipt of all the facts. I was not able to make a considered judgment that I can report here to be totally accurate.

We have a register of Aboriginal sites and objects which is designed for use and access by members of local Aboriginal heritage committees to obtain information about sites and areas of interest if they are registered. Access to information needed by cultural heritage professionals working for developers is provided only if written endorsement is given by traditional owners or the Aboriginal heritage organisation with interests in that area. There are currently approximately 6 303 sites recorded in the central archive. Of these, 3 419 have been registered; 2 882 have been reported; and two sites have been archived.

In the time of the current government 21 sites have been registered—I think the honourable member knows how many were registered prior to our forming government—19 in the Star Fish Hill area and two in the Port Pirie area. In excess of 800 items have been added to the central archive. Developers and land managers can access non-confidential information about the central archives through section 7 of the Land and Business (Sale and Conveyancing) Act and through development application processes which assist in ensuring that developments do not affect any sites.

An honourable member interjecting:

The Hon. T.G. ROBERTS: The honourable member makes a valid point. In visiting regional groups that do not have immediate access to the department's archival system, we see that the system does not act in a proactive way. I have spoken to DARE's departmental officers and have asked them to look at a system where the first thing that developers do when coming into contact with the Development Act is to consider the protection of culture and heritage. It is not an adjunct to a whole range of other issues that they have to familiarise themselves with, but it is high on the list of those items requiring clearance before developments can be started. Many of the developers that we have spoken to are agreeable to this, because the worst thing that can happen to a developer is that halfway through a development—as occurred at Black Point—excavations start to take place and heritage and cultural areas are discovered but not listed or archived. What this leads to is a slowdown in development and contact with the local Aboriginal heritage groups. Negotiations tend to slow processes down. What we are saying is that those clearances should be gained before any application is made for development.

We are now looking at putting out a handbook that is a staged introduction to the protection of culture and heritage. That is being looked at now. I understand that one department does it now; I think the Department of Transport puts out a staged development application process as a reminder for staff in the Department of Transport who are building roads. They have had some bad experiences themselves, which they have turned into better ones as a result of experience. We are now learning from some of those issues that have developed in order to put together a project where we can be proactive in making the applicant familiar with the Heritage Act so that they then comply with the registration, clearance and archival issues that they come into contact with.

The Hon. SANDRA KANCK: I have a supplementary question. Will the minister consult and work with the Minister for Urban Development and Planning to ensure that there are amendments to the Development Act that will require both councils and developers to observe such protocols?

The Hon. T.G. ROBERTS: I will give a guarantee to the member to take it up at the first opportunity with the minister in relation to legislation. I will refer that question to the minister in another place and bring back a reply, as well as make a commitment to raise it as an issue.

SECURITY INDUSTRY

The Hon. A.L. EVANS: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Consumer Affairs, a question relating to the security consumer industry.

Leave granted.

The Hon. A.L. EVANS: Over the past three years the Australian Security Industry Association (ASIA) has been raising with the Office of Consumer and Business Affairs a number of issues concerning unethical and unsavoury behaviour of some licensed and unlicensed operators. I understand that, to date, the responses received from the OCBA have not satisfactorily addressed industry concerns. The association holds genuine fears that elements of organised crime such as outlaw motorcycle gangs, may have already infiltrated the private security industry in South Australia. If this is indeed correct, then this would indicate very serious market failures that need to be addressed and dealt with as a priority.

The association believes that the existing Security and Investigations Act 1995 needs to be reviewed to take into account the changing global and Australian security environment, the growing front-line role of the private security

industry and the rapid pace of technological change. I understand that there are already moves across all Australian jurisdictions to bring in greater uniformity and consistency in key areas across the security industry such as in licensing and regulation within a co-regulatory framework. My questions are:

1. How is the government engaging the security industry in regard to the management of industry complaints and compliance monitoring?

2. Would the minister advise whether the government intends to review the Security and Investigations Act 1995 and, if so, will the Australian Security Industry Association be consulted?

3. Would the minister advise the level of revenue collected by the Office of Consumer and Business Affairs through the licensing of the private security industry?

4. Would the minister advise how much of the revenue collected through licensing is being spent each year on enforcement to ensure that the industry operates in the best interests of the South Australian public?

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

The Hon. T.G. CAMERON: I rise on a point of order, Mr President. It concerns the warning you gave me earlier this session. It occurred to me whilst the Hon. Andrew Evans was speaking that, if I wanted to leave the chamber, the only way I could do so would be to climb over the top of the Hon. John Gazzola. I would be seeking some assurance of a safe passage in the event that I am required to climb over the top of the honourable member. It was not terribly important at that moment because the Hon. Mr Evans was asking a question—

The PRESIDENT: What is your point of order?

The Hon. T.G. CAMERON: The point of order is: how do I get safe passage out of the chamber, given your ruling? I looked across at the Democrats—

The PRESIDENT: The honourable member has raised a point of order—

Members interjecting:

The PRESIDENT: Order! The minister will come to order.

Members interjecting:

The PRESIDENT: Order! The Minister for Aboriginal Affairs will come to order. There is no point of order. The honourable member is asking me a question, which he could have done by approaching the table. The Hon. Mr Cameron has been in this place for at least, I think, 10 years. The standing orders have been in place for almost 100 years. Everyone else can comply with the orders. The Hon. Mr Cameron is being petulant and immature. This is not a 'three strikes and you're out' situation, Mr Cameron. If you want to defy me, I have warned you today. The next step in the process is that I name you. If you want to talk to me about your problems—

The Hon. T.G. Cameron interjecting:

The PRESIDENT: People have been getting in and out of this chamber for 100 years. If you are not capable of manoeuvring mechanically out of that situation, you should consult a doctor.

The Hon. T.G. Cameron: I'll come and see you shortly.

OLIVE KNOT DISEASE

The Hon. J.S.L. DAWKINS: I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question about olive knot disease.

Leave granted.

The Hon. J.S.L. DAWKINS: I understand that a bacterial disease that affects olive trees has been found in South Australia. This disease is known as olive knot, or pseudomonas savastanoi. The discovery of olive knot on five properties in South Australia and one in Victoria marks, apparently, the first time that this exotic disease has been found in Australia. While the national advisory body on exotic plant pests has indicated that eradication of the disease is not possible, it has recommended the development of management strategies. Most members would be well aware of the extent of the growth in the local olive industry and the associated investment by many South Australians. With this in mind, my questions to the minister are:

1. Will he outline any particular management practices developed by PIRSA to assist growers to minimise the tree and fruit damage caused by olive knot?

2. Will the minister indicate the details of the quarantine restrictions that have been placed on the five properties where olive knot has been found?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I thank the honourable member for his question. I have been advised that, unfortunately, there has been an outbreak of olive knot disease. In relation to the details about which he has asked, I will obtain that information for him and bring back a response.

BEACHPORT BOAT RAMP

The Hon. D.W. RIDGWAY: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Environment and Conservation and the Minister for Transport, a question about the proposed temporary boat ramp at Beachport.

Leave granted.

The Hon. D.W. RIDGWAY: On 3 November 2000, the Environment Protection Agency wrote to the Wattle Range Council to advise it about the suitability of alterations to the Beachport boat ramp. This letter detailed problems that would be caused by building the ramp at the proposed location. The letter stated:

> It is our view that there is likely to be serious sand management issues associated with the proposed Beachport boat ramp at its current location.

The letter continued:

> We are of the opinion that the risks associated with sand and beach management will be much reduced if the boat ramp were to be located in the lee of Glen Point near the commercial boat yard.

The EPA concluded by saying that the council should 'properly explore the Glen Point site'. Some 17 months later, the Minister for Environment and Conservation wrote to the Wattle Range Council to discuss the environmental and community concerns about the proposed boat ramp at Beachport. In the letter, which is dated 14 April 2002, the minister outlined the following proposals:

- that the council, with the government, establish a Beachport foreshore advisory committee;
- that the foreshore advisory committee prepare a foreshore management strategy plan; and

- that no construction work on the proposed boat ramp facility be started until the council and government have considered the recommendations of the foreshore management strategy plan.

The minister went on to say that the foreshore management strategy plan should include a number of points, including fully exploring the options to integrate parking and boat launching for a recreational boat ramp facility with the commercial boat use of the commercial boat yard and slipway, as well as exploring the use of crown lands adjacent to Glen Point for parking.

The Rivoli Bay Advisory Committee was formed in response to the above letter, and will be recommending a permanent boat launching site after proper research has been conducted. Early in its existence, the committee recommended the construction of a breakwater and, on 22 August this year in a press release, the Minister for Transport (Hon. Michael Wright) announced the construction of a geotextile breakwater. On the 10th line he says:

> At same time, a temporary two-lane boat ramp will be installed close to the current location.

He continues:

> The existing ramp has currently become unsuitable due to erosion of the adjacent coastline and subsequent undermining of the ramp slab. These works will ensure safe use of this facility for the next 10 to 15 years.

My questions are:

1. Why has a temporary boat ramp been constructed, rather than repairing the original ramp?

2. Why is the government ignoring the EPA's recommendation that Glen Point is the preferred location for construction of the new ramp?

3. What will be the cost of constructing a temporary boat ramp, compared with the cost of repairing the old ramp?

4. Why is the government, or Transport SA, not waiting for the recommendations of the Rivoli Bay Foreshore Advisory Committee?

5. Is the construction of the temporary boat ramp a cute measure to avoid waiting for the committee's recommendations?

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

The Hon. SANDRA KANCK: I have a supplementary question. Will the minister seek the opinion of the Coast Protection Board as to whether or not this proposal, if it goes ahead, will result in greater destruction of seagrass and greater movement of sand?

The Hon. T.G. ROBERTS: I will refer the supplementary question to the Minister for Environment and Conservation in the other place and bring back a reply.

The Hon. A.J. REDFORD: I have a supplementary question. Is the minister aware that, when I was there two weeks ago, I noticed that significant construction had already commenced, with huge plastic bags of sand blotting out the foreshore?

The Hon. T.G. ROBERTS: I did observe that some work had been done on the breakwater. Various views were being expressed by the community about the construction, but there was unanimity that the current boat ramp was unsafe, and that was the only opinion that was being uniformly expressed.

FISHERIES, ECOLOGICALLY SUSTAINABLE DEVELOPMENT

The Hon. J. GAZZOLA: I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question about the national fisheries ecologically sustainable development reporting framework.

Leave granted.

The Hon. J. GAZZOLA: The need to develop a national approach to address matters related to implementing ecologically sustainable development for fisheries was recognised some time ago by the then standing committee for fisheries and aquaculture. Can the minister tell us what developments are taking place with respect to the national fisheries ecologically sustainable development reporting framework?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I thank the honourable member for his interest in this subject and his very interesting question. Recently, I attended the Natural Resources Management Ministerial Council meeting in Perth, at which this subject was discussed. A fisheries ecologically sustainable development (or, as it is better known, an ESD) assessment manual has been completed. An ESD reporting framework for aquaculture is still in development. Pleasing progress has been made in incorporating the principles of ESD into the management of Australia's fisheries. This is a requirement under the legislation and policy aims of all jurisdictions.

The nationally agreed ESD reporting framework allows for the measurement and reporting of how effectively fisheries are meeting the objectives of ecologically sustainable development. The framework is also capable of accommodating the fishery assessment requirements of the commonwealth's Environment Protection and Biodiversity Conservation Act 1999. However, there is a need to extend the ESD framework beyond the individual fishery level to encompass cross-fishery and cross-sectoral issues to facilitate the implementation of full ecosystem-based management and marine planning initiatives. Future progress in ESD assessments will need to incorporate social performance measures and impact assessments, which is a difficult area to develop. A team in the commonwealth Bureau of Rural Sciences has taken leadership of this research.

The South Australian government supports the continued development of ESD reporting and assessment tools for aquaculture, as it is of importance to the continued sustainable growth of the industry. The ministerial council agreed to continue and, indeed, extend the national fisheries ESD reporting framework so that it encompasses multiple fisheries and multiple sectors that will assist the move to regional ESD reporting.

Finally, it is my intention that proposals in relation to the new state based legislation to replace the Fisheries Act 1982 would be consistent with the national ESD framework being developed for the management of fisheries and would provide further support for the implementation of these arrangements.

DOG AND CAT MANAGEMENT

The Hon. IAN GILFILLAN: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Environment and Conservation, a question about the proposed Dog and Cat Management Act.

Leave granted.

The Hon. IAN GILFILLAN: I have received a detailed document analysing reaction from an organisation called Dogs: Friends for Life—an advocacy network promoting respect, understanding and community inclusion—over the names of Karen Messent and Chris McLean and dated 10 October. The first paragraph states:

> We are writing to you to express our deep concern at the state government's proposed new amendments to the Dog and Cat Management Act.

In this document they have 'included materials, which detail our concerns, and we trust you will take the time to examine them carefully'. And I certainly will. However, the first paragraph in the text reads:

> 'Dogs: Friends for Life' is a group committed to responsible and caring dog ownership, as well as recognition of the valuable role that dogs play in our community. We believe that aspects of the SA government's proposed new dog laws will impact very severely on the lives of responsible dog owners and their dogs, without contributing to a reduction of dog attacks.

Honourable members, I am sure, are fully aware that that is the alleged purpose of the proposed legislation.

On page 18 of their document, they question the collection and interpretation of data indicating that Department of Human Services research shows that 6 500 people each year require some form of treatment as a result of being attacked by a dog in metropolitan Adelaide. They point out that that is an average of 18 attacks a day, which they find surprising given the media's quickness to report every single dog attack as a front page item. They state:

> As mentioned elsewhere in this submission, it is essential that there is a clear definition of what constitutes an attack as distinct from 'harassment' or 'unwelcome attention'—

They go on to be critical again of some of the data that has been put forward to justify the legislation.

The final concern which I will mention from this document relates to consultation. They make the point that there has been no indication of response to community concerns, and they state:

> We have shaken our heads in disbelief as we are told that these proposed recommendations will not affect responsible dog owners. They already have. Councils are already acting before the consultative process is complete. . .

The group Dogs: Friends for Life makes the point that it is argued that current legislation is adequate but is not policed because there are not enough inspectors. My questions to the minister are:

1. It is quite clear that, if the draft Dog and Cat Management Act is passed, extra inspectors will be required. Does the minister intend that the government will fund extra inspectors?

2. (This question is framed by the Dogs: Friends for Life group.) What are the details of consultation; who was consulted; and what was the response from those who were supposedly consulted?

3. What research data is available to justify the draconian measures in the proposed bill, and will the minister make it available?

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

BUSES, SMART STOPS

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Transport, questions about Smart Stop bus stops?

Leave granted.

The Hon. T.G. CAMERON: South Australia has produced many groundbreaking inventions during our state's short history, and it appears that we have done it again. A new realtime arrival and departure information system called Smart Stop has been installed as part of a six month trial at selected Adelaide bus stops. For members who are not aware of what it involves, the system operates by feeding data from buses fitted with a global positioning system navigation unit to a main computer at the Passenger Transport Board, which then calculates the time the bus will be at the next stop.

The Hon. T.G. Roberts interjecting:

The Hon. T.G. CAMERON: Passengers waiting at stops using the system are then able to see when the next bus is due by simply pressing a button. We ought to give those binoculars to the Hon. Mr Roberts. He might be able to see what is going on a little better. However, there have been complaints—

The PRESIDENT: Order! Is the honourable member responding to an interjection or speaking to me?

The Hon. T.G. CAMERON: I was probably doing both, Mr President.

The PRESIDENT: If the honourable member was responding to the minister, the minister will come to order.

Members interjecting:

The Hon. T.G. CAMERON: I am just waiting for the interjections to subside so that members can hear me.

The PRESIDENT: I am very interested to know that the honourable member is interested in background noise.

The Hon. T.G. CAMERON: I am pleased to hear that, Mr President. Passengers waiting at stops using the system are then able to see when the next bus is due by simply pressing a button. It would be a good system for speakers in this place! However, there have been complaints from some passengers during the trials that the wait times displayed by the machines have been inaccurate by up to 30 minutes, even though the longest wait for a bus in Go Zones during the day is meant to be just 10 minutes.

The Hon. A.J. Redford interjecting:

The Hon. T.G. CAMERON: They are not too smart. I think that the trial is a good concept and any move, within cost constraints, to give accurate information to people waiting for a bus will encourage more people to use our public transport system, and I think that is something we would all like to see. However, it does appear as if there are still a few small glitches to be ironed out. My questions to the minister are:

1. What have been the results of the Smart Stop trials, what problems have been encountered and have these problems, including the incorrect waiting times, been corrected?

2. When will the new Smart Stop system be introduced, where will it operate and how much will it cost to install and run on an annual basis?

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

MINISTERIAL CODE OF CONDUCT

The Hon. A.J. REDFORD: I seek leave to make an explanation before asking the Minister for Agriculture, Food

and Fisheries a question about the Ministerial Code of Conduct.

Leave granted.

The Hon. G.E. Gago interjecting:

The Hon. A.J. REDFORD: I take the Hon. Gail Gago's praise as my reputation obviously precedes me. The Ministerial Code of Conduct states that ministers must accept standards of the highest order. The code states that they must be diligent in their performance. Of course, a set of rules is only as good as the sanctions and, in this case, it is up to the Premier to determine what course of action is to be taken in relation to a breach, including apology, reprimand, standing aside and resignation. So far, none of these sanctions have been applied despite clear examples, and I will give just one. At page 15 of the document, the code states:

> Ministers should establish with their senior departmental and agency managers a mutual understanding of their respective roles and relationships, agree on priorities, directions, targets and expected levels of performance and evaluation of performance.

Late last year I issued an FOI application directed to the Minister for Environment (Hon. John Hill), who earlier this year was found guilty of misleading parliament. In the application I sought access to documents relating to the minister's involvement in the arts portfolio that detail the establishment 'with the senior departmental managers of a mutual understanding of their respective roles and relationships, including agreements on priorities, directions, targets and expected levels of performance and evaluation of performance as required on page 15 of the Ministerial Code of Conduct.' The answer came back as follows:

> A search was conducted of the records management databases within the office . . . and no documents relevant to your request were found.

Obviously, a simple request to the minister would have been found wanting as well. The response goes on:

> . . . the minister meets fortnightly with Ms Kathie Massey, the Executive Director Arts SA, and it is during these meetings that the above mentioned items are discussed.

So, there we have it: no such documents and some verbal discussions. They appear to talk about the establishment without reducing it to writing. Despite that, I am told that there is a pro forma for CEO performance, one obviously not used by the minister. We all know that Ms Massey resigned last month. In light of this, my questions are:

1. Has the minister signed a document evidencing any agreement or mutual understanding of the respective roles of the minister with his Chief Executive Officer, Mr Hallion?

2. Has the minister signed any document evidencing priorities, directions, targets and expected levels of performance and evaluation of performance with Mr Hallion?

3. If he has not, why has he not?

4. What is the appropriate punishment for a breach of the code of this kind?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I assume the honourable member has put in an FOI request to a number of ministers in relation to this matter. Of course, the chief executive officers of departments are on performance contracts signed by the Premier and chief executive, as was the case with the previous government, where all chief executive officers signed a contract with the Premier. In relation to the performance and expectations of chief executives, as far as my office is concerned I have weekly meetings with the senior executives, including the Chief Executive Officer of my department, in which my expectations in relation to the operations of the department are made quite clear. That is the appropriate way these things are done. Never having been a minister, the honourable member does not understand that good government is about getting results and performance. The honourable member might well reflect on some of the debate we had on the Freedom of Information Act when I made the prediction that, under the Freedom of Information Act and with requests for everything in writing, the inevitable result will be that increasingly less and less will be put in writing.

The Hon. A.J. REDFORD: I rise on a point of order, sir. There are 2¼ minutes left in this question time. We do not have the opportunity to ask a supplementary question.

The PRESIDENT: Order! You will have to put your point of order.

The Hon. A.J. REDFORD: The question is: has he signed any document?

The PRESIDENT: The honourable member will resume his seat. There is no point of order.

The Hon. P. HOLLOWAY: I will go away and examine the question carefully to see what documents comply accurately. I will find out exactly what documents—

Members interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: Good ministers will not be spending their time giving instructions to chief executive officers in writing. Good ministers will keep regular contact with their chief executive officers to ensure that the directions of the department and the performance of the senior executives of the department—

An honourable member interjecting:

The PRESIDENT: Order! I wish the honourable member would remember his responsibilities to the standing orders.

The Hon. P. HOLLOWAY: Obviously, documents have been signed at the appointment of chief executive officers, and I think performance statements have been proposed that will be signed at regular intervals. There are documents. The important thing is that, as any person who has been a minister would know—

An honourable member interjecting:

The Hon. P. HOLLOWAY: It would be completely ridiculous, because if you were to always deal with a chief executive officer in writing, the government of this state would be—

An honourable member interjecting:

The Hon. P. HOLLOWAY: Well, I am not going to do that and I do not think any sensible minister is going to deal with chief and senior executive officers of their department by putting things in writing.

Members interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: If we did, the government of this state would be in chaos. Where it is necessary to provide broad instructions in writing, it will be done. Obviously, in the government's day to day setting of priorities good ministers will have regular contact with their CEOs to ensure there is a continual flow. If you had to respond to every issue and concern which arises in writing, the government would be extremely inefficient.

Members interjecting:

The PRESIDENT: Order! Honourable members have to test their memories. When you entrusted me with the honour of being President I said I would uphold the practices, procedures and protocols of this council in order to maintain the dignity of the council at all times. That requires some cooperation by honourable members. I am tired of constant

interjection when a minister is trying to answer. On almost every occasion, questioners are heard in silence and I expect ministers to have the same right. There are processes for supplementary questions that honourable members can avail themselves of, and I am not going to tolerate people calling for points of order to show dissent.

We had this argument earlier in the year when people complained about the use of points of order. I have looked at the matter. Most of the points of order being called are from people who disagree. In an effort to try to maintain the dignity of this august place, I will ask all honourable members during the break to consider their obligations, because I am considering much tighter application of the standing orders. I hope we can get back to a more dignified situation for the rest of the day.

EMERGENCY SERVICES FUNDING (VALIDATION OF LEVY ON VEHICLES AND VESSELS) BILL

Adjourned debate on second reading.

(Continued from 22 October. Page 440.)

The Hon. R.I. LUCAS (Leader of the Opposition): On behalf of Liberal members, I rise to support the second reading of the Emergency Services Funding (Validation of Levy on Vehicles and Vessels) Bill 2003. This bill seeks to achieve three purposes. Firstly, it validates retrospectively the collection of ESL on motor vehicles and vessels in respect of the financial years 2001-02, 2002-03 and 2003-04. Secondly, it enables the collection of ESL on vehicles and vessels for the remainder of 2003-04, including on additional premium class codes proposed to be introduced for compulsory third party insurance from 1 January 2004. Thirdly, it allows ESL amounts on vehicles and vessels in place at the commencement of the financial year to have ongoing application to vehicles that shift from an existing premium class code to a new premium class code part way through a financial year.

The first reason is obviously the key purpose of the legislation. The government has received some legal advice that the emergency services levy on motor vehicles and vessels has been collected invalidly from the 2001-02 financial year to date. The initial gazettal notice, which was published on 2 June 1999, had application only for financial years 1999-2000 and 2000-01. That gazettal notice states:

> specify that this notice will apply in relation to the following financial years:
>
> (i) in respect of all classes of motor vehicles other than vehicles within classes 18 and 68, and in respect of all vessels—the 1999-2000 and 2000-2001 financial years;
>
> (ii) in respect of motor vehicles within classes 18 and 68—the 1999-2000, 2000-2001, 2001-2002 and 2002-2003 financial years.

It is clear that that initial gazettal notice technically and specifically refers only to financial years 1999-2000 and 2000-01. The opposition has been advised by the government that officers worked under the assumption that, because there had been no changes to the rates since that time, there was no requirement for future gazettal notices. As I said, subsequent legal advice has differed to that administrative interpretation of the original gazettal notice, and that legal advice seems to have indicated to the government that a new notice should have been published before the year 2001-02 but was not, and also no new notice has been gazetted for the subsequent financial years 20002-03 and 2003-04. The first and most significant purpose of the bill therefore is, as I said at the outset, to validate retrospectively the ESL collections on motor vehicles and vessels.

Usually the parliament and Liberal members, in particular, are slow to support retrospective provisions in legislation, although there have been a number of examples in recent years where the parliament and a majority of Liberal members have supported such retrospective provisions. Therefore, the Liberal Party indicates its support for that provision within this bill.

Secondly, when the GST was introduced some three years or so ago, one of the more complicated aspects of the intergovernmental agreement on GST applications was what was to occur in relation to compulsory third party insurance, which in South Australia is managed by the Motor Accident Commission. A complicated agreement was entered into which, if I could summarise it briefly, decided on a transitional period of some three years in which certain GST arrangements, as they related to CTP, were to apply. However, I am advised that, as from July this year, that three-year transitional period has expired. As a result, there will be different arrangements from 1 January 2004 and, as I understand it, due to the expiration of those transitional arrangements for the GST treatment of CTP insurance, new premium class codes for vehicles will have to be introduced from 1 January next year. The bill seeks to clarify that the emergency services levy can still be collected validly at existing rates on vehicles for this financial year.

I should have noted at the outset that the opposition has been prepared on this occasion to expedite the parliamentary consideration of the legislation. This bill was introduced into the parliament, in the House of Assembly, just on seven days ago and it is not usual practice for both houses of parliament to consider important legislation within the one sitting week in less than seven days. Liberal members have been advised that, because of this 1 January deadline and the requirements of government agencies such as the Motor Accident Commission and more particularly the Department of Transport for a six-week leeway to send out required notices for a 1 January start-up, which takes us to about the second or third week of November, and with parliament not sitting again until the second week of November, parliament has been asked to expedite its consideration of the legislation.

I indicate that on this occasion the opposition is prepared to expedite this matter. However, whilst the opposition understands that explanation for the expedition of consideration of the legislation, it did not really receive a valid argument as to why the introduction of the legislation was delayed by the government until such a late stage. I do not intend to delay proceedings other than to place on the record that, having asked the question, we really never got a satisfactory explanation as to why the government delayed the introduction of the bill. If the deadline was to be the middle of November, this legislation should have been introduced at the outset of this parliamentary session, and then both houses of parliament would have had the usual opportunity to consult and to consider the implications of the legislation.

The third and final issue concerns some provisions that will allow emergency services levy amounts on vehicles and vessels in place at the commencement of any future financial year to have ongoing application to vehicles that might shift

from an existing premium class code to a new premium class code part way through a financial year. So, if in three years part way through a financial year the Motor Accident Commission, for whatever reason, was to change the premium class code of an individual vehicle, I am advised that the provisions in the bill will now ensure that the emergency services levy at that existing rate will be able to be validly collected for that financial year.

In conclusion, the opposition has been advised that this bill, which seeks to validate retrospectively ESL collections, will not impose any additional burdens in any of its provisions. We place that advice on the record. That advice, which came from the government and its advisers, was that this was just to ensure the appropriate collection of the emergency services levy at the existing levels, or at the levels that are appropriately set for any future financial year. On that basis, the opposition is prepared to indicate its support for the second reading.

The Hon. IAN GILFILLAN: The Democrats support the second reading. The bill arises from an error of omission. Under the emergency services funding legislation, the government is required to publish a notice in the *Gazette* detailing the ESL payable for motor vehicles in any given financial year. This is set out in section 24 of the act. Section 24(4) provides:

> The notice must be published before the commencement of the financial year or financial years in relation to which it will apply.

However, it seems that, for the past few years, this has not happened. I note that this has occurred while both Labor and the Liberals have been in government. The bill before us is trying to retrospectively validate the collection of the emergency services levy for the years 2001-02, 2002-03 and for the current financial year. The bill also provides an amendment to allow the ESL to be charged on a new class of vehicles under the new compulsory third party structure that is to be introduced in January 2004. We recognise the need to pass this bill but this must, I think, act as a message to the government to be a little more diligent in performing its legislative duties in future.

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I thank honourable members for their indication of support. I have tried to quickly clarify the question asked by the Leader of the Opposition. It is my advice that the particular invalidity that this bill seeks to address was first identified approximately six or seven weeks ago. The bill, obviously, first had to go through the cabinet process, drafting legislation, and then, of course, pass through the House of Assembly. So, it has not taken very long.

I understand that there was crown law advice that it may not be necessary to bring in that second part of the bill, but that it would help to clarify the situation if the second part of the bill was introduced. I hope that that adequately answers the points made by the Leader of the Opposition. I thank the Leader of the Opposition and the Hon. Ian Gilfillan for their contributions, and I look forward to the speedy passage of this bill.

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

CORRECTIONAL SERVICES (PAROLE) AMENDMENT BILL

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation) obtained leave and introduced a bill for an act to amend the Correctional Services Act 1982. Read a first time.

The Hon. T.G. ROBERTS: I move:

> That this bill be now read a second time.

This Bill will amend the Correctional Services Act 1982 to implement the recommendations of the review conducted by the government earlier this year into aspects of the parole system. In April 2003, the Premier announced that the Chief Executive of the Department of the Premier and Cabinet would conduct a review into the Parole Board and its guidelines. The aim of the government in commissioning the review was to ensure that community safety and community interests are priorities in decisions on parole. The terms of reference for the review were to examine:

- whether the Parole Board should have power to refuse parole to prisoners sentenced to less than five years, with particular regard to practices in other jurisdictions;
- the current provisions to which the Parole Board must have regard in reaching a decision to release on parole and report on whether these matters should be strengthened, with particular regard to community interest and safety;
- the most appropriate balance of skills, qualifications and experiences of Parole Board members, having regard particularly to community safety and the interests of victims.

During the review, comparative research was undertaken on the role, functions and constitution of parole boards in all Australian jurisdictions and New Zealand. Key areas examined in the review included:

- the consideration and extent of community interest that the various parole boards must have regard to when considering the parole of a prisoner;
- the conditions for release on parole;
- the skills, experience and qualifications of Parole Board members;
- a possible increase in the number of Parole Board members to enable the board to sit in three divisions rather than two divisions, as at present;
- the operation of the automatic release provisions and the term of imprisonment that triggers consideration by the Parole Board, with particular reference to child sexual offenders.

The Chief Executive reported to the Premier and Minister for Correctional Services in June 2003. It is important to stress that the review was not a comprehensive review of the whole parole system. The government's objective was to achieve a speedy review of those matters which were of major concern to the government and the community. It may be that other matters will be dealt with at a later date.

The review recommended amending the Correctional Services Act 1982 to strengthen the conditions for release on parole to:

- ensure that the paramount consideration of the board in every case must be the safety of the community;
- take into account the impact of the release of a prisoner on a victim and their family and the gravity of the offence and the potential for the prisoner to re-offend;
- remove the requirement for reports relating to the social background of the prisoner.

The review also recommended an expansion of the Parole Board's powers to empower it to refuse parole for child sex offenders serving sentences of less than five years. The government has accepted this recommendation, and has gone further by removing automatic parole for all sex offenders.

With regard to the membership and qualifications of the Parole Board, the review recommended the following:

- the term of appointment for the presiding member be changed from five to three years;
- the criteria for appointment for board members include the need for members to have due regard to, and an understanding of, the impact of criminal offences on victims; and
- an increase in the number of members from six to at least nine to allow for greater community representation and to reflect the values of the public at large.

The bill is based on the recommendations emanating from the review.

Constitution of the Parole Board.

The Parole Board of South Australia is an independent statutory body constituted under the Correctional Services Act 1982. The Parole Board consists of six members appointed by the Governor. The qualifications for membership of the board are set out in section 55 of the act.

The presiding member is appointed by the Governor and must be either a judge, or retired judge, of the Supreme Court or District Court, or a person who has extensive knowledge and experience in the science of criminology, penology, or other related science. One member of the board must be a qualified practitioner who has extensive knowledge and experience in psychiatry. One member must have extensive knowledge of, or experience in, criminology, sociology or any other related science. In addition, the minister nominates three persons to be members. The composition of the board must include a person of Aboriginal descent and at least one man and one woman. Under section 59(1)(a), the Governor must also appoint one of the other members as the deputy presiding member of the board.

The bill amends the provisions relating to the qualifications and appointment of board members. Clause 7 of the bill amends section 56, so that the term of appointment for the presiding member is reduced from five years to three years. This is consistent with the length of tenure for other members of the board and would bring South Australia into line with corresponding provisions in Victoria, New South Wales and New Zealand.

The bill also modifies the qualifications of the presiding member to allow a legal practitioner of at least seven years' standing to be appointed as the presiding member. This is consistent with many other provisions in legislation relating to the appointment of presiding officers to boards and tribunals and will expand the pool of people with legal qualifications who can be appointed as the presiding member.

The bill increases the number of Parole Board members from six to nine. This will allow more community-based representatives to reflect public values. One of the additional members must represent victims of crime and another must be a retired police officer. A consequential amendment will increase the quorum from four to five members. The expansion to nine members would allow the Parole Board to sit in three divisions, instead of two divisions, as at present. However, whether the board sits as three divisions concurrently will depend on the availability of members and workload demands. Consequential amendments will be made to provide for two deputy presiding members. The government believes the amendments to the membership of the board will ensure an appropriate balance of legally qualified members, qualified professionals and community representation so that the interests of the community and victims are properly taken into account.

Role of victims.

The bill will expand the involvement of victims and their families in the parole process. Clause 5 of the bill provides for the establishment of a victims register. This section builds on the current provisions in section 85D(2)(a) of the act that allow for a victim of an offence, or one of the offences for which the prisoner is imprisoned, to register with the Chief Executive Officer of the Department for Correctional Services. Once a person has been entered on the register, he or she will be a registered victim for the purposes of the act. This approach maintains and expands the registration system currently in the act because the government recognises that not all victims want to remain involved in the criminal process.

A survey of victims in 1990 found that, whereas approximately 50 per cent of victim respondents wanted to be informed or actively involved in the parole decision-making process, the other 50 per cent did not necessarily want any involvement. In practice, some victims want to forget, or move on from, the incident and accordingly choose not to register with the department. The department has found that contact with this group of people has the potential to cause them further anxiety and grief.

The Correctional Services Act 1982 and the Victims of Crime Act 2001 already give recognition to victims in the parole process. A victim is already entitled to make written submissions to the Parole Board on questions affecting the parole of a person imprisoned for an offence. In practice, the board writes to registered victims, advising them that they are entitled to submit a written statement to the board setting out their concerns and the impact on them of the prisoner's release.

Clauses 11 and 12 of the bill go further than the current provisions and specifically require the board to consider the impact that the release on parole of the prisoner is likely to have on a registered victim and/or the registered victim's family. The bill also will allow a victim, by prior arrangement with the board, to make submissions in person to the board. These amendments further demonstrate the government's commitment to strengthening victims' rights and recognises their right to be more involved in the criminal justice process, if they elect to do so.

Threshold for applications to the board.

Currently under the act, the Parole Board has no discretion over a prisoner sentenced to less than five years (including prisoners convicted of sexual offences), and those prisoners must be released no later than 30 days after their non-parole period expires. The automatic release of these prisoners is of great concern to the government. The government is concerned that there are some serious offenders in this group—including child sexual offenders—who should not be automatically released at the end of the non-parole period.

Therefore, clause 10 of the bill amends section 66 to remove the mechanism of automatic release for prisoners serving any part of a sentence of imprisonment for a sexual offence. This will allow the Parole Board to exercise its statutory powers in relation to prisoners imprisoned for sexual offences, even when the sentence is for a period of less than 5 years.

The bill will also enable an extension of the Parole Board's jurisdiction to prisoners of a class excluded by the regulations from the automatic release provisions of section 66, provided the prisoner is liable to serve a total period of imprisonment of more than three years.

Conditions of Release: Community/Victim Interest.

Section 67(4) of the act sets out the matters that the Parole Board must have regard to when determining an application for the release of a prisoner on parole. These matters include:

(a) any relevant remarks made by the court in passing sentence;

(b) the likelihood of the prisoner complying with the conditions of parole;

(c) where the prisoner was imprisoned for an offence or offences involving violence, the circumstances and gravity of the offence or offences for which the prisoner was sentenced to imprisonment, but only insofar as it may assist the board to determine how the prisoner is likely to behave should the prisoner be released on parole;

(d) the behaviour of the prisoner while in prison or on home detention;

(e) the behaviour of the prisoner during any previous release on parole; and

(f) any other reports tendered to the board on the social background, the medical, psychological or psychiatric condition of the prisoner, or any other matter relating to the prisoner.

While the Parole Board considers every case on its merits, the review recommended an amendment to ensure that the board, when determining the appropriateness of releasing a prisoner on parole, pays particular attention to the safety of the community and the impact of release of the prisoner on the victim and the victim's family.

Clauses 11(2) and 12(1) of the bill insert new provisions into the act to make it clear that the paramount consideration of the board, when determining an application for parole or fixing or recommending conditions for release of a prisoner on parole, must be the safety of the community. The bill also specifically refers to the impact that the release of the prisoner is likely to have on a registered victim and the registered victim's family.

While some may argue that the Parole Board already takes these factors into account, the amendments are consistent with the government's position that community safety and the impact on victims should be expressly referred to in the statute. The amendment also makes it clear to the board that community safety is to be its paramount consideration.

Currently, under section 67(4)(c) of the act, when a prisoner is imprisoned for an offence or offences involving violence, the circumstances and gravity of the offence or offences for which the prisoner was sentenced to imprisonment may be taken into account by the Parole Board but only insofar as it may assist the board to determine how the prisoner is likely to behave should the prisoner be released on parole. This provision will be amended to remove the need to relate the circumstances and gravity of the offence to the prisoner's future behaviour. This is not intended to allow the Parole Board to substitute its own opinion as to the appropriate length of sentence but rather to ensure that, when making a decision on parole, the board takes into account all relevant information. The government believes that the circumstances surrounding the offence and the gravity of the offence are relevant for this purpose. A number of other states have similar provisions in their parole legislation.

Section 67(4)(f) requires the Parole Board to have regard to any reports tendered to the board on the social background, the medical, psychological or psychiatric condition of the prisoner, or any other matter relating to the prisoner. The bill will amend this section to remove the reference to reports on social background. The new provision will require the board to have regard to any reports tendered to the board on matters relating to the prisoner including, for example, medical, psychological or psychiatric reports and reports from community corrections officers, or other officers or employees of the department.

Transitional provision.

The bill includes transitional provisions so that the amendments will apply to prisoners serving sentences of imprisonment immediately before the commencement of the schedule, regardless of when they were sentenced. This will mean that some prisoners sentenced to a term of imprisonment, when there would be automatic parole under section 66, will now have to apply to the Parole Board for release.

While some may criticise this as being unfair on those prisoners, the government makes no apology for this position. It is consistent with the government's commitment to protecting the community. The amendment will mean that those prisoners cannot be released automatically, but rather they will have to apply to the Parole Board. It will then be for the Parole Board to consider the application, taking into account the matters set out in the act. The transitional provisions also make it clear that a member of the board holding office immediately before the commencement of the act will continue in office for the balance of his or her term. The government believes the change in the bill will improve the way in which parole laws operate in this state. I commend the bill to members. I seek leave to have the explanation of the clauses of the bill inserted in *Hansard* without my reading it.

Leave granted.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Correctional Services Act 1982*

4—Amendment of section 4—Interpretation

This clause inserts additional definitions for the purposes of the amendments dealing with the proposed Victims Register and applications for parole.

5—Insertion of section 5

There is to be a Victims Register kept for the purposes of the *Correctional Services Act 1982* (the ***principal Act***) in which is to be recorded the contact details of those victims of offences for which prisoners are serving sentences of imprisonment who wish to be contacted with information about the prisoner. The Victims Register is relevant for the purposes of Part 6 and section 85D of the principal Act .

6—Amendment of section 55—Continuation of Parole Board

The membership of the Board is to be increased from 6 to 9 members. There is to be a presiding member (who must have judicial experience or be a legal practitioner of some seniority with experience in the criminal justice system) .

7—Amendment of section 56—Term of office of members

The term of all members is not to exceed 3 years (although they are eligible for reappointment).

8—Amendment of section 59—Deputies

There are to be 2 deputy presiding members (instead of the current one deputy presiding member).

9—Amendment of section 60—Proceedings of the Board

These amendments are consequential on the proposal to have 2 deputy presiding members.

10—Amendment of section 66—Automatic release on parole for certain prisoners

Currently, all prisoners who are liable to serve a total period of imprisonment of less than 5 years and for whom a non-parole period has been fixed must be released on parole by the Board at the end of the non-parole period. The proposed amendment provides that this does not apply to—

(a) a prisoner if any part of the imprisonment for which he/she was sentenced is in respect of a sexual offence (as defined); or

(b) a prisoner of a class excluded by the regulations from the application of that provision, with the proviso that the regulations cannot exclude a prisoner liable to serve a total period of imprisonment of 3 years or less.

11—Amendment of section 67—Release on parole by application to the Board

Section 67 (as amended) will apply to a prisoner if—

(a) section 66 (as amended) does not apply to the prisoner; and

(b) a non-parole period has been fixed for the prisoner; and

(c) the prisoner is not serving an indeterminate sentence.

The proposed amendments provide that the paramount consideration of the Board when determining an application by a prisoner for release on parole must be the safety of the community. Among other matters that must be taken into consideration is the impact that the release of the prisoner on parole is likely to have on the registered victim and the registered victim's family.

12—Amendment of section 68—Conditions of release on parole

The proposed amendments provide that the paramount consideration of the Board when fixing conditions to which the release of a prisoner on parole will be subject must be the safety of the community. Among other matters that must be taken into consideration is the impact that the release of the prisoner on parole is likely to have on the registered victim and the registered victim's family.

13—Amendment of section 77—Proceedings before the Board

The proposed amendment provides that if an application for parole is made to the Board, the following persons must be notified of the time and day fixed for the hearing:

(a) the prisoner to whom the application relates;

(b) the Chief Executive Officer;

(c) the Commissioner for Police;

(d) the relevant registered victim, if any (except where the registered victim has indicate to the Board that he/she does not wish to be so notified).

The registered victim may make submissions to the Board in writing or, by prior arrangement, in person.

14—Amendment of section 85C—Confidentiality

Information derived from the Victims Register is confidential information.

15—Amendment of section 85D—Release of information to registered victims etc

This amendment is consequential on new section 5.

Schedule 1—Transitional provision

The Schedule makes provision for transitional arrangements consequent on the passage of this measure.

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

UNIVERSITY OF ADELAIDE (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 23 September. Page 175.)

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I thank honourable members for their contributions. I understand that there are still some outstanding differences between government and opposition. I will not make a long, drawn-out summing up, and those differences that we have in relation to the progress of this bill we will sort out in the committee stage.

Bill read a second time.

In committee.

Clauses 1 to 7 passed.

Clause 8.

The Hon. R.I. LUCAS: I note that clause 8 gives the university power—for the first time, as I understand it—to confer honorary awards on persons. I do not intend to delay the committee stage by outlining my views on that at any great length other than to indicate that I guess most other universities, and I am not sure whether it is all, have the power to confer honorary awards. Certainly, it is not a system that I am overly attracted to (and I am trying to be nicely understated here), given some of the people who have been given honorary awards by various universities in Australia and around the world. Has the government been advised by the university what processes and procedures it intends to follow, if any, in relation to the sorts of people who might be acknowledged by an honorary award of the university?

The Hon. T.G. ROBERTS: I understand there are already rules and procedures for conferring academic titles on persons who are not members of the academic staff of the University of Adelaide and that the same procedure would be used for this process.

The Hon. R.I. LUCAS: Can I clarify the advice the minister has given the committee? Perhaps I have misread this. As I understand honorary awards, we are not talking about academic staff. This could be a prominent politician or prominent movie actor or prominent astronaut, or whoever else, and the university decides to make them an honorary professor or doctor of the university. Politicians seem occasionally to attract these sorts of honorary degrees from universities. Am I misreading this particular provision? If I am not, I repeat the question—that is, as I understand it, this is a new power that the University of Adelaide has, as opposed to other universities: has the university indicated what its processes will be to decide whether the Hon. Terry Roberts, say, when retired, will become an honorary doctor of the University of Adelaide?

The Hon. T.G. ROBERTS: Do you mean awards being conferred?

The Hon. R.I. LUCAS: I am not sure. Does an award include a degree?

The Hon. T.G. ROBERTS: Yes.

The Hon. R.I. LUCAS: Yes, that is what I am talking about.

The Hon. T.G. ROBERTS: There are already awards and doctorates procedures and processes that the Adelaide University and Flinders University have for this process, and I am told that strict application of those procedures would apply when those awards were being conferred.

The Hon. R.I. LUCAS: I thank the minister for clarifying that there is an existing power of the University of Adelaide and I was wrong to think otherwise. What, then, is new subclause (2a) doing? That is, is this an additional power? Why is that particular provision of the parent act being amended? The minister has clarified that the university has already (under clause 6(2a) of the parent act) the power to admit a person to an honorary degree of doctor at the university. Is this broadening it from being just a doctor of the university to, in essence, other honorary degrees as opposed to being a doctor of the university?

The Hon. T.G. ROBERTS: Yes.

Clause passed.

Clauses 9 to 11 passed.

Clause 12.

The Hon. R.I. LUCAS: I move:

Page 7—
Lines 8 to 12—
Delete subclause (1) and substitute:
(1) The Council may, by instrument in writing, delegate any of its powers or functions under this act to the holder of a particular office or position in the university.
Line 13—
After 'delegated' (first occurring) insert:
to the Vice-Chancellor
Lines 15 to 19—
Delete subclause (3)

I indicate at the outset that I have a series of amendments that I am hopeful will be supported by at least a majority of members of the Legislative Council, even if the government is opposing it. I therefore do not intend to speak at length in committee. It may well be that a number of these amendments will pass the Legislative Council and will then need to be resolved by the normal processes once the bill returns to the House of Assembly when the government will need to decide its position. Unless there is anything different to that, I will speak as briefly as I can. The first and subsequent two amendments are related.

They are, in essence, a change to the delegation provisions of the university act. There has been very strong opposition from within the university community to the prospect of the university council's being able to delegate all of its powers down to a very small subcommittee of the council. Not to put too fine a point on it, I think that some people are concerned that a chancellor may, with a small group of council members, be given the power to (by delegation clause to a subcommittee of the council) make some important decisions, which the rest of the council and the community believes ought to remain the province of the university council.

I am sure that some people within the university council and the government will argue that that is not the intention and never has been. Some concern was expressed in recent years about the formation of what was called the Chancellor's Committee, about which a number of members have received correspondence. Again, I am sure that we will or could hear both pro and con arguments in terms of the intentions of that Chancellor's Committee. This set of amendments is seeking to make it clear that these delegation powers can be to delegate powers and functions to the holder of a particular office or position.

The second amendment will make it clear that that would be only if it is delegated to the Vice-Chancellor. The Vice-Chancellor will be able to subdelegate further. If, however, it is delegated to anyone other than the Vice-Chancellor, that office holder will not be able to subdelegate further. The scheme of arrangement, if I can put it that way, is to allow the council to delegate, as is appropriate, certain powers and functions to holders of particular offices or positions, but not to delegate to a committee. If in the event there is a delegation to the Vice-Chancellor, he or she could further subdelegate to someone else, but only the Vice-Chancellor would be able to do that.

As I said, the amendments are a package. The third amendment would delete subclause 3. It is the opposition's advice that that particular subclause is not really required. Most of the provisions are either picked up in our other amendments or they are self-evident anyway, I am told, in terms of normal statutory interpretation.

The CHAIRMAN: Is it the Hon. Mr Lucas's understanding that, if his first amendment collapses, the others collapse, too?

The Hon. R.I. LUCAS: Yes.

The Hon. T.G. ROBERTS: To make life easier for the committee and for the honourable member moving the amendments, the government is prepared to accept several of the amendments proposed by the Hon. Rob Lucas in order to facilitate a speedier passage of this legislation. These include amendments Nos 1, 2 and 3 regarding the delegation of powers of the council.

The Hon. R.I. LUCAS: Hear, hear!

Amendments carried; clause as amended passed.

Clause 13 passed.

Clause 14.

The Hon. R.I. LUCAS: I move:

Page 8, after line 11—
Insert:
(1a) Section 12(1)b)—delete 'appointed by the Chancellor' and insert:
, three of whom are appointed by the Chancellor and three by the presiding member of the Graduate Association (but at least three members of the selection committee must be graduates of the university),

This amendment relates to the second issue I addressed in my second reading contribution. There has been, again within the university community, some debate about the constitution of the committee, which is established under section 12(1)(b) of the parent act, which provides:

The Council will consist of the following members:
(b) seven persons appointed by the Council, on the recommendation of a selection committee (which consists of the Chancellor and six other persons appointed by the Chancellor in accordance with guidelines determined by the Council);

There is, under the existing act, considerable flexibility for the Chancellor in terms of choosing the selection committee. That selection committee is responsible for recommending the seven persons to be appointed by the council to go on the council. For those of us not currently well versed in university politics, we would describe these people as the independent members of the council. That may or may not be a strictly accurate description of the clause but, certainly, as I said, from my perspective, that is the way in which I would view this provision.

Certainly, there is strong argument for having independent people on the university council. My amendment tries to indicate that there should be some gentle restriction on the constitution of the selection committee. As I said, the current act allows considerable flexibility for the Chancellor and the six other persons appointed by the Chancellor, in accordance with guidelines determined by the council, to go on that selection committee. My amendment indicates that three of those persons will be appointed by the Chancellor and then three will be appointed by the presiding member of the Graduate Association.

As we will discuss later, the government and the university community seem to have accepted that the Graduate Association is, in fact, the Alumni Association. Again, I cannot remember whether I declared an interest in the second reading, but I am a member of the University of Adelaide Alumni Association, but I am not the presiding member, so I do not have to declare an interest to that extent. The six extra persons, other than the Chancellor, would be three appointed by the Chancellor, so that he or she retains some flexibility with respect to appointing people whom he or she wants. And three would be appointed by the presiding member of the Alumni Association.

Also, there would be another restriction in that at least three members of the selection committee would need to be

graduates of the university. I accept that that last provision does mean a slight degree of potential complication. I do not think that, in practice, that will be the case. I suspect it will be highly likely that at least the three persons appointed by the presiding member of the Graduate Association will be members of the Alumni Association who, by definition, will be graduates of the university, anyway.

I suspect that at least some of the three nominated by the Chancellor will be graduates of the university, but they do not have to be graduates of the university. So, there may well need to be some tick-tacking by the Chancellor to ensure that this provision includes the Chancellor and the presiding member of the Alumni Association, but with goodwill I am sure that the intention of this amendment can be met easily by the Chancellor and the presiding member of the graduate association.

The Hon. KATE REYNOLDS: The Democrats have some concerns about the inclusion of the term 'graduate association' in the bill, because in fact no such association exists. I have sought advice from the minister and I would like to place on record correspondence forwarded to me by the minister on 31 September and co-signed by the Vice Chancellor, Professor James McWha, and the President of the Alumni Association, the Hon. Greg Crafter. In that correspondence they said:

> It has come to our attention that there is some concern about the general term 'Graduate Association' in the University of Adelaide (Miscellaneous) Amendment Bill 2003. This matter has been discussed and we wish to advise that it is understood that Graduate Association means the university of Adelaide Alumni Association. However it is appropriate to use the term 'Graduate Association' in the University of Adelaide (Miscellaneous) Amendment Bill 2003.
>
> The Bill has been drafted in its current form on advice that this would provide the maximum flexibility for the University, should there be a name change from time to time, which would not require further amendments to the Act. The University has full confidence in the Alumni Association and the Alumni & Community office to maintain and provide an accurate electoral roll of graduates of the University and their current address. There is a safeguard in that the Council has the authority to determine the manner of the election after consultation with the presiding member of the Graduate Association. Further, the Alumni Association Constitution requires Council to approve the Chair and Pro Chair, the Constitution, including variations, and to approve the Annual Report.

Whilst we still have some concerns about the lack of democratic process in the conduct of elections or appointments, we do not consider it possible to attempt to change the constitution of the University of Adelaide in regard to this bill, so we will support this amendment.

The Hon. T.G. ROBERTS: The government is prepared to agree to this amendment.

Amendment carried; clause as amended passed.

Clauses 15 and 16 passed.

Clause 17.

The Hon. R.I. LUCAS: I move:

Page 9, lines 14 to 19—
Delete subclauses (2) and (3)

It is probably reasonable—unless someone wants to argue to the contrary—that this amendment and the next three amendments are all related. I will clarify that in a moment. This issue of introducing significant penalties to University of Adelaide Council members has significantly divided the University of Adelaide community. In this case, it involves maximum penalties of $20 000 and, later, maximum penalties of $20 000 or imprisonment for four years, so they are very significant penalties on university council members. I have said in my discussions with people on this bill that I can understand both sides of this debate. The university community debate generally has been that we have hard-working people of goodwill who, for many years in some cases, have worked assiduously on the University of Adelaide Council who and have never had the threat of imprisonment or significant financial penalties hanging over their head in terms of their acting on the council. Unless it has changed—I do not think it has—members of the council are not paid for the privilege of serving on the University of Adelaide Council.

On the other hand, I understand that the government's position has been that, in some recent amendments that have gone through the parliament in respect of a number of other bodies and organisations, similar penalties of imprisonment and significant financial penalties have been imposed on the board members of those organisations. As I understood the government's position, if it was reasonable enough for the people in those other positions then the threat of imprisonment and significant financial penalty should be held over the University of Adelaide Council members as well. As I said, I accept that there are two sides to this argument and, as with many arguments, it is not simply black and white: there are obviously shades of grey. I have to say that my inclination and certainly the Liberal Party's position has been very strongly to support the broader educational community view in relation to this issue. That is, that these sorts of threats of imprisonment and significant financial penalty should not be held over the heads of University of Adelaide Council members.

The second point that I have made in some of the discussions I have had is that, if the government is of the view that University of Adelaide Council members should have the threat of imprisonment and significant financial penalty over their heads, the government should also have that view for the council members of Flinders University and the University of South Australia. It would certainly be unfair to have imprisonment or significant financial penalties hanging over the head of someone serving voluntarily on the council of the University of Adelaide when a similar person may be serving on the council of Flinders University or the University of South Australia and not have the threat of imprisonment or significant financial penalty hanging over their head.

The view I put to the government and others is that, if the government wants to have this view tested in the parliament, it should not do so in this bill, which seeks just to amend the University of Adelaide Act. The government should come back to the parliament with a bill which seeks to amend the three acts as they relate to the three universities in South Australia and argue a consistent case that the threat of significant financial penalty and the threat of imprisonment for up to four years should hang over the heads of university council members for all three universities.

I think that at that stage the parliament should again be asked to consider whether or not we want to accept that across the board. I suspect the Liberal Party's view will still be to oppose it. I cannot say that at this stage; that is the province of the shadow minister, the member for Bragg, and the Liberal parliamentary party room. As I said earlier, I accept that this is not a black and white issue. I accept that in some cases these days universities are managing multimillion dollar businesses and making multimillion dollar decisions, and therefore the potential exists for some council members to be exposed to temptations that board members in other circumstances may also be exposed to, so that the government has argued that penalties ought to hang over their heads if

they behave inappropriately. That issue is best left for a debate through amendment to the three university acts. In conclusion, on both those grounds, a series of amendments can be addressed sensibly as a package here. I will not repeat the arguments. For both these reasons, I urge support for this amendment which, in essence, seeks to remove the penalty provisions from the legislation.

The Hon. T.G. ROBERTS: I indicate that the government will oppose these amendments. The penalties are consistent with those applied to members of boards of public corporations. Similar penalties exist in the Adelaide Festival Corporation Act, the Dried Fruits Act, the National Wine Centre Act and are consistent with the Criminal Law Consolidation Act. The intent of the bill is consistent with the Statutes Amendment (Honesty and Accountability in Government) Bill 2002 (a bill that will replace the Criminal Law Consolidation Act) that will ultimately override all other legislation in defining penalties for abuse of office.

Given the changing climate and increasing commercialisation of universities, the inclusion of steeper penalties, though controversial, is a matter of consistency and sets a precedent for accountability of university councils. Two higher education providers, the Australian National University and the Maritime College, include in their acts penalties relating to dishonesty. Both reference the Commonwealth Authorities and Companies Act 1997. While it is the sincere hope of the government that no situation will arise whereby the penalties are invoked, their presence in the act will remind council members of their serious attention to sound management of the university. Amendments 5, 6, 7 and 8 are therefore opposed by the government.

Amendment carried.

The Hon. R.I. LUCAS: I believe that my next amendments 6, 7 and 8 are consequential. I move:

Page 9—Line 23—Delete 'Maximum penalty: $20 000 or imprisonment for 4 years.
Line 36—Delete 'Maximum penalty: $20 000.'
Page 10—Line 22—Delete 'Maximum penalty: $20 000.'

Amendments carried.

The Hon. R.I. LUCAS: I move:

Page 10, lines 25 and 26—Delete an associate of the member and insert:
the member's spouse or a relative of the member,

This amendment seeks to delete an associate of the member and insert the member's spouse or a relative of the member. I understand that the next amendment is part of this package which will define 'relative' and 'spouse'. I understand that there have been some discussions among all parties—the university, the government and the opposition—and, as I said, I am informed that the government is likely to support these.

The Hon. T.G. ROBERTS: We support the amendments.

Amendments carried.

The Hon. R.I. LUCAS: I move:

Page 10, line 32 to page 11, line 15—Delete subclauses (10) and (11) and insert:

(10) In this section—
relative of a person means the spouse, parent or remoter linear ancestor, son, daughter or remoter issue or brother or sister of the person;
spouse includes a putative spouse (whether or not a declaration of the relationship has been made under the Family Law Relationships Act 1975)

Amendment carried.

The Hon. R.I. LUCAS: I am advised that amendments 11 and 12 are consequential on our earlier debate on the removal of penalties, which involved amendments 5, 6, 7 and 8, so I therefore move:

Page 11—
Lines 20 to 27—Delete subclause (1)
Lines 29 and 30—Delete '(whether or not proceedings have been brought for the offence)'

Amendments carried; clause as amended passed.

Clause 18.

The Hon. R.I. LUCAS: I move:

Page 11, line 37—
After 'sections' insert:
and substitute:
18—Annual meeting
(1) The Council must, within two months of the commencement of each financial year, convene and attend an annual meeting of the University community.
(2) The Vice-Chancellor, or in the absence of the Vice-Chancellor, a member of the Council chosen by the Council, must preside at a meeting convened under subsection (1).
(3) At least 28 days notice of a meeting under subsection (1) must be given in a manner determined by the Council.
(4) The business and procedures of a meeting under subsection (1) will be determined by the Council.
(5) In this section—
University community means the Council, members of the academic staff, members of the general staff, graduates and students.

There has been considerable debate in the university community about the removal of the senate. The Liberal Party spokesperson in this area, the member for Bragg, has outlined publicly and in another place her arguments for an annual meeting which would allow interested persons to be informed of the processes of the university and ask questions as appropriate under certain procedures that would apply to the annual meeting. The university community is described broadly as the council, members of the academic staff, members of the general staff, graduates and students. It is an imperfect analogy but perhaps akin to a shareholders' meeting and, so, with the indication that there is likely to be support from the government, I have moved my amendment.

The Hon. T.G. ROBERTS: I am not sure whether there is support but we will not be opposing the amendment. This amendment establishes by statute a practice already observed by the university to hold an annual meeting of the council with the university community in order that the performance of the council can be reviewed in an open manner. The university has indicated that it is willing to formalise this practice and the government will therefore not oppose this amendment.

Amendment carried; clause as amended passed.

Remaining clauses (19 to 23) passed.

Schedule.

The Hon. T.G. ROBERTS: I move:

Clause 4, page 14, lines 12 to 15—
Delete clause 4 and substitute:

4. On the commencement of section 14(4) of this Act, a member of the Council holding office under section 12(1)(g) of the principal Act will vacate his or her office, and the Council may, in a manner determined by the Council after consultation with the Presiding Member of the Students Association of the University, appoint one postgraduate student and one undergraduate student to the council.

This is a transitional amendment found necessary after recent elections did not bring about the necessary result to uphold the act.

The Hon. R.I. LUCAS: I suggest to the minister that he report progress. The opposition has not had an opportunity to consider this. Some discussions are going on which may

well allow us to proceed later this afternoon. The survey bill has to be done, so, if the minister is prepared to report progress, we can handle the survey bill and it may well be that the discussions that are being conducted will enable the opposition to support the amendment. I have not seen it, I do not understand the need for it yet, and at this stage I am not in a position to be able to support it. If the minister reports progress, we might be able to return to this matter after the debate on the survey bill.

Progress reported; committee to sit again.

SURVEY (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 22 October. Page 441.)

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I thank members for their contributions. I understand that there is general agreement on the introduction of the bill with the exception of one clause. I hope that we have rapid progress in the committee stage to finalise the bill, and speedy passage to another place.

Bill read a second time.

In committee.

Clauses 1 to 21 passed.

Clause 22.

The Hon. CAROLINE SCHAEFER: I am very tempted to say 'Have a look at yesterday's speech', but I will not go down that path. The opposition's view is that, while there is some saving of time in objections being able to be lodged only once, we believe that it allows more opportunity for people to object, under the present circumstances, and we believe that, in some cases, there may be a need for compensation to be payable as a result of a landowner's being disadvantaged by the decision on boundaries. The opposition opposes this clause on those two grounds.

The Hon. A.L. EVANS: Family First also feels that compensation should be payable, despite the difficulties there may be, if people have lost land. I support the Liberal Party's position.

The Hon. IAN GILFILLAN: We are sympathetic to the opposition's position. Is the minister able to give any details of the number of instances, and the amounts, where compensation has been paid or was payable over a previous time frame—12 months, or whatever? Do the advisers have any data that can be provided to the chamber?

The Hon. T.G. ROBERTS: My advice is as follows:

> The Surveyor-General must give notice of the terms of an approval and, if a plan is approved with modification, a brief description of the reasons for the decision as to those terms—
>
> (a) to the surveyors responsible for the survey; and
>
> (b) to all persons who made objections under this section; and
>
> (c) to all persons who have, since the date of notification under subsection (4), acquired a registered interest in land by reason of which they would have been entitled to be notified under subsection (4) if they had held that interest at that date; and
>
> (d) where a plan approved with modification, to all persons entitled to be notified under subsection (4) who continue to hold the registered interest in land by reason of which they were so entitled and whose registered interest is affected by the modification.

I think that means that we can do the second notification.

The CHAIRMAN: The Hon. Mr Gilfillan might like to clarify his position.

The Hon. IAN GILFILLAN: Yes. The nub of my question was: what is the history of claims for compensation and compensation that was paid in a previous period of time? I am not sure whether the adviser has any data with him, but I would be interested to hear that information.

The Hon. T.G. ROBERTS: There has been one appeal since my birth.

The Hon. IAN GILFILLAN: The very eloquent shadow minister for agriculture, Caroline Schaefer, answered the question: she said 'Once in a blue moon'. Obviously, we now know the time frame between blue moons! This consolidates our view that there is no point in taking away the right—maybe every blue moon there is a genuine case for compensation. Why knock it out? We will support the move initiated by the opposition to oppose clause 22.

Clause negatived.

Remaining clauses (23 and 24), schedules and title passed.

Bill reported with an amendment; committee's report adopted.

Bill read a third time and passed.

STATUTES AMENDMENT (EXPIATION OF OFFENCES) BILL

Adjourned debate on second reading.

(Continued from 21 October. Page 400.)

The Hon. IAN GILFILLAN: I rise to indicate the Democrats' support for this bill. The bill effectively stops a number of offenders from slipping through the net by using delaying tactics and exhausting the time limit for issuing notice of the offence. It is currently possible for a vehicle owner to provide a statutory declaration to the effect that they were not driving the vehicle at the date and time of the offence, and that is a credible defence. Where the driver of the vehicle is identified in this declaration, a new expiation notice is drafted in the name of the identified driver. This process can continue back and forth, allowing the clock to be exhausted. With the new bill before the parliament in the other place adding demerit points to offences captured by traffic cameras, it is very likely that this behaviour will increase. It is reasonable to postulate that drivers may have their expiation notices paid by their employers or treated as an ordinary cost of doing business. But demerit points can prevent a driver from holding a licence and this is not easily shrugged off.

This bill allows the issuing authority 12 months in which to issue the expiation notice where a statutory declaration as to the identity of the driver has been provided. It also provides for a new expiation notice to be produced where a simple error of fact has occurred, such as the misspelling of the driver's name or the name of the street where the offence took place.

Finally, I note that there is an unrelated provision to tidy up a loophole to facilitate the forfeiture of drugs, drug-growing equipment and drug-using implements, when a cannabis expiation notice is enforced by the courts. While the Democrats are far from convinced that we have an ideal circumstance with the current laws dealing with cannabis in South Australia, I certainly agree with the principle that there must be even-handedness under the law.

It is not reasonable for people who, voluntarily, expiate their cannabis offences to be treated more harshly than those who have their expiation enforced by the courts. This bill addresses this unusual oversight and makes the forfeiture of drugs, drug-growing equipment and drug-using implements automatic when the offender does not, voluntarily, expiate

their offence. I indicate support for the second reading of the bill.

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

PARLIAMENTARY COMMITTEES (FUNCTIONS OF ECONOMIC AND FINANCE COMMITTEE) AMENDMENT BILL

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

STATUTES AMENDMENT (ANTI-FORTIFICATION) BILL

The House of Assembly agreed to the amendments made by the Legislative Council without any amendment.

SUMMARY OFFENCES (VEHICLE IMMOBILISATION DEVICES) AMENDMENT BILL

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

STATUTES AMENDMENT (DIVISION OF SUPERANNUATION INTERESTS UNDER FAMILY LAW ACT) 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 seeks to amend the *Judges' Pensions Act 1971*, the *Parliamentary Superannuation Act 1974*, the *Police Superannuation Act 1990*, the *Southern State Superannuation Act 1994*, and the *Superannuation Act 1988*, to complement the requirements of Part VIIIB of the *Family Law Act 1975* (Cth), enacted by the Federal Parliament under the *Family Law Legislation Amendment (Superannuation) Act 2001*.

Part VIIIB of the *Family Law Act 1975* provides that a superannuation interest in a scheme is "property" for the purposes of the *Family Law Act*. This means that as from 28 December 2002, which was the date on which the *Family Law Legislation Amendment (Superannuation) Act 2001* came into operation, accrued superannuation benefits have been property that can be split and shared with the former partner to a marriage. Until the recent changes to the *Family Law Act*, a superannuation benefit of a member of a scheme could not be split and shared with a former partner to a marriage, and the Family Court could only take into account the value of superannuation as a "financial resource".

Whilst the new Part VIIIB of the *Family Law Act 1975* sets out the framework for the superannuation splitting arrangement, its implementation is very complex. This complexity is evidenced by the 230 pages of regulations, already published under the *Family Law Act*, that prescribe the detail of the arrangement.

The new Commonwealth law has the potential to impact on a person who has an interest in any superannuation scheme, be it a private sector or public sector scheme. Accordingly, the new Commonwealth law applies to an interest in a superannuation scheme established under one of the before mentioned State Acts, which establish those public sector schemes under the regulatory control of the State Government. In general terms the provisions apply to all marriages that have broken down, irrespective of whether there has been a divorce between the spouses, provided there is not in force at the date that Part VIIIB of the *Family Law Act* comes into operation, a Section 79 property order or a Section 87 maintenance agreement.

The new Family Law provisions will enable persons entering into a marriage to include in a pre nuptial financial agreement, an agreement that deals with superannuation in circumstances where the marriage subsequently dissolves. The provisions also enable the parties to a marriage that has broken down to enter into an agreement specifying how the member spouse's interest is to be split and shared with the non-member spouse. Where the parties cannot agree the terms of a split of the superannuation interest, the Family Court will issue an Order giving directions on how the member spouse's interest is to be split. Trustees of superannuation schemes are bound by these superannuation agreements or Family Court orders.

Where a superannuation agreement is entered into between the spouses, the agreement can specify a 'base amount' or a percentage of the total value of the member spouse interest that is to be provided to the non-member spouse. The proportions of the split are determined by the spouses themselves in constructing a superannuation agreement. The option of not splitting a superannuation interest and using other property as an offset will continue to be available to the parties.

Due to constitutional reasons, the *Family Law Act* can only deal with the matter of how payments or benefits from a superannuation scheme, called "splittable payments", are to be split at the point when a benefit is paid. The Commonwealth cannot require schemes to create a separate interest for the non-member spouse and reduce the member spouse benefit before the member actually receives a benefit or splittable payment. However, it is generally accepted within the superannuation industry and amongst family law practitioners that it is in the parties' best interest for a splitting of the member spouse's interest to occur as soon as practicable after the splitting instrument is served on the trustees. This is called the "clean break" approach and it is the approach that the State Government has adopted for its superannuation schemes.

Accordingly, the Bill before the Parliament complements the requirements of the *Family Law Act* and amends the State superannuation legislation establishing schemes, implementing the "clean break" approach under which a separate interest for the non-member spouse is to be created as soon as practicable.

Under the Bill before the Parliament, the rules of the State's superannuation schemes are to be amended to provide for the splitting and creation of a separate interest for the non-member spouse, and a reduced benefit for the member spouse, on service of the splitting instrument on the relevant Board. The reduction in the member spouse accrued benefit, to the extent of the share provided to the non-member spouse, will take effect from the Commonwealth prescribed operative time. The approach being proposed under this legislation before the House therefore, is that even while a benefit is continuing to accrue to the member spouse because he or she is still working, and may be many years away from retirement, the non-member spouse's share of the member spouse's interest will be removed and placed in an account in the non-member spouse's name as soon as possible after the splitting documents are served on the administrator. Irrespective of the scheme to which the member spouse belongs, where the member spouse has not terminated their service, or they have a preserved benefit, the new interest to be created for the non-member spouse will be in the form of a lump sum. Where the accrued benefit or part of the accrued benefit is a defined benefit, the lump sum to be rolled over as an interest for the non-member spouse is to be determined on the basis of a set of actuarially determined factors, applicable to the particular scheme, and approved by the Commonwealth Attorney General. Unless scheme specific factors are approved by the Commonwealth Attorney General, the *Family Law Act* requires that the standard generic factors prescribed under the *Family Law (Superannuation) Regulations 2001* be applied. The Government has made application to have scheme specific factors approved for all the defined benefit schemes as the standard Commonwealth prescribed factors are not appropriate for the State Government schemes.

The Bill also provides that the new interest to be created for a non-member spouse may be rolled out to a regulated superannuation scheme nominated by the non-member spouse, or rolled into (or continued to be maintained in) the Triple S Scheme. The Triple S Scheme is the State Government's accumulation style scheme established under the *Southern State Superannuation Act*. Where no

specific instructions are provided within 28 days of the relevant Board advising the non-member spouse that his or her interest must be rolled over to some other nominated scheme, the legislation provides that the non-member spouse's interest will be retained in the Triple S Scheme.

Due to the difficulty in determining the accrued benefit of a Member of Parliament where the member has not completed six years of service, the amendments proposed for the *Parliamentary Superannuation Act* provide for the Board to defer creating the separate interest for a non-member spouse until the member spouse attains six years of service or ceases to be a member of the Parliament, whichever first occurs. The difficulty in this area relates to the fact that the member's accrued benefit may either be a lump sum or a pension, depending on whether the member remains a member until completing six years service. A similar provision applies in the amendments being proposed for the *Judges' Pensions Act*, where generally a pension is not available until the judge has served 10 years and attained 60 years of age.

The Bill also sets out the arrangement that will apply where a pension benefit that is already in payment is to be split in accordance with a splitting instrument. This could be the situation where a couple who have been retired for a number of years decide to separate as a consequence of marriage breakdown. In such circumstances, the non-member spouse will be provided with several options. The first option is for the non-member spouse to receive his or her share of the member-spouse pension as an ongoing pension. As this pension is a share of the member-spouse interest, the pension will be payable for the life of the member-spouse, as provided for under the *Family Law Act*. The second option is for the non-member spouse to elect to convert his or her share in the interest into an 'associate pension', which will be a pension payable to the person in their own right. An 'associate pension' will be indexed and payable for the lifetime of the person, but not have any reversionary entitlements attached to it. The factors for the conversion of a non-member spouse interest in a pension to an 'associate pension' shall be actuarially determined and prescribed in regulations. The legislation also provides some flexibility for the non-member spouse, in providing an option for the initial share of the member–spouse pension to be commuted to a lump sum. Commutation of pensions will be at the standard rate for age commutation factors. The Bill provides that the non-member spouse must make a decision in regards to commuting the pension to a lump sum within a prescribed period. It is envisaged that the prescribed period will be 3 months. In relation to persons already in receipt of a pension, it is clear that there are additional matters and issues that the non-member spouse will need to consider. The Government will be asking the relevant Superannuation Boards to ensure that in these circumstances, the non-member spouse is made fully aware of his or her options together with the benefits and disadvantages associated with these options.

It is important to note that the amendments being proposed in this Bill only apply to the breakdown in cohabiting relationships between two *married* persons, and do not deal with the breakdown in cohabiting relationships between defacto partners. Similar legislation dealing with the breakdown in relationships between defacto partners cannot be introduced until the power to legislate in respect of de facto relationships has been referred to the Commonwealth. Alternatively, the States need to enact legislation to provide for an arrangement similar to that which is about to come into operation for married partners. Even if the States are left to enact legislation to provide a similar arrangement, the Commonwealth will be required to enact amendments to deal with the transfer between funds of the superannuation interests of defacto partners. Resolution of this issue is under discussion with the Commonwealth. Until there is a resolution in this area, there will be different treatment of separating partners of a marriage, and separating partners of a defacto relationship.

Explanation of Clauses

PART 1—PRELIMINARY

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides that the Act will be brought into operation on a day to be fixed by proclamation. This clause also provides that the Governor may, by proclamation, bring a section of the Act into operation on a day that is earlier than the day on which the proclamation is made. However, a section may not be brought into operation earlier than 28 December 2002.

Clause 3: Amendment provisions

This clause is formal.

PART 2—AMENDMENT OF JUDGES' PENSIONS ACT 1971

Clause 4: Insertion of s. 9A

This clause inserts into the *Judges' Pensions Act 1971* ("the Act") a new provision relating to the entitlements of spouses who have received, or are entitled to receive, benefits in accordance with Part VIIIB of the *Family Law Act 1975* as facilitated by the provisions of Part 2A (inserted by clause 5).

9A. Spouse entitlement subject to any Family Law determination

Sections 6A(3), 8 and 9 of the principal Act provide for the payment of a pension to the spouse of a deceased Judge or former Judge. This section qualifies those sections by prohibiting the payment of a pension in circumstances where section 17K (inserted by clause 5) applies. Section 17K applies where a Judge dies and is survived by a spouse who has received, is receiving or is entitled to receive a benefit under a splitting instrument and has the effect of preventing a spouse in these circumstances from receiving any other benefit under the Act.

Clause 5: Insertion of Part 2A

Clause 5 inserts Part 2A, which contains provisions necessary to facilitate the division of interests under the Act between spouses who have separated. These provisions are necessary as a consequence of the passing of the *Family Law Legislation Amendment (Superannuation) Act 1975* and the regulations under that Act.

PART 2A

FAMILY LAW ACT PROVISIONS

17B. Purpose of this Part

Section 17B expresses the purpose of Part 2A, which is to facilitate the division under the *Family Law Act 1975* of the Commonwealth of interests of spouses who have separated.

17C. Interpretation

Section 17C provides definitions of a number of terms that are introduced into the principal Act for the purposes of Part 2A only. Most of the definitions included in this section refer back to the Commonwealth instrument in which the term is originally defined (the *Family Law Act 1975* (as amended by the *Family Law Legislation Amendment (Superannuation) Act 1975*) or the *Family Law (Superannuation) Regulations 2001*).

Examples of terms defined in section 17C include "member spouse" (a spouse who has an entitlement to a superannuation interest), "non-member spouse" (the spouse of a member spouse) and "splitting instrument" (an agreement between spouses or an order of the Family Court providing for a split of the member spouse's superannuation interest).

17D. Accrued benefit multiple

Under regulation 64 of the *Family Law (Superannuation) Regulations 2001*, the trustee of an eligible superannuation plan is required to provide certain particulars to a non-member spouse seeking information in relation to, among other matters, a defined benefit interest. (A defined benefit interest is a superannuation interest (as defined) that entitles the member spouse to a benefit that is defined by reference to one or more of a number of specified factors. Interests under the principal Act are defined benefit interests.)

If a benefit is in the growth phase when a request for information is made, the trustee (or, under the principal Act, the Treasurer) is required under regulation 64(4)*(b)* to provide an applicant with the member spouse's "accrued benefit multiple". Section 17D provides three different formulae for determining the accrued benefit multiple in respect of a pension payable under the Act. The appropriate formula is determined on the basis of the member spouse's circumstances at the time the information is sought.

Section 17D also provides that the Treasurer may provide an applicant for information with a statement of the value of a member spouse's interest at a particular date.

17E. Value of interest

This section provides that the value of an interest under the Act will be determined in accordance with Part 5 of the Commonwealth regulations, subject to any modification prescribed by regulation under the Act. This is subject to the proviso in subsection (2) that an approval of the Commonwealth Minister under regulation 38 or 43A of the Commonwealth regulations that relates to a superannuation

interest under Part 2A will have effect for the purposes of the Part.

17F. Non-member spouse's entitlement

This section prescribes the action required to be taken by the Treasurer on receipt of a splitting instrument.

The Treasurer is required to create a new interest for the non-member spouse named in the instrument. If the member spouse has less than 10 years judicial service at the time of service of the splitting instrument on the Treasurer, the Treasurer will create the interest for the non-member spouse when the member spouse attains 10 years of judicial service or ceases to be a judge, whichever occurs first. The value of the non-member spouse's interest will be determined on the basis of whether the interest is in the growth phase or payment phase and by reference to the provisions of the instrument.

17G. Entitlement where pension is in growth phase

If the member spouse's interest is a pension in the growth phase, the non-member spouse is entitled to a lump sum. If the splitting instrument specifies a percentage of the member spouse's benefit for the purposes of the split, the lump sum will be determined by applying that percentage split to the member spouse's interest under the Act based on the relevant accrued benefit multiple and by applying any relevant method or factor that applies under section 17E. If the splitting instrument specifies a lump sum amount for the purposes of the split, the lump sum will be adopted. The value of a lump sum payable to a non-member spouse must not exceed the value of the member spouse's interest.

17H. Entitlement where pension is in payment phase

If the member spouse's interest is a pension in the payment phase, the pension must be split between the parties in accordance with the percentage split specified in the instrument. The non-member spouse may elect to have the whole of his or her entitlement converted to a separate pension entitlement (an "associate pension") for his or her lifetime or elect to have the whole of his or her entitlement commuted to a lump sum. The amount of the associate pension will be determined by the application of prescribed methods and factors. The amount of the lump sum will be determined by the application of prescribed methods and factors.

If the non-member spouse dies while entitled to, or in receipt of, a pension under section 17H (other than an associate pension), the non-member spouse's legal representative may elect to have the pension commuted to a lump sum.

17I. Payment of non-member spouse's entitlement

Any lump sum payable to a non-member spouse must, according to the non-member spouse's election, be rolled over into an account in the Southern State Superannuation Fund or to another superannuation fund or scheme approved by the Treasurer, or paid out (but only if such payment is permitted under the *Superannuation Industry (Supervision) Act 1993*). If a non-member spouse fails to make an election under this section within 28 days, his or her interest must be rolled over to the credit of the non-member spouse into an account in the Southern State Superannuation Fund.

17J. Reduction in Judge's entitlement

If a payment split is payable in respect of a member spouse's interest, there must be a corresponding reduction in the member spouse's entitlement.

17K. Pension not payable to spouse on death of Judge if split has occurred

A non-member spouse who has received a benefit under a splitting instrument is not entitled to any other benefit under the Act on the death of the member spouse. This prohibition does not apply in relation to benefits unconnected to the deceased spouse.

17L. Treasurer to comply with Commonwealth requirements

Part VIIIB of the *Family Law Act 1975* imposes certain requirements on trustees. This section imposes an obligation on the Treasurer to comply with those requirements as if the Treasurer were the trustee of the pension scheme.

17M. Payment of benefit

This section provides that any amount payable under Part 2A of the Act is payable by the Treasurer from the Consolidated Account or a special deposit account established by the Treasurer. A special deposit account is an account established under section 8 of the *Public Finance and Audit Act 1987*.

17N. Fees

This section provides that the Treasurer may fix fees in respect of any matters in relation to which fees may be charged under regulation 59 of the Commonwealth regulations.

17N. Regulations

Section 17O provides that the Governor may make regulations contemplated by, or necessary or expedient for the purposes of, Part 2A. It is further provided that the regulations may modify the operation of any provision of the Act in prescribed circumstances in order to ensure that the Act operates in a manner that is consistent with, and complementary to, the requirements of the Commonwealth family law legislation.

PART 3

AMENDMENT OF PARLIAMENTARY SUPERANNUATION ACT 1974

Clause 6: Insertion of Part 4A

Part 4A, inserted by this clause, contains provisions necessary to ensure that the *Parliamentary Superannuation Act 1974* ("the Act") operates effectively in relation to the requirements of Part VIIIB of the *Family Law Act 1975* and the regulations under that Act, which provide for the division of superannuation interests between spouses who have separated.

PART 4A

FAMILY LAW ACT PROVISIONS

23A. Purpose of this Part

Section 23A expresses the purpose of Part 4A, which is to facilitate the division under the *Family Law Act 1975* of the Commonwealth of superannuation interests of spouses who have separated.

23B. Interpretation

Section 23B provides definitions of a number of terms that are introduced into the principal Act for the purposes of Part 4A only. Most of the definitions included in this section refer back to the Commonwealth instrument in which the term is originally defined (the *Family Law Act 1975* (as amended by the *Family Law Legislation Amendment (Superannuation) Act 1975*) or the *Family Law (Superannuation) Regulations 2001*).

Examples of terms defined in section 23B include "member spouse" (a spouse who has an entitlement to a superannuation interest), "non-member spouse" (the spouse of a member spouse) and "splitting instrument" (an agreement between spouses or an order of the Family Court providing for a split of the member spouse's superannuation interest).

23C. Accrued benefit multiple

Under regulation 64 of the *Family Law (Superannuation) Regulations 2001*, the trustee of an eligible superannuation plan is required to provide certain particulars to a non-member spouse seeking information in relation to, among other matters, a defined benefit interest. (A defined benefit interest is a superannuation interest that entitles the member spouse to a benefit that is defined by reference to one or more of a number of specified factors. Superannuation interests under the principal Act are defined benefit interests.)

If a benefit is in the growth phase when a request for information is made, the trustee (the Board) is required under regulation 64(4)*(b)* to provide an applicant with the member spouse's "accrued benefit multiple". Section 23C provides two different formulae for determining the accrued benefit multiple in respect of a pension payable under the Act. The appropriate formula is determined on the basis of the member spouse's circumstances at the time the information is sought.

Section 23C also provides that the Board may provide an applicant with a statement of the value of a member spouse's interest at a particular date.

23D. Value of superannuation interest

This section provides that the value of any superannuation interest will be determined in accordance with Part 5 of the Commonwealth regulations, subject to any modification prescribed by regulation under the Act. This is subject to the proviso in subsection (2) that an approval of the Commonwealth Minister under regulation 38 or 43A of the Commonwealth regulations that relates to a superannuation interest under the Act will have effect for the purposes of the Part.

23E. Non-member spouse's entitlement

This section prescribes the action required to be taken by the Board on receipt of a splitting instrument.

The Board is required to create a new interest for the non-member spouse named in the instrument. If the member spouse has less than 6 years service at the time of service of the splitting instrument on the Board, the Board will create the interest for the non-member spouse when the member spouse attains 6 years of service or ceases to be a member of Parliament, whichever occurs first. The value of the interest will be determined on the basis of whether the interest is in the growth phase or payment phase, by the nature of the member spouse's superannuation interest, by reference to the provisions of the instrument and by reference to any methods or factors prescribed under the Act.

23F. Non-member spouse's entitlement where pension is in growth phase

If the member spouse's superannuation interest is a pension in the growth phase, the non-member spouse is entitled to a lump sum. If the splitting instrument specifies a percentage of the member spouse's superannuation interest for the purposes of the split, the lump sum will be determined by applying that percentage split to the member spouse's superannuation entitlement under the Act based on the relevant accrued benefit multiple and by applying any relevant method or factor that applies under section 23D. If the splitting instrument specifies a lump sum amount for the purposes of the split, the lump sum will be adopted. The value of a lump sum payable to a non-member spouse must not exceed the value of the member spouse's interest.

23G. Non-member spouse's entitlement where pension is in payment phase

If the member spouse's superannuation interest is a pension in the payment phase, the pension must be divided between the parties in accordance with the percentage split specified in the instrument. The non-member spouse may elect to have the whole of his or her entitlement converted to a separate pension entitlement (an "associate pension") for his or her lifetime or elect to have the whole of his or her entitlement commuted to a lump sum. The amount of the associate pension will be determined by the application of prescribed methods and factors. The amount of the lump sum will be determined by the application of prescribed methods and factors.

If the non-member spouse dies while entitled to, or in receipt of, a pension under section 23G (other than an associate pension), the non-member spouse's legal representative may elect to have the pension commuted to a lump sum.

23H. Payment of non-member spouse's entitlement

Any lump sum payable to a non-member spouse must be rolled over into an account in the Southern State Superannuation Fund or to another superannuation fund or scheme approved by the Board, or paid out (but only if such payment is permitted under the *Superannuation Industry (Supervision) Act 1993*). If a non-member spouse fails to make an election under this section within 28 days, his or her interest must be rolled over to the credit of the non-member spouse into an account in the Southern State Superannuation Fund.

23I. Reduction in member's entitlement

If a payment split is payable in respect of a member spouse's superannuation interest, there must be a corresponding reduction in the member spouse's entitlement. The reduction is to be made by the Board in the manner specified in this section.

23J. Pension not payable to spouse on death of member if split has occurred

A non-member spouse who has received a benefit under a splitting instrument is not entitled to any other benefit under the Act on the death of the member spouse. This prohibition does not apply in relation to benefits unconnected to the deceased spouse.

23K. Board to comply with Commonwealth requirements

Part VIIIB of the *Family Law Act 1975* imposes certain requirements on trustees. This section reinforces the Board's obligation to comply with those requirements.

23L. Fees

The Board may fix fees in respect of matters in relation to which fees may be charged under regulation 59 of the Commonwealth regulations. Subsection (2) provides that if such fees are not paid within one month after they become payable, the Board may deduct the fees from benefits payable to the spouse or non-member spouse, as appropriate.

Clause 7: Insertion of s. 26AAA

Clause 7 inserts a new section into the Part of the Act that deals with the entitlements of spouses on the death of a member.

26AAA. Spouse entitlement subject to any Family Law determination

Section 26AAA prevents payment of a pension to a spouse in circumstances where section 23J applies. Section 23J applies where a non-member spouse has received, is receiving or is entitled to receive a benefit under a splitting instrument.

Clause 8: Insertion of s. 39A

This clause inserts a new provision relating to the confidentiality of information as to the entitlements or benefits of a particular person under the Act. It also ensures that the confidentiality requirements prescribed by the *Family Law Act 1975* apply for the purposes of the Act.

Clause 9: Amendment of s. 40—Regulations

This clause amends section 40, which deals with the Governor's power to make regulations, by adding a specific power to make regulations for the purpose of modifying the operation of any provision of the Act in prescribed circumstances in order to ensure the Act operates in a manner that is consistent with, and complementary to, the requirements of the Commonwealth Act.

PART 4—AMENDMENT OF POLICE SUPERANNUATION ACT 1990

Clause 10: Amendment of s. 26—Death of contributor

Clause 11: Amendment of s. 32—Benefits payable on contributor's death

These clauses amend the provisions of the *Police Superannuation Act 1990* ("the Act") dealing with the entitlements of spouses on the death of old scheme and new scheme contributors by preventing the payment of a benefit to a surviving spouse in circumstances where section 38K applies. Section 38K applies where a non-member spouse has received, is receiving or is entitled to receive a benefit under a splitting instrument and prohibits payment of additional benefits to the non-member spouse on the death of the member spouse.

Clause 12: Insertion of Part 5B

Part 5B, inserted by this clause, contains provisions necessary to ensure that the Act operates effectively in relation to the requirements of Part VIIIB of the *Family Law Act 1975* and the regulations under that Act, which provide for the division of superannuation interests between spouses who have separated.

PART 5B
FAMILY LAW ACT PROVISIONS
DIVISION 1—PRELIMINARY

38F. Purpose of this Part

Section 38F expresses the purpose of Part 5B, which is to facilitate the division under the *Family Law Act 1975* of the Commonwealth of superannuation interests of spouses who have separated.

38G. Interpretation

Section 38G provides definitions of a number of terms that are introduced into the principal Act for the purposes of Part 5B only. Most of the definitions included in this section refer back to the Commonwealth instrument in which the term is originally defined (the *Family Law Act 1975* (as amended by the *Family Law Legislation Amendment (Superannuation) Act 1975*) or the *Family Law (Superannuation) Regulations 2001*).

Examples of terms defined in section 38G include "member spouse" (a spouse who has an entitlement to a superannuation interest), "non-member spouse" (the spouse of a member spouse) and "splitting instrument" (an agreement between spouses or an order of the Family Court providing for a split of the member spouse's superannuation interest).

38H. Value of superannuation interest

This section provides that the value of any superannuation interest will be determined in accordance with Part 5 of the Commonwealth regulations, subject to any modification prescribed by regulation under the Act. This is subject to the proviso in subsection (2) that an approval of the Commonwealth Minister under regulation 38 or 43A of the Commonwealth regulations that relates to an interest under the Act will have effect for the purposes of the Part.

38I. Board to comply with Commonwealth requirements

Part VIIIB of the *Family Law Act 1975* imposes certain requirements on trustees. This section reinforces the Board's obligation to comply with those requirements.

38J. Reduction in contributor's entitlement

If a payment split is payable in respect of a member spouse's superannuation interest, there must be a corresponding reduction in the member spouse's entitlement. The reduction is to be made in the manner specified in this section.

38K. Benefit not payable to spouse on death of member if split has occurred

A non-member spouse who has received, is receiving or is entitled to receive a benefit under a splitting instrument is not entitled to any other benefit under the Act on the death of the member spouse. This prohibition does not apply in relation to benefits unconnected to the deceased spouse.

DIVISION 2—NEW SCHEME CONTRIBUTORS

38L. Application of Division

Division 2 of Part 5B applies in relation to the interests of new scheme contributors only.

38M. Accrued benefit multiple

Under regulation 64 of the *Family Law (Superannuation) Regulations 2001*, the trustee of an eligible superannuation plan is required to provide certain particulars to a non-member spouse seeking information in relation to, among other matters, a defined benefit interest. (A defined benefit interest is a superannuation interest that entitles the member spouse to a benefit that is defined by reference to one or more of a number of specified factors. Superannuation interests under the principal Act are defined benefit interests.)

If a benefit is in the growth phase when a request for information is made, the trustee (the Board) is required under regulation 64(4)*(b)* to provide an applicant with the member spouse's "accrued benefit multiple". Section 38M provides that the accrued benefit multiple in respect of a superannuation interest payable as a lump sum is the multiple of annual salary that the member spouse would be entitled to receive at the prescribed date assuming that the member spouse retired on that day at or above the age of retirement, with the member spouse's accrued contribution points and contribution period as at that day.

Section 38M also provides that the Board may provide an applicant with a statement of the value of a superannuation interest of a member spouse as at a particular date.

38N. Non-member spouse's entitlement

This section prescribes the action required to be taken by the Board on receipt of a splitting instrument in respect of a superannuation interest payable as a lump sum.

The Board is required to create a new interest for the non-member spouse named in the instrument in accordance with the provisions of the instrument. The lump sum payable to the non-member spouse must, at his or her election, be rolled over into an account in the Southern State Superannuation Fund or to another superannuation fund or scheme approved by the Board, or paid out (but only if such payment is permitted under the *Superannuation Industry (Supervision) Act 1993*). If a non-member spouse fails to make an election under this section within 28 days, his or her interest must be rolled over to the credit of the non-member spouse into an account in the Southern State Superannuation Fund.

DIVISION 3—OLD SCHEME CONTRIBUTORS

38O. Application of Division

Division 3 of Part 5B applies in relation to the interests of old scheme contributors only.

38P. Accrued benefit multiple

Section 38P provides a method for determining the accrued benefit multiple in respect of a superannuation interest payable to an old scheme contributor under the Act.

38Q. Non-member spouse's entitlement

This section prescribes the action required to be taken by the Board on receipt of a splitting instrument in respect of a superannuation interest payable as a pension.

The Board is required to create a new interest for the non-member spouse named in the instrument. The form and value of the interest will be determined on the basis of whether the interest is in the growth phase or payment phase, by the nature of the member spouse's superannuation interest and also by reference to the provisions of the instrument.

38R. Non-member spouse's entitlement where pension is in growth phase

If the member spouse's superannuation interest is a pension in the growth phase, the non-member spouse is entitled to a lump sum. If the splitting instrument specifies a percentage of the member spouse's superannuation interest for the purposes of the split, the lump sum will be determined by applying that percentage split to the member spouse's superannuation entitlement under the Act based on the relevant accrued benefit multiple and by applying any relevant method or factor that applies under section 38H. If the splitting instrument specifies a lump sum amount for the purposes of the split, the lump sum will be adopted. The value of a lump sum payable to a non-member spouse must not exceed the value of the member spouse's interest.

38S. Non-member spouse's entitlement where pension is in payment phase

If the member spouse's superannuation interest is a pension in the payment phase, the pension must be divided between the parties in accordance with the percentage split specified in the instrument. The non-member spouse may elect to have the whole of his or her entitlement converted to a separate pension entitlement (an "associate pension") for his or her lifetime or elect to have the whole of his or her entitlement commuted to a lump sum. The amount of the pension will be determined by the application of prescribed methods and factors. The amount of the lump sum will be determined by the application of prescribed methods and factors.

If the non-member spouse dies while entitled to, or in receipt of, a pension under section 38S (other than an associate pension), the non-member spouse's legal representative may elect to have the pension commuted to a lump sum.

38T. Payment of non-member spouse's entitlement

Any lump sum payable to a non-member spouse must, at his or her election, be rolled over into an account in the Southern State Superannuation Fund or to another superannuation fund or scheme approved by the Board, or paid out (but only if such payment is permitted under the *Superannuation Industry (Supervision) Act 1993*). If a non-member spouse fails to make an election under this section within 28 days, his or her interest must be rolled over to the credit of the non-member spouse into an account in the Southern State Superannuation Fund.

38U. Fees

Section 38U provides that the Board may fix fees payable in respect of matters in relation to which the Board is permitted by the Commonwealth legislation to charge fees. Subsection (2) provides that if such fees are not paid within one month after they become payable, the Board may deduct the fees from benefits payable to the spouse or non-member spouse, as appropriate.

Clause 13: Amendment of s. 49—Confidentiality

This amendment ensures that the confidentiality requirements prescribed by the *Family Law Act 1975* apply for the purposes of the Act.

Clause 14: Amendment of s. 52—Regulations

This clause amends section 52, which deals with the Governor's power to make regulations, by adding a specific power for the Governor to make regulations for the purpose of modifying the operation of any provision of the Act in prescribed circumstances in order to ensure the Act operates in a manner consistent with, and complementary to, the requirements of the *Family Law Act 1975*.

PART 5—AMENDMENT OF SOUTHERN STATE SUPERANNUATION ACT 1994

Clause 15: Amendment of s. 3—Interpretation

This clause amends section 3 of the *Southern State Superannuation Act 1994* ("the Act") by recasting the definition of "rollover account" to include any rollover accounts established by the Board, including under the new family law provisions.

Clause 16: Amendment of s. 7—Contribution and rollover accounts

This amendment makes it clear that the Board can debit administrative charges against certain accounts.

Clause 17: Amendment of s. 12—Payment of benefits

Under section 12 of the principal Act, a payment to be made under the Act to or on behalf of a member, or to a spouse or the estate of a deceased member, must be made out of the Consolidated Account or a special deposit account. The amendment to section 12 effected by this clause removes the wording that refers specifically to the spouse or estate of a deceased member and substitutes wording that

is more general. This amendment therefore has the effect of requiring that payment to *any person entitled to a benefit* under the Act be made out of the Consolidated Account or a special deposit account.

Clause 18: Amendment of s. 14—Membership

Clause 19: Amendment of s. 21—Basic Invalidity/Death Insurance

Clause 20: Amendment of s. 22—Application for additional invalidity/death insurance

Clause 21: Amendment of s. 25—Contributions

Clause 22: Amendment of s. 26—Payments by employers

Clause 23: Amendment of s. 27—Employer contribution accounts

These amendments are all consequential on the creation of rollover accounts in the names of non-member spouses who are entitled to lump sum benefits under these Family Law provisions.

Clause 24: Amendment of s. 35—Death of member

Section 35 of the principal Act deals with the entitlements of a spouse on the death of a member. This amendment inserts a new subsection that has the effect of preventing the payment of a benefit to a surviving spouse in circumstances where section 35F applies. Section 35F applies where a non-member spouse has received, is entitled to receive or is receiving a benefit under a splitting instrument and prohibits payment of additional benefits to the non-member spouse on the death of the member spouse.

Clause 25: Insertion of Part 5A

Part 5A, inserted by this clause, includes provisions necessary to ensure that the principal Act operates effectively in relation to the requirements of Part VIIIB of the *Family Law Act 1975* and the regulations under that Act, which provide for the division of superannuation interests between spouses who have separated.

PART 5A

FAMILY LAW ACT PROVISIONS

35A. Purpose of this Part

Section 35A expresses the purpose of Part 5A, which is to facilitate the division under the *Family Law Act 1975* of the Commonwealth of superannuation interests of spouses who have separated.

35B. Interpretation

Section 35B provides definitions of a number of terms that are introduced into the principal Act for the purposes of Part 5B only. Most of the definitions included in this section refer back to the Commonwealth instrument in which the term is originally defined (the *Family Law Act 1975* (as amended by the *Family Law Legislation Amendment (Superannuation) Act 1975*) or the *Family Law (Superannuation) Regulations 2001*).

Examples of terms defined in section 35B include "member spouse" (a spouse who has an entitlement to a superannuation interest), "non-member spouse" (a spouse who is not a member spouse in relation to a superannuation interest) and "splitting instrument" (an agreement between spouses or an order of the Family Court providing for a split of the member spouse's superannuation interest).

35C. Non-member spouse entitlement

This section prescribes the action that must be taken by the Board following service of a splitting instrument. The Board is required to create a new interest for the non-member spouse named in the instrument in accordance with the provisions of the instrument.

35D. Payment of lump sum

The interest created for the non-member spouse under section 35C must, at his or her election, be retained in an account in the Southern State Superannuation Fund or rolled over to another superannuation fund or scheme approved by the Board, or paid out (but only if such payment is permitted under the *Superannuation Industry (Supervision) Act 1993*). If a non-member spouse fails to make an election under this section within 28 days, his or her interest must be transferred to the credit of the non-member spouse into an account in the Southern State Superannuation Fund.

35E. Reduction in member's entitlement

If a payment split is payable in respect of a member spouse's superannuation interest, there must be a corresponding reduction in the member spouse's entitlement. The reduction is to be made in the manner specified in this section.

35F. Lump sum not payable to person who has received benefit under splitting instrument

A non-member spouse who has received, is receiving or is entitled to receive a benefit under a splitting instrument is not entitled to any other benefit under the Act on the death of the member spouse. This prohibition does not apply in relation to benefits unconnected to the deceased spouse.

35G. Board to comply with Commonwealth requirements

Part VIIIB of the *Family Law Act 1975* imposes certain requirements on trustees. This section reinforces the Board's obligation to comply with those requirements.

35H. Provision of information

The Board will be able to provide information about the value of superannuation interests to eligible persons.

35I. Payment from contribution account in name of non-member spouse

This section deals with the payment out of a contribution account that holds money paid under this or a corresponding Part.

35J. Fees

This section authorises the Board to fix fees payable in respect of matters in relation to which the Board is permitted by the Commonwealth legislation to charge fees. Subsection (2) provides that if such fees are not paid within one month after they become payable, the Board may deduct the fees from benefits payable to the spouse or non-member spouse, as appropriate.

Clause 26: Amendment of s. 47A—Confidentiality

This amendment ensures that the confidentiality requirements prescribed by the *Family Law Act 1975* apply for the purposes of the Act.

Clause 27: Amendment of s. 49—Regulations

This clause amends section 49, which deals with the Governor's power to make regulations, by adding a specific power for the Governor to make regulations for the purpose of modifying the operation of any provision of the Act in prescribed circumstances in order to ensure that the Act operates in a manner that is consistent with, and complementary to, the requirements of the Commonwealth family law legislation.

PART 6—AMENDMENT OF SUPERANNUATION ACT 1988

Clause 28: Amendment of s. 20B—Payment of benefits

Under section 20B of the *Superannuation Act 1988* ("the Act"), a payment to be made under the Act to or on behalf of a member, or to a spouse or child or the estate of a deceased member, must be made out of the Consolidated Account or a special deposit account. The amendment made to section 20B by this clause removes the wording that refers specifically to the spouse, child or estate of a deceased member and substitutes wording that is more general and therefore has the effect of requiring that payment of any benefit payable under the Act will be made out of the Consolidated Account or a special deposit account.

Clause 29: Amendment of s. 32—Death of contributor

Clause 30: Amendment of s. 38—Death of contributor

These clauses amend the provisions of the Act dealing with the entitlements of spouses on the death of both old scheme and new scheme contributors by preventing the payment of a benefit to a surviving spouse in circumstances where section 43AG applies. Section 43AG applies where a non-member spouse has received, is receiving or is entitled to receive a benefit under a splitting instrument and prohibits payment of additional benefits to the non-member spouse on the death of the member spouse.

Clause 31: Insertion of Part 5A

Part 5A, inserted by this clause, includes provisions necessary to ensure that the principal Act operates effectively in relation to the requirements of Part VIIIB of the *Family Law Act 1975* and the regulations under that Act, which provide for the division of superannuation interests between spouses who have separated.

PART 5A

FAMILY LAW ACT PROVISIONS

DIVISION 1—PRELIMINARY

43AB. Purpose of this Part

Section 43AB expresses the purpose of Part 5A, which is to facilitate the division under the *Family Law Act 1975* of the Commonwealth of superannuation interests of spouses who have separated.

43AC. Interpretation

Section 43AC provides definitions of a number of terms that are introduced into the principal Act for the purposes of Part 5B only. Most of the definitions included in this section refer back to the Commonwealth instrument in which the term is originally defined (the *Family Law Act 1975* (as amended by the *Family Law Legislation Amendment (Superannuation) Act 1975*) or the *Family Law (Superannuation) Regulations 2001*).

Examples of terms defined in section 38G include "member spouse" (a spouse who has an entitlement to a superannuation interest), "non-member spouse" (a spouse who is not a member spouse in relation to a superannuation interest) and "splitting instrument" (an agreement between spouses or an order of the Family Court providing for a split of the member spouse's superannuation interest).

43AD. Value of superannuation interest

This section provides that the value of any superannuation interest will be determined in accordance with Part 5 of the Commonwealth regulations, subject to any modification prescribed by regulation under the Act. This is subject to the proviso in subsection (2) that an approval of the Commonwealth Minister under regulation 38 or 43A of the Commonwealth regulations that relates to an interest under Part 5A of the Act will have effect for the purposes of the Part.

43AE. Board to comply with Commonwealth requirements

Part VIIIB of the *Family Law Act 1975* imposes certain requirements on trustees. This section reinforces the Board's obligation to comply with those requirements.

43AF. Reduction in member's entitlement

If a payment split is payable in respect of a member spouse's superannuation interest, there must be a corresponding reduction in the member spouse's entitlement. The reduction is to be made in the manner specified in this section.

43AG. Benefit not payable to spouse on death of member if split has occurred

A non-member spouse who has received, is receiving or is entitled to receive a benefit under a splitting instrument is not entitled to any other benefit under the Act on the death of the member spouse. This prohibition does not apply in relation to benefits unconnected to the deceased spouse.

DIVISION 2—NEW SCHEME CONTRIBUTORS

43AH. Application of Division

Division 2 of Part 5A applies in relation to the interests of new scheme contributors only.

43AI. Accrued benefit multiple

Under regulation 64 of the *Family Law (Superannuation) Regulations 2001*, the trustee of an eligible superannuation plan is required to provide certain particulars to a non-member spouse seeking information in relation to, among other matters, a defined benefit interest. (A defined benefit interest is a superannuation interest that entitles the member spouse to a benefit that is defined by reference to one or more of a number of specified factors. Superannuation interests under the principal Act are defined benefit interests.)

If a benefit is in the growth phase when a request for information is made, the trustee (the Board) is required under regulation 64(4)*(b)* to provide an applicant with the member spouse's "accrued benefit multiple". Section 43AI provides that the accrued benefit multiple in respect of a superannuation interest payable as a lump sum is the multiple of annual salary that the member spouse would be entitled to receive at the prescribed date assuming that the member spouse retired on that day at or above the age of retirement, with the member spouse's accrued contribution points and contribution period as at that day.

Section 43AI also provides that the Board may provide an applicant with a statement of the value of a superannuation interest of a member spouse as at a particular date.

43AJ. Non-member spouse's entitlement

This section prescribes the action required to be taken by the Board on receipt of a splitting instrument in respect of a superannuation interest payable as a lump sum.

The Board is required to create a new interest for the non-member spouse named in the instrument in accordance with the provisions of the instrument. The lump sum payable to the non-member spouse must, at his or her election, be rolled over into an account in the Southern State Superannuation Fund or to another superannuation fund or scheme approved by the Board, or paid out (but only if such payment is permitted under the *Superannuation Industry (Supervision) Act 1993*). If a non-member spouse fails to make an election under this section within 28 days, his or her interest must be rolled over to the credit of the non-member spouse into an account in the Southern State Superannuation Fund.

DIVISION 3—OLD SCHEME CONTRIBUTORS

43AK. Application of Division

Division 3 of Part 5A applies in relation to the interests of old scheme contributors only.

43AL. Accrued benefit multiple

Section 43AL provides a method for determining the accrued benefit multiple in respect of a superannuation interest payable to an old scheme contributor under the Act.

43AM. Non-member spouse's entitlement

This section prescribes the action required to be taken by the Board on receipt of a splitting instrument in respect of a superannuation interest payable as a pension.

The Board is required to create a new interest for the non-member spouse named in the instrument. The form and value of the interest will be determined on the basis of whether the interest is in the growth phase or payment phase, by the nature of the superannuation interest and also by reference to the provisions of the instrument.

43AN. Non-member spouse's entitlement where pension is in growth phase

If the member spouse's superannuation interest is a pension in the growth phase, the non-member spouse is entitled to a lump sum. If the splitting instrument specifies a percentage of the member spouse's superannuation interest for the purposes of the split, the lump sum will be determined by applying that percentage split to the member spouse's superannuation entitlement under the Act based on the relevant accrued benefit multiple and by applying any relevant method or factor that applies under section 43AD. If the splitting instrument specifies a lump sum amount for the purposes of the split, the lump sum will be adopted. The value of a lump sum payable to a non-member spouse must not exceed the value of the member spouse's interest.

43AO. Non-member spouse's entitlement where pension is in payment phase

If the member spouse's superannuation interest is a pension in the payment phase, the pension must be split between the parties in accordance with the percentage split specified in the instrument. The non-member spouse may elect to have the whole of his or her entitlement converted to a separate pension entitlement (an "associate pension") for his or her lifetime or elect to have the whole of his or her entitlement commuted to a lump sum. The amount of the pension will be determined by the application of prescribed methods and factors. The amount of the lump sum will be determined by the application of prescribed methods and factors.

If the non-member spouse dies while entitled to, or in receipt of, a pension under section 43AO (other than an associate pension), the non-member spouse's legal representative may elect to have the pension commuted to a lump sum.

43AP. Payment of non-member spouse's entitlement

Any lump sum payable to a non-member spouse must be rolled over into an account in the Southern State Superannuation Fund or to another superannuation fund or scheme approved by the Board, or paid out (but only if such payment is permitted under the *Superannuation Industry (Supervision) Act 1993*). If a non-member spouse fails to make an election under this section within 28 days, his or her interest must be rolled over to the credit of the non-member spouse into an account in the Southern State Superannuation Fund.

43AQ. Fees

This section provides that the Board may fix fees payable in respect of matters in relation to which the Board is permitted by the Commonwealth legislation to charge fees. Subsection (2) provides that if such fees are not paid within one month after they become payable, the Board may deduct the fees from benefits payable to the spouse or non-member spouse, as appropriate.

Clause 32: Amendment of s. 55—Confidentiality

This amendment ensures that the confidentiality requirements prescribed by the *Family Law Act 1975* apply for the purposes of the Act.

Clause 33: Amendment of s. 59—Regulations

This clause amends the section of the Act dealing with the Governor's power to make regulations by adding a specific power for the Governor to make regulations for the purpose of modifying the operation of any provision of the Act in prescribed circumstances

in order to ensure that the Act operates in a manner that is consistent with, and complementary to, the requirements of the Commonwealth family law legislation.

Schedule 1—Transitional provisions

1. Interpretation

Clause 1 of Schedule 1 provides definitions of terms used in the Schedule. A *relevant Act* is an Act amended by the *Statutes Amendment (Division of Superannuation Benefits Under Family Law Act) Act 2003* ("the amending Act"). *Relevant Authority* means a superannuation Board or the Treasurer.

2. Prior action

This clause validates action taken by a relevant authority under a relevant Act prior to the amending Act being brought into operation, so long as that action would have been valid and effectual if it had been taken after the commencement of the amending Act.

3. Instruments

This clause provides that instruments lodged with a relevant authority before the commencement of the amending Act may take effect for the purposes of a relevant Act after the commencement of the amending Act.

4. Other matters

This clause provides that the Governor may, by regulation, make additional provisions of a saving or transitional nature.

The Hon. CAROLINE SCHAEFER secured the adjournment of the debate.

ABORIGINAL LANDS PARLIAMENTARY STANDING COMMITTEE

The House of Assembly informed the Legislative Council that it had appointed Ms Breuer, Mr Hanna and Dr McFetridge as members of the committee.

[Sitting suspended from 5.04 to 5.23 p.m.]

STANDING ORDERS SUSPENSION

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

That standing orders be so far suspended as to enable me to move that the order made this day for the second reading of the Summary Offences (Vehicle Immobilisation Devices) Amendment Bill to be an order of the day for the next day of sitting be discharged and for the order of the day to be taken into consideration forthwith.

Motion carried.

SUMMARY OFFENCES (VEHICLE IMMOBILISATION DEVICES) AMENDMENT BILL

The Hon. P. HOLLOWAY: I move:

That the order made this day for the second reading of the Summary Offences (Vehicle Immobilisation Devices) Amendment Bill to be an order of the day for the next day of sitting be discharged and for the order of the day to be taken into consideration forthwith.

Motion carried.

The Hon. P. HOLLOWAY: 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 is a Bill to provide a statutory basis for police use of vehicle-specific immobilisation equipment, such as tyre-deflation devices.

Although New South Wales and the Australian Capital Territory have laws allowing police to use tyre-deflation devices, South Australian law does not distinguish between the use of such devices and road blocks.

The road block laws in section 74B of the *Summary Offences Act 1953* allow police to set up a roadblock under the authority of a senior officer when they have reason to believe it will substantially improve the prospects of catching someone who has escaped from lawful custody, or who is suspected of committing an offence of illegal use of a motor vehicle, or who is suspected of committing an offence attracting a penalty or maximum penalty of life imprisonment or imprisonment for at least seven years.

For some time, South Australian police have used slow-release tyre-deflation devices using the same criteria. But using devices like these should not require the same level of authorisation as road blocks. The purpose of these devices is to target single vehicles, not traffic at large. Because stopping traffic at large can require complicated logistics and can inconvenience other road users for long periods, high level authorisation is required. By contrast, vehicle-immobilisation devices have a low impact on other traffic and are easy and quick to assemble and use in an emergency situation—for example to forestall a vehicle chase or stop it developing into a high-speed one. Their use should not require the permission of a senior police officer as long as the police using them have been trained to use them safely and legally, and the device is of a kind that has met prescribed standards of efficacy and safety. That is what this Bill does.

The Bill allows devices of a specified kind to be declared by regulation to be vehicle immobilisation devices. The declaration is made on the recommendation of the Minister. Only devices that have been comprehensively tested in South Australia, or in like conditions, and that have been shown in these tests to be capable of immobilising a target vehicle at an appropriate range of speeds without undue risk to its occupants or to people nearby may be recommended by the Minister.

Police now use a slow-release tyre-deflation device that has been tested extensively. The device deflates tyres gradually, so that the driver can maintain control of the vehicle. Only police officers with current operational-safety certification that includes prescribed training in the use of road blocks and in the use of vehicle-immobilisation equipment may operate these devices.

The Commissioner of Police has described how these devices were selected and what they do, and I quote:

> Most states in Australia and indeed most countries worldwide were, by 1998, either using or examining the viability of using the Stingers road spikes.
>
> During 1998 STAR Group expanded its field trials and purchased extra sets of Stingers. Training programs, videos and curriculum documents were developed. Information seminars were also provided to other operational police throughout the State in relation to the Stingers. Eventually SAPOL was to purchase large numbers of Stingers for all metropolitan and country LSA's. Training was provided, Standard Operating Procedures and General Orders were developed. Training in the use of the Stingers became part of the Incident Management and Operational Safety Training (IMOST2) program in 2001. All operational officers are required to pass IMOST to remain operational.
>
> Stinger Road Spikes are light (3.63 kg) portable and are carried around in a brief case size container. The device is simple to use and can be deployed by one person in five to ten seconds. The Stingers are deployed across a roadway in front of a suspect vehicle and once the tyres are spiked they can be quickly removed, thus minimising the danger to other vehicles using the same road, including police vehicles involved in the pursuit.
>
> The Stingers are made of elastomeric nylon and are very difficult to damage, consequently little maintenance is required. Spare parts can be obtained locally. The spikes are 100% stainless steel and hollow in the middle. Once the spikes penetrate a tyre, air is slowly released through the inner core of the spike. The car will travel approximately 300 to 500 metres before the tyres completely deflate. The system is designed to allow a controlled release of air over distance. This is considered to be much safer. Conversely, if a car was travelling at high speed and suddenly lost air in all of its tyres the result could be catastrophic. This situation would not occur with the use of Stingers road spikes.

The Commissioner says, and I quote:

> All operational members within SAPOL undertake regular training and assessment in the deployment and use of tyre-deflation devices. This training is an essential component in order to hold operational safety certification. Police officers who cannot attain certification cannot undertake operational duties. It is intended that this requirement be the benchmark for the future.

. . . SAPOL has developed strict protocols in the use of road spikes which is supported by compulsory cyclic training in their deployment to ensure safe work practices.

It is expected that the Commissioner will take steps to have Stinger road spikes declared to be vehicle-immobilisation devices once this Bill is passed.

I note that in May, 2003 the New South Wales police issued 600 sets of road spikes to 300 highway patrols and 80 local commands. 1800 police will be trained to use the spikes to terminate high speed pursuits. The issue of this equipment was a safety measure in response to an analysis of 9405 police pursuits since 1999, and after a two-year trial of the spikes.

This Bill makes safety a paramount consideration. Police officers who are authorised to use the devices have current operational-safety certification. The devices themselves have met prescribed safety standards. Before a device is used, police must consider the risk to occupants of the vehicle or people nearby, and may not use it if to do so would place these people at undue risk.

Police must also be satisfied that one of three other criteria is met before using a vehicle-immobilisation device. There must either be reasonable grounds for believing that using the device will greatly improve the prospects of catching a person suspected of committing a major offence or of catching someone who has escaped from lawful detention, or reasonable grounds for believing that the driver has disobeyed or will disobey a lawful police request or signal to stop.

It is this last criterion that is different from the criteria for road blocks. Road blocks are used only for catching people suspected of committing major offences or who have escaped lawful detention. The physical, logistical and legal prerequisites for setting up a road block will usually make it too cumbersome to use to stop a single vehicle whose driver has disobeyed a police request to stop. Although vehicle-immobilisation devices are a useful adjunct to road blocks in catching those who escape detention or people suspected of major crimes, they have the added advantage of allowing prompt targeting of single vehicles without much disruption to other traffic. They can be used to stop a fleeing driver at the earliest possible stage and stop the incident escalating into a high-speed pursuit.

Finally, the Bill substitutes the word 'detention' for 'custody' in the road block legislation, and uses it in this amendment, to ensure that road blocks and vehicle-immobilisation devices may be used to catch not only a person who escapes from police custody or prison but one who escapes from detention imposed by a court that has declared the person liable to supervision under the mental impairment provisions of the *Criminal Law Consolidation Act 1935*. People are detained in this way because their mental impairment has caused them to do something that would otherwise be considered a criminal offence, usually one of violence, and is likely to continue to do so. If such a person escapes, and is in a motor vehicle, police should be able to use a road block or vehicle-immobilisation device to catch him or her.

The Bill makes it clear to road users, police and the courts when and how vehicle immobilisation devices may be used by police, and what kinds of device may be used in this way.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Summary Offences Act 1953*

4—Amendment of section 4—Interpretation

This clause relocates the definition of "major offence" to section 4 of the principal Act.

5—Amendment of section 74B—Road blocks

This clause amends section 74B of the principal Act by removing the definition of "major offence" and by substituting the word "detention" for "custody" to clarify that the measure applies to persons who have escaped whilst being detained under Part 8A of the *Criminal Law Consolidation Act 1935*.

6—Insertion of section 74BA

This clause inserts new section 74BA into the principal Act, which provides that an authorised police officer may, in specified circumstances, use a vehicle immobilisation device. The clause provides that the Governor may, on the recommendation of the Minister, declare a device of a specified kind to be a vehicle immobilisation device. The Minister must not make such a recommendation unless satisfied that the device has been adequately tested, and can, at an appropriate range of speeds, immobilise a target motor vehicle without undue risk to the occupants of the vehicle, and other persons in the vicinity. The clause also defines an authorised police officer as being a police officer authorised by the Commissioner, and defines a vehicle immobilisation device to be a device so declared by regulation.

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

UNIVERSITY OF ADELAIDE (MISCELLANEOUS) AMENDMENT BILL

In committee (resumed on motion).

(Continued from page 459.)

Schedule.

The CHAIRMAN: When the committee last met we made some progress and had reached consideration of the schedule. I understand there are some amendments proposed.

The Hon. T.G. ROBERTS: In the spirit of cooperation and compromise, negotiations have come up with an agreed position on the amendment but members would like to have it clarified by this statement. I put on record that this clause will not be proclaimed until the end of the current term in relation to student members of the council holding office under section 12(1)(g) of the principal act. It is the government's understanding that the university will begin the process to fill the student vacancies so that at no time will there fail to be student members on the council.

The Hon. R.I. LUCAS: On behalf of the opposition and on the advice of my colleague the member for Bragg, the opposition supports the amendment, but more particularly on the understanding of the undertaking that has been given in relation to the proclamation dates of the appropriate provision. For the reasons outlined by the minister, we believe this is an appropriate resolution of the concerns originally raised by the government.

The Hon. KATE REYNOLDS: The Democrats also support that position.

Amendment carried; schedule as amended passed.

Title passed.

Bill reported with amendments; committee's report adopted.

Bill read a third time and passed.

NATIONAL ELECTRICITY (SOUTH AUSTRALIA) (NEW PENALTY) 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.

The Government is again delivering on a key energy commitment through new legislation that ensures that participants in the electricity industry receive proportionate penalties for significant breaches of the market rules in the National Electricity Market.

The legislation introduces a new 'D' class penalty provision into the National Electricity (South Australia) Act 1996, imposing a penalty not exceeding $1 million for breaches of the National Electricity Code (Code) and $50 000 for each day the breach continues.

Since the commencement of the National Electricity Market and the Code there have been three civil penalty classes for breaches of the Code as stipulated in Section 13 of the National Electricity (South Australia) Act:

- 'A' class penalty; allowing NECA to impose a civil penalty not exceeding $20 000;
- 'B' class penalty; allowing the National Electricity Tribunal to impose a civil penalty not exceeding $50 000 and $10 000 for each day that the breach continues; and
- 'C' class penalty; allowing the National Electricity Tribunal to impose a civil penalty not exceeding $100 000 and $10 000 for each day that the breach continues.

It has become apparent in recent times that participants in the electricity industry operating in the National Electricity Market have the potential to secure significant financial benefits as a result of breaching their obligations under the Code. This has led to the need to bring the Code penalty classes in line with the gains that may be made from breaches of the more significant provisions of the Code.

One example of a current penalty in the National Electricity Market that is disproportionately low is the penalties associated with bidding and rebidding obligations of electricity generators. The current clauses in the Code associated with rebidding are not presently assigned a penalty under the Code. This means that the National Electricity Tribunal can only impose a maximum penalty of $20 000 for breaches of the rebidding clause.

As members would be aware, inappropriate bidding and rebidding can be extremely profitable, with individual generators able to receive significant additional revenue from inappropriate rebidding strategies.

The South Australian Government has strongly supported changes to address bidding and rebidding that is inconsistent with the purpose of the National Electricity Code market rules, which is to promote an efficient, competitive and reliable market. After substantial consultation, the ACCC made a determination on 4 December 2002 authorising changes to the bidding and rebidding rules that created an obligation for market participants' bids and offers to represent their genuine intentions at the time the bids are made (Clause 3.8.22A). Clause 3.8.22A has been in operation since 1 February 2003.

While Clause 3.8.22A does not fully address all of the Government's concerns with bidding and rebidding, such as blatant economic withdrawal and the gaming of constraints, it is important that the 'D' Class penalty be applied to ensure that generators who do not bid in good faith are subjected to appropriate penalties.

Electricity is an essential service that impacts upon the daily lives of all South Australians. Reliable supply of electricity at reasonable prices is essential to the community and to the ongoing competitiveness of South Australian businesses, small and large. Consumer protection from uncompetitive behaviour is a key principle underpinning this legislation.

Overall, the penalty provisions will be a substantial incentive for industry participants to comply with significant obligations under the Code.

The National Electricity Market Legislation Agreement between the jurisdictions participating in the National Electricity Market requires the written approval by all Ministers for amendments to the Act and Regulations. I can confirm that all Ministers have provided written approval for the introduction of this Bill and the subsequent making of a regulation to assign the Class 'D' penalty to Clause 3.8.22A of the Code.

I commend the National Electricity (South Australia) (New Penalty) Bill 2003 to Honourable Members.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

This clause provides that the Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

This clause is formal.

Part 2—Amendment of *National Electricity (South Australia) Act 1996*

4—Amendment of section 13—Civil penalties for breaches of Code

Section 13 of the *National Electricity (South Australia) Act 1996* provides that the regulations may prescribe a provision of the *National Electricity Code* as a Class A, Class B or Class C provision. The maximum civil penalty for breach of a provision is determined on the basis of the class of that provision as prescribed by the regulations.

Proposed section 13(4), as inserted by this clause, provides that the regulations may prescribe a provision of the Code as a Class D provision. For breach of a Class D provision, the National Electricity Tribunal may, in accordance with the National Electricity Law, impose a civil penalty not exceeding $1 000 000 and $50 000 for each day that the breach continues after service by National Electricity Code Administrator Limited (NECA) of notice of the breach.

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

ADJOURNMENT

At 5.38 p.m. the council adjourned until Monday 10 November at 2.15 p.m.