LEGISLATIVE COUNCIL

Wednesday 13 April 2005

The PRESIDENT (Hon. R.R. Roberts) took the chair at 2.21 p.m. and read prayers.

CRIMINAL LAW CONSOLIDATION (CRIMINAL NEGLECT) AMENDMENT BILL

His Excellency the Governor's Deputy, by message, assented to the bill.

LEGISLATIVE REVIEW COMMITTEE

The Hon. J. GAZZOLA: I bring up the 18th report of the committee.

Report received.

GAWLER HEALTH SERVICE

The Hon. CARMEL ZOLLO (Minister for Emergency Services): I lay on the table a copy of a ministerial statement relating to obstetric and gynaecological services at the Gawler Health Service made in another place by my colleague the Minister for Health.

QUESTION TIME

DEPARTMENTAL FUNDS

The Hon. R.I. LUCAS (Leader of the Opposition): I seek leave to make a brief explanation before asking the Minister for Emergency Services a question about spending sprees by Rann government ministers.

Leave granted.

The Hon. R.I. LUCAS: For more than 12 months, the opposition has been raising concerns about Rann government ministers and their departments and agencies spending up big in spending sprees in June of each financial year to ensure that their funding budgets are expended by the end of 30 June. As members will be aware, just over two years ago, the Rann government introduced its new carryover policy. The Auditor-General and some others have raised questions as to whether or not this might encourage injudicious spending (if I can use a general phrase rather than attributing the exact words) by government departments, agencies and their ministers. Information has been provided to the parliament and to the opposition which indicates that some Rann government ministers actually spent up to 67 per cent of their total capital works budget in June 2004.

The Hon. T.G. Cameron: Where did you get that figure from?

The Hon. R.I. LUCAS: That has come from Treasury after 12 months of asking. This issue was also raised in June 2003 when the opposition indicated that there was a need for an inquiry because some ministers spent up to 46 per cent of their total capital works budget in June 2003. I refer the minister, in particular, to agencies within her own portfolio. The Country Fire Service in June 2004 spent $4.9 million on capital works; the South Australian Metropolitan Fire Service spent $1 million; and the Emergency Services Administrative Unit spent $1.2 million. Of course, I acknowledge that the current minister was not the minister at the time; it was the accident-prone member for Elder, minister Paddy Conlon.

The Hon. R.D. Lawson: Hapless!

The Hon. R.I. LUCAS: Hapless minister is a better description.

The PRESIDENT: I remind the Leader of the Opposition of his responsibilities under standing order 193.

The Hon. R.I. LUCAS: The Country Fire Service's $4.9 million is 45.7 per cent of the total capital spending for the year 2003-04; so the CFS spent 45.7 per cent of its total capital works budget in June. There has been a request for the Auditor-General to conduct an urgent inquiry into these issues, but I ask the minister to conduct an urgent inquiry into agencies that now report to her and to bring back to this council an explanation as to why up to 45.7 per cent of the total capital works budget in her agencies was expended in one month in June 2004. Will the minister bring back to the council an assurance that there are no examples of pre-payments for services to be delivered in the later stage; that is, later than 30 June 2004; or that there was any organised process within her agencies to pay accounts before the normal time frame for the payment of accounts by government departments and agencies?

The Hon. CARMEL ZOLLO (Minister for Emergency Services): I am not sure about urgent inquiries, but I certainly will be taking some advice and I will bring back a response at another time. I have to say that, on becoming a minister, I was advised that the emergency services sector would be achieving an overall balanced operational result by 30 June this year. Nonetheless, a budget is a living document in relation to emergency services that can be affected greatly by events which are not foreseen and which often are not controllable.

This government is committed to the safety of the people of South Australia and that our emergency services are adequately considered during budgeting. An example of changes to budgets might include the CFS and its requirement for additional funding from the Community Emergency Services Fund due to the Lower Eyre Peninsula fires. As the honourable member would know, our emergency services levy is an excellent contingency support for extraordinary costs, such as the Lower Eyre Peninsula fires—

The Hon. R.I. Lucas interjecting:

The Hon. CARMEL ZOLLO: That is fine. I just thought that I would educate the honourable member. As the honourable member knows, we are now heavily into budget discussions for our new budget; and, when that is brought forward, I am sure that he will be better informed.

Members interjecting:

The PRESIDENT: Order!

The Hon. J.F. STEFANI: As a supplementary question, will the minister kindly provide details of individual items of expenditure incurred in June 2004 and the project name to which the expenditure was allocated?

The Hon. Carmel Zollo: In relation to what individual fund?

The Hon. J.F. STEFANI: From the agencies for which the minister carries the responsibility.

The Hon. CARMEL ZOLLO: I will endeavour to get that information and bring back a response for the honourable member.

MOTOR VEHICLE THEFT

The Hon. R.D. LAWSON: I seek leave to make a brief explanation before asking the Leader of the Government, representing the Attorney-General, a question about motor vehicle theft.

Leave granted.

The Hon. R.D. LAWSON: The latest publication of the National Motor Vehicle Theft Reduction Council indicates that the position with regard to motor theft in South Australia remains the worst in this country. The document records that all states and territories recorded fewer thefts in the year 2004. The national percentage fell by 10 per cent. South Australia recorded by far (by a factor of five, actually) the lowest, at a percentage drop of only 1 per cent; the Australian Capital Territory had 38 per cent; New South Wales, five times more than us at 5 per cent; the Northern Territory, a reduction of 28 per cent; Tasmania, 20 per cent; and Western Australia, 22 per cent. The report states:

> Because of their lack of security, older vehicles are obvious theft targets for joy-riders, those who need transport to support another crime such as burglary or the purchase of drugs, or those who simply want transport. Unless fitted with an after-market immobiliser, older cars can usually be 'hot-wired' by even the most inexperienced thieves. The majority of older cars are abandoned and quickly recovered. . . but often have sustained extensive and expensive mechanical and body damage whilst in the hands of the thief.

The percentage of thefts per 1 000 of population in South Australia is the highest in the country (6.2 per cent per 1 000 of population as opposed to the national average of 4.3 per cent); and the thefts per 1 000 registrations in South Australia are also by far the highest in the country at 8.4 per cent against the national average of 6.1 per cent. The government introduced a very small program to assist a small number of tertiary students with the fitting of the immobilisers but, apart from that, this government, despite all its rhetoric about being tough on law and order, has done nothing to ameliorate this situation. My questions to the Attorney-General are:

1. Does he acknowledge that the position with regard to vehicle theft in this state remains the worst in the country?

2. What does this government intend to do to bring us into at least the national average on this matter?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): In relation to those statistics, I will refer that question to the Attorney-General for his confirmation. However, I note that, in *The Advertiser* this morning, some acknowledgment is given that home break-ins in South Australia were at the lowest record level for 14 years in February, as recent police figures show. It says that, in February, 992 homes across the state were broken into compared to 1 056 in February 2004. It represented the lowest recorded monthly total of residential break-ins since the Police Incident Management System began in 1991. So, I suppose you can find statistics for everything, if you want to go looking for them. This government stands by its record on law and order. In relation to those specific statistics, I will refer that to the minister in another place and bring back a reply.

MURRAY-MALLEE STRATEGIC TASK FORCE

The Hon. CAROLINE SCHAEFER: My question is to the Minister for Emergency Services. Is the minister still the chair of the Murray-Mallee Strategic Task Force? If not, who is? If so, what priority does she intend to give to this important group, given her numerous other duties? If someone else is to be appointed, who is it and when will they be appointed?

The Hon. CARMEL ZOLLO (Minister for Emergency Services): I thank the honourable member for her question. I have resigned as the chair of the Murray-Mallee Strategic Task Force. I understand that, whilst I do not have a proper letterhead yet, letters have gone out from my office this week. I have had discussion with the Minister for Agriculture, Food and Fisheries in the other place and I believe that a suitable replacement is being approached. I am not certain whether they have actually been appointed yet, but it will be happening, if it has not already happened, probably in the next few days.

JUVENILE FIRE LIGHTERS INTERVENTION PROGRAM

The Hon. R.K. SNEATH: My question is to the Minister for Emergency Services. Can the minister inform the council of any community safety initiatives to reduce the incidence of childhood arson in South Australia?

The Hon. CARMEL ZOLLO (Minister for Emergency Services): I thank the honourable member for his important question. The South Australian Metropolitan Fire Service carries out the Juvenile Fire Lighters Intervention Program (J-FLIP) which aims to reduce the incidence of unsafe fire play or fire setting by children. J-FLIP has been running successfully for 12 years. The program is based on a model developed by the Melbourne Fire Brigade and is used by most states in Australia. Juvenile fire lighters have the potential to cause death, injury or property damage irrespective of their intent at that time.

The program is a response service based on referrals from families, SAPOL, youth courts, the Women's and Children's Hospital and firefighters. Specialist-trained South Australian Metropolitan Fire Service officers work with the young fire lighters and their families to change their behaviour and provide the families with strategies to address the problem on an ongoing basis. In the last financial year, 96 young people were counselled as a result of requests from families, court-directed conference sessions or SAPOL, resulting in approximately 230 intervention sessions and follow-up contacts.

Follow-up research indicates that the recurrence of inappropriate fire-lighting behaviour has been reduced to approximately 5 per cent. This program is designed to complement rather than replace any other medical and mental health services provided to these youths. The J-FLIP program is currently being expanded requiring additional staff being trained from both the South Australian Metropolitan Fire Service and the CFS to provide an improved statewide response.

AMBULANCE SERVICE

The Hon. IAN GILFILLAN: I seek leave to make an explanation before asking the Minister for Emergency Services a question relating to volunteer recruitment for the South Australian Ambulance Service.

Leave granted.

The Hon. IAN GILFILLAN: All members will know that, in the past couple of days, the state media has been focussing on problems with ambulance facilities in the Barossa Valley, which may or may not highlight problems focused distinctly on volunteers. It is further added to by an article in *The Murray Valley Standard* of 5 April this year

headlined 'The Meningie ambulance station is desperately seeking volunteers', which read:

> The Meningie ambulance service will hold an urgent meeting tomorrow to address its critical shortage of volunteers.

I have been approached by people who are concerned about the volunteer situation in the ambulance service—particularly in the rural and regional areas—and was told that most volunteer stations are having huge problems finding and keeping new recruits and, furthermore, that the number of volunteers is not enough to maintain a 24/7 cover at over 60 per cent of volunteer stations. Most of the stations have problems with crews on the weekends, in particular, and on evenings and nights there may be only one person on call.

The information made available to me indicates that the problem has been in place for some time. There is a 12-month training course, which a lot of the recruits do not complete. For years, SAAS has supposed to have been doing exit interviews on volunteers who leave, but there is no public knowledge that those exit interviews have been done. There is also the challenge of the statistics, in that many of the numbers given by certain stations include people who have been out for two or three years. My questions to the minister are:

1. In her opinion, are the enrolment numbers satisfactory; if not, why not?

2. How many recruits were rejected in the past 12 months and for what reasons?

3. How many recruits left before completing their 12-months service?

4. What number of volunteers are categorised attendance only? In other words, what number of volunteers are not accepted as being able to drive but only as being able to attend at patient pick up or accidents?

The Hon. CARMEL ZOLLO (Minister for Emergency Services): I thank the honourable member for his questions. The South Australian Ambulance Service is the responsibility of the Minister for Health in another place, so I will refer these important questions to her and bring back a response.

The Hon. J.F. STEFANI: I have a supplementary question. Is the minister aware of any efforts which the Minister for Volunteers (Hon. Mike Rann) has attempted to improve the situation described by the honourable member?

The Hon. CARMEL ZOLLO: I thank the honourable member for his supplementary question. As I said before, all of us in this chamber recognise that volunteers are the heart and soul of our community, and I will refer his question to the Minister for Volunteers in another place and bring back a response.

The Hon. IAN GILFILLAN: I have a further supplementary question. It is my understanding that there is an application by the ambulance services for a portion of the emergency services levy. If that is the case, how is it that the ambulance services are not described as being an emergency service?

The Hon. CARMEL ZOLLO: You are correct in terms of the levy and in terms of the process of collecting it but, as I said, ambulance services are the responsibility of the Minister for Health in another place.

PRISONERS, EDUCATION

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister for Correctional Services questions regarding prisoner training programs.

Leave granted.

The Hon. T.G. CAMERON: The recent edition of *Government News* highlighted an innovative prisoner training program that is being run by the Western Australian Department of Justice, to help prisoners gain qualifications that will assist in finding employment, and help prevent them from re-offending. Auswest Specialist Education and Training Services offers prisoners a range of flexible training programs covering construction, hospitality, engineering and horticulture, and it is based on a national TAFE system. It has been so successful that it was recently awarded the Australian Training Initiative Award. Program coordinator, Mr Ray Chavez, said Auswest also provided funds and assistance to ex-prisoners on parole who wished to continue with their TAFE studies.

Prisoners can attend either short, intensive courses, or standard 10-week courses, similar to what TAFE would offer. A small group is even participating in university study. The program currently has a team of 40 educational personnel, 30 industrial training personnel, and more than 100 casual teachers. It reaches 6 000 prisoners a year in the state's 12 prisons and six work camps. Recent studies have shown education and training has proven to help people, once they get a job, to stay out of the prison system, and to participate in their communities in a positive manner after release. A lot of money is currently spent on putting people into prison and on fighting crime. Education and training has been proven to help people, once they get a job, to stay and remain out of the system. My questions to the minister are:

1. Considering that the government has taken a high profile tough line with its approach to law and order and prides itself on locking criminals away, will it consider introducing a similar program to that in Western Australia to ensure that, when prisoners are eventually released, they have the basic skills necessary to fit back into society?

2. What educational work and training programs are prisoners currently able to access before they are released, and how much is spent on these programs?

3. How many prisoners are currently in some form of educational work and training program?

4. Has the government undertaken any recent research into the relationship between prisoners who enter educational work and training programs and the likelihood of their re-offending (heaven forbid that they would do that)?

5. What percentage of prisoners released from state prisons in the past three years have re-offended?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): On behalf of my colleague, the Minister for Correctional Services, I will take that question on notice and bring back a reply.

INDEPENDENT LIVING AND EQUIPMENT PROGRAM

The Hon. J.M.A. LENSINK: I seek leave to make an explanation before asking the Minister for Industry and Trade, representing the Minister for Disability Services, a question about the Independent Living and Equipment program.

Leave granted.

The Hon. J.M.A. LENSINK: The 2004 annual report of the Independent Living and Equipment program states:

> Waiting times for new equipment remain unacceptably high. . . The ILEP program strives to cope with inconsistent 'top up' funding, which precludes staff from strategically managing lengthy

waiting list. . . The ILEP team at the ILC has become larger because of the need for more therapist assessments. The workload for all the ILEP staff has been high this financial year. The waiting list of approximately 700 clients has been reviewed and the number of new referrals for ILEP equipment has been approximately 1500. . . As has been common in the past few years, this extra 'once off' funding meant that staff had to work very hard at the end of the financial year to commit the available funds.

New responsibilities for the centre in that year include:

Accepting applications, determining eligibility, determining priority of requests, waiting list management, funding allocation, short time acute equipment requirements.

According to the financial statement, there is a $600 000 drop in the centre's recurrent funding from the Department of Human Services, as it was then, from $5 372 220 in 2003 to $4 763 013. It refers to note 4 further in the statements, which also shows the drop. I do realise that the government has been lauding itself for the fact that it has injected one-off funds of $5.9 million for waiting lists for equipment, including for the ILEP program. It has also congratulated itself on its 16.8 per cent increase in funding since coming to office. My questions are:

1. Why was the recurrent funding to the ILEP program reduced by $600 000 from 2002-03 to 2003-04?

2. Given the additional commitment of equipment funds and increasing demand, will the government increase ILEP's recurrent funding?

3. What is the waiting list as of close of business yesterday?

4. How much, as at close of business yesterday, has been spent?

5. Where has the 16.8 per cent the government congratulates itself on gone?

6. Where is the review of the South Australian Disability Services Act that was promised at the 2002 election?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): That was a very patronising question, typically, from the Hon. Michelle Lensink. The government does not have to congratulate itself. The reality is that there has been a substantial increase in equipment. It really is pitiful that the honourable member should try to attack the government—

The Hon. Caroline Schaefer: Answer the question.

The Hon. P. HOLLOWAY: I am answering it. The government has made a substantial increase in relation to equipment in this sector. The honourable member herself gave the figure of $5.9 million, which was significantly in excess, she would have noted, of the entire recurrent support she claimed the government is giving—a massive increase, I would have thought—into that area of need. Members opposite need to work out exactly where they are going. On the one hand they come into this place and say this government should be cutting taxes. They want to spend money. They are putting up huge lists of areas in which they think this government should be spending money. They need to work out their policies and where they stand. Do they want more money to go into the basics, as this government has been doing? This government has been putting money, in our three years in government, into health, education—

The Hon. A.J. Redford: Wasting money.

The Hon. P. HOLLOWAY: Wasting money, he says. He is the person who was talking about the Hindmarsh Soccer Stadium. What was Hindmarsh stadium? What was the Wine Centre? They are the experts in wasting money.

The Hon. A.J. Redford: Fifty soccer stadiums.

The PRESIDENT: Order! Members on my right are not assisting the minister. Members on my left are offending the standing orders and both will come to order.

The Hon. P. HOLLOWAY: This government has significantly increased expenditure to try to address some of the problems with equipment for disabled people, but members opposite really need to work it out—and they will have their opportunity as there is an election coming up in less than 12 months, and they will be able to set out their plans of where they think money should be spent. They better work it out because they cannot promise to cut taxes and at the same time increase spending in all sorts of areas. I believe that sufficiently answers the question. In relation to any other specific detail, I will refer it to my colleague in another place and bring back a reply.

The Hon. J.M.A. LENSINK: By way of supplementary question, given that the Independent Living Centre consistently records underspends, when does the government, without providing additional recurrent funding for therapists to assess client needs, expect that the $5.9 million will actually be spent?

The Hon. P. HOLLOWAY: If that organisation records underspends, perhaps the honourable member needs to investigate exactly why those underspends occur. I presume it is up to that government. The Independent Living Equipment Program is just as its name suggests—it is an independent living program. These are matters for my colleague, the Minister for Family and Community Services and I will refer it to him and bring back a reply.

The Hon. J.M.A. LENSINK: I have a further supplementary question. Does the minister understand the difference between 'capital funding' and 'recurrent funding'?

The Hon. P. HOLLOWAY: I suspect that I understand it a lot better than the honourable member.

The Hon. KATE REYNOLDS: I have a supplementary question.

The PRESIDENT: The Hon. Ms Reynolds has a supplementary question. This is getting a bit untidy.

The Hon. T.G. Cameron: That's because of the answers he's giving. If he bothered to answer a question, he wouldn't cop all these supplementaries.

The PRESIDENT: Order! What is untidy is the over indulgence of members in their own importance by interjecting. Interjections are out of order. That remark was not directed to the Hon. Ms Reynolds.

The Hon. KATE REYNOLDS: Thank you, Mr President. Will the minister assure the council that the one-off injection of funds for equipment will cover all the unmet need, including proper assessments for those people who have not yet been fitted for wheelchairs or measured for lifting equipment and so on? Will it also cover the projected maintenance costs for the equipment currently being used?

The PRESIDENT: There is an awful lot of opinion in that question. It is supposed to be a question only.

The Hon. P. HOLLOWAY: I will refer those questions to the Minister for Disability and bring back a reply.

METROPOLITAN FIRE SERVICE

The Hon. J.S.L. DAWKINS: I seek leave to make a brief explanation before asking the Minister for Emergency Services a question about the Metropolitan Fire Service.

Leave granted.

The Hon. J.S.L. DAWKINS: I understand that in 2003 the Metropolitan Fire Service instituted a wellness program for its staff. The program was designed with a focus on two main areas—voluntary health monitoring and station exercise. A tendering process for the delivery of this program on an annual basis at metropolitan stations and Port Pirie was conducted. Apparently the winning tender came in at $22 475 (GST excluded), less than half that of the two other definitive tenders. My questions are:

1. Will the minister confirm that the company awarded the project in 2003-04 (as I say, a tender of $22 475) charged SAMFS $69 100 for the 2004-05 program, and that the cost for the coming year has blown out further to $78 191?

2. Will the minister inform the council whether the specifications of the wellness program have changed considerably since its inception without its going back to the industry for a further tender process?

3. Will the minister provide the council with any reasons outlined by the MFS for instituting a wellness program in the first place?

The Hon. T.G. Cameron: Make us feel well, Carmel.

The Hon. CARMEL ZOLLO (Minister for Emergency Services): I am very pleased to help you feel well, if you need to. Clearly, the program which commenced in 2003 was before my time, but I will undertake to obtain some information for the honourable member and bring back a response.

MINERAL EXPLORATION

The Hon. J. GAZZOLA: I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development a question about mineral exploration in South Australia.

Leave granted.

The Hon. J. GAZZOLA: Just over a year ago, the government released its plan for accelerating exploration (PACE). With much of South Australia already pegged by explorers, new explorers, particularly majors, will need to enter into joint venture agreements with those companies which have already pegged ground. What has the government been doing to facilitate these joint ventures, and will the minister give an example of the results of these efforts?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development): I thank the honourable member for his question. The Hon. John Gazzola is correct: there will need to be an increasing number of joint ventures in South Australia. The government is actively encouraging this through its PACE initiative, primarily through the use of the South Australian mineral and petroleum expert group. This group assists the government in targeting exploration companies, particularly the majors, and convincing them to explore in South Australia.

The drilling partnership has been particularly useful in this regard. For example, Teck Cominco, one of the world's larger mining companies, announced last week that it would be a joint venturer with Avoca Resources, but only on its South Australian tenements where it would be eligible for drilling partnership money. The joint venture will see Teck Cominco spend up to $4.5 million in South Australia over the next four years. Avoca Resources Limited has executed a formal agreement with Teck Cominco Australia Pty Ltd, a wholly owned subsidy of Vancouver-based Teck Cominco Limited, and they will be involved in a number of projects, including the Cowell copper-gold project.

The Cowell copper-gold project is located close to the town of Cowell on the east coast of Eyre Peninsula, midway between Port Augusta and Port Lincoln. Avoca has previously discovered high-grade copper-gold massive sulphide veins over a large area associated with an 80 square kilometre magnetic anomaly located adjacent to a Hiltaba Granite intrusion. Subsequent to its discovery, the company completed detailed ground-based transient electromagnetic (TEM) surveys aimed at locating additional bodies of massive sulphide.

Significantly, a 600 metre long TEM conductor has been located one kilometre south-west of high-grade copper-gold veins intersected by Avoca. It lies at the intersection of two structures adjacent to the margin of the Hiltaba Granite. The conductor is interpreted to be dipping subvertically over a distance of 300 metres and occurs at a depth of 120 metres below the surface, and it will be the focus of drill testing scheduled to start immediately the company is able to secure a diamond drilling rig.

The Hon. T.G. Cameron interjecting:

The Hon. P. HOLLOWAY: Let me say something about the availability of diamond drilling rigs. Because we have been so successful in promoting exploration in this state, we are finding it difficult to secure the services of a drilling rig—so successful are we in securing this exploration.

The Port Julia copper-gold project is located on the east coast of the Yorke Peninsula, approximately 20 kilometres south of the historic Hillside and Parara copper-gold mines. Previously, Avoca completed a detailed gravity survey, resulting in the definition of a six kilometre long gravity anomaly. Avoca has since completed two diamond drill holes and intersected a strongly haematite altered breccia that contained anomalous copper, gold and rare earth elements. The haematite breccia intersected is similar in appearance to breccias associated with the Olympic Dam copper-gold-uranium mine. Planned exploration at Port Julia incorporates TEM surveying and diamond drilling.

The Redhill diamond project is located approximately 30 kilometres south-east of Port Pirie. That project is defined by several discrete high intensity magnetic anomalies that lie within the Kimberlite Indicator Mineral Field Anomaly (KIMFA), as defined by South Australian government geologists. Modelling of the magnetic anomaly confirms the shape of the body, giving rise to the magnetic anomaly as being funnel-shaped, similar in appearance to kimberlite pipes. Exploration to be completed at Redhill will be the collection of geophysical data to precede diamond drilling and detailed mineral analysis.

Members interjecting:

The Hon. P. HOLLOWAY: I am very pleased to welcome Teck Cominco to South Australia. As always, I wish both the joint venture partners luck in their exploration efforts. We will be pleased to see that additional $4.5 million spent in South Australia over the next four years, because it will add significantly to the wealth of this state.

The Hon. J.F. STEFANI: I have a supplementary question. Will the minister advise the council whether he and the Rann Labor Government support further uranium mining in South Australia?

The Hon. P. HOLLOWAY: I think the Hon. Terry Stephens asked me just last week whether I agreed with the Treasurer's comments. The answer is yes, I do.

PARLIAMENT, REGIONAL SITTINGS

The Hon. KATE REYNOLDS: I seek leave to make a brief explanation before asking you, Mr President, a question about regional sittings of parliament.

Leave granted.

The Hon. KATE REYNOLDS: Last week I asked you a question about regional sittings of parliament, and specifically about plans for the Legislative Council to sit in a regional community of South Australia. You replied that you had not had any discussions about the Legislative Council's sitting in a regional community, and you said that you would invariably be involved in any discussions that took place. The following day, you will remember that I showed you a document which had been given to me that morning entitled 'Schedule of Community Cabinet and Regional Parliament Meetings to February 2006.'

My understanding is that the document originated in the Department of the Premier and Cabinet. Under the week starting Monday 21 November, the document states:

> Parliament sitting, community cabinet and regional parliament-Legislative Council only.

In the next column, headed 'Location', the document states:

> Port Augusta (See cabinet note for explanation).

My questions to you, Mr President, are:

1. Have you on or since 5 April held discussions with the Premier or government ministers about the Legislative Council sitting in any regional areas?

2. Will you please provide to the council a report on the progress of the government's plans for the Legislative Council to sit in Port Augusta or in any other regional community?

3. Will you correct those members who have recently made comments about the parliament sitting in the South-East by pointing out that, in fact, only half the parliament will be sitting in Mount Gambier next month?

The PRESIDENT: In response to the original questions asked by the honourable member, I have instigated correspondence with the Premier's department in respect of the matters raised. I have not yet received a reply to that letter. I have the document with which the honourable member provided me just before the start of proceedings today. Certainly, that is the implication one gets from the document, which states '(See cabinet note for explanation)'. I have not seen a cabinet note.

I have instigated correspondence with the Premier and the cabinet. I have not had any report back on that. I am prepared to do that as soon as possible. In respect of the third question, the honourable member is absolutely correct: it is not the parliament that will be meeting in Mount Gambier in the very near future, but the House of Assembly. If and when I get further information about that (and, certainly, I expect to get that), I will report back to the chamber.

The Hon. J.F. STEFANI: As a supplementary question: when discussions are advanced in relation to the possibility of the council sitting in a regional area, will consideration be given to the cost associated with this exercise and, if that is to occur, will you please report to the chamber what costs would be incurred?

The PRESIDENT: I am certain that the Premier and the cabinet would always consider the cost. They would be endeavouring to get the most efficient result from any activities that are conducted in the name of the parliament or part of the parliament.

The Hon. IAN GILFILLAN: As a supplementary question: Mr President, I understood you to say that you would invariably be involved in discussion on any schedule of community parliamentary meetings involving the Legislative Council. In relation to the document that you have seen and the one which my colleague addressed, were you invariably involved in discussion before the presentation and finalisation of this document?

The PRESIDENT: I thought I explained that. The matter was brought to my attention last week. I have had correspondence delivered to the Premier's department, and I am expecting a reply. I have had no other discussions in respect of this matter prior to that.

The Hon. T.G. Cameron: I think that is a resounding yes.

The PRESIDENT: That is a resounding no; I have not.

The Hon. J.F. STEFANI: I have a further supplementary question. Will you, Mr President, seek the views of the members of this chamber before a decision to sit in a regional area is, in fact, finalised?

The PRESIDENT: It is not necessary. I will certainly be having discussions with the clerks on the logistics, etc.

The Hon. A.J. Redford: You might be there by yourself.

The PRESIDENT: That may well be the case.

The Hon. T.G. Cameron: You mean you won't even discuss it with us?

The PRESIDENT: I will have discussions with the government to try to find out what its intentions are. When I am appraised of what its intentions are, I will then consider what action I will take. I am not going to commit to do one thing or another until I am fully informed of the government's intentions. Whether this council wants to make a decision, contrary to the government's decision, is always the prerogative of the Legislative Council.

The Hon. T.G. Cameron interjecting:

The PRESIDENT: Order! I tell you what is the prerogative of the President—to call for order when members continually interject. The Hon. Mr Cameron is just being offensive, and I am warning him.

HOUSING, GRADUATE LOAN

The Hon. A.L. EVANS: I seek leave to make a brief explanation before asking the minister representing the Minister for Housing questions about the graduate housing loan.

Leave granted.

The Hon. A.L. EVANS: The Graduate Housing Scheme was launched in September 2003 by HomeStart Finance. Available to graduates with university, TAFE and diploma qualifications, the loan enables graduates to enter the private housing market. It is my understanding, from statements made by Shelter SA last year, that housing properties are at such a level that people are forced to stay in the private rental market for longer periods of time. Some estimate that approximately 40 per cent of renters are locked in the rental market for 10 years or more before they are in a position to purchase their own home. My questions are:

1. Will the minister provide information on the total number of graduate housing loans approved since the program was launched in September 2003 to March 2005?

2. Of the total number of applications approved, how many applications were provided to applicants who graduated from their studies more than 10 years ago?

3. Is the minister able to provide information on how South Australia compares to other states in relation to its graduate housing loan initiative and its role particularly in relation to improving housing affordability?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I will refer that question to the minister in another place and bring back a reply.

PORT STANVAC OIL REFINERY

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Minister for Industry and Trade questions about the Port Stanvac refinery.

Leave granted.

The Hon. A.J. REDFORD: In early 2003, Mobil announced that it would mothball the Port Stanvac Oil Refinery and spend $30 million to mothball and maintain the site. Following that announcement, the Premier established a task force to look at the future of the site. That pre-dated the Mitsubishi announcement of the closure of the Mitsubishi factory at Lonsdale. In April 2003, the Minister for Environment and Conservation announced, as Minister for the Southern Suburbs, that he was being represented on a working group set up by the Treasurer, although I am not sure whether that is the same task force earlier announced by the Premier. In May 2003, the government announced the opening of the southern suburbs office and said it would be intimately involved in discussions about Port Stanvac and its future. In October 2003, it was announced that they would have to report on the extent of site contamination by the end of that year.

In November 2003, the government announced an agreement with Mobil, whereby Mobil would mothball the site until July 2006, pay $814 000 to the government and provide a site assessment report at the end of the year. In November 2003, the Treasurer said something should be done about the site, and on 4 April this year, in response to a question from the Hon. Sandra Kanck, the Treasurer advised that Mobil had completed its site contamination assessment in December 2003. The Treasurer also advised that Mobil's stage one remediation action plan had been given to the EPA. He advised that Mobil was developing a 'scope for work'. It was also announced that, 'Mobil has reaffirmed its intention to complete the mothballing of the refinery.' So it is clear that we are not getting the refinery back. The State Infrastructure Plan states:

> The government will negotiate access to surplus Port Stanvac land for industrial use and investigate other investment opportunities for industrial sites in the south.

At page 57 it states that, 'Port Stanvac is identified as an industrial site', and at page 60 the plan says that a priority one project is to 'Pursue alternative uses of Port Stanvac land. Lead—state government, local government.'

Last Thursday the minister released the planning strategy for the outer metropolitan Adelaide region. On page 31, Port Stanvac has been identified as a heavy industrial site. Further, it has been identified as an area that deserves protection from 'residential encroachment'. It goes on to say:

> Review the future of the Port Stanvac land with an emphasis on maintaining the site for employment-generating land uses.

My questions are:

1. Has the Premier's task force prepared a report? If so, is that report available publicly?

2. As Minister for Industry and Trade and Minister for Urban Development, what options is the government investigating in relation to the use of this land?

3. Does the government have a copy of Mobil's site contamination assessment? If so, will it be released publicly?

4. Does the government have a copy of the stage one remediation plan? If so, will it be released publicly?

5. What is Mobil's scope for work? When will it be commenced and will it be completed?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I am pleased to see that the Hon. Angus Redford is showing such great interest in Port Stanvac—I wonder whether that arises because of the fact that it is in the seat of Bright. In relation to the land at Port Stanvac, there is the future of the Mobil refinery and there is, of course, other land adjacent to that area which the government is currently looking at and which includes the Mitsubishi engine plant.

In relation to those specific questions, I am not aware of whether there is a report of the Premier's task force, but I will take that on notice. In relation to the use of land, the Department of Trade and Economic Development has looked at the industrial land issue and a draft report following that review from Planning SA is under consideration. There are issues in relation to the availability of industrial land within Adelaide, and the land that has been identified for industrial land is being consumed at a rapid rate—and it is good that it is, because that means the economy of the state is growing. So, the department is currently examining that and I would expect to get a report fairly soon. Regarding the Mobil site contamination or remediation reports, I am not aware of whether they are with the government, but I will take that question on notice and bring back a reply.

The Hon. A.J. REDFORD: I have a supplementary question. Given that the minister is looking at all industrial land and expecting a report, when does he anticipate receiving the report, and when will the public be involved in any consultation process in relation to future use of the land?

The Hon. P. HOLLOWAY: In relation to the land at Port Stanvac, the honourable member framed his question in the context of the Mobil land. Obviously the fate of that land and the fate of the Mitsubishi land adjacent to that is really in the hands of those particular companies. Obviously, the government keeps in touch but, ultimately, the future use of those sites does depend on the company, and the company's decision. It is not really for me to set any date in relation to that. All the department can do is to keep in touch with those companies, in relation to their plans for that particular land, and then obviously decisions on the use of that land by the companies concerned precludes any further use that might be undertaken.

In respect of the broad report of industrial land use in Adelaide, information has been provided to me, and some work has been done with DTED and a number of other agencies, including Planning SA, to continue this work. It is actually ongoing work. I assume that it was done in the days of the previous government, maybe keeping track of industrial land right across Adelaide—

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: It is mothballing it, but the company presumably still owns the land, and there is obviously legal title. I was not involved at the time in the discussions the Treasurer had with Mobil, and I think it

would be wise for me to go back to those negotiations of several years ago. I am not aware offhand what the particular details of those negotiations involve as far as the future use of the land, or what control there is, or what agreements there are in relation to the future use of the land. I will take that question on notice and bring back a considered reply.

COURTS, SUSPENDED SENTENCES

The Hon. T.J. STEPHENS: I seek leave to make a brief explanation before asking the Minister for Industry and Trade, representing the Attorney-General, a question regarding suspended sentences.

Leave granted.

The Hon. T.J. STEPHENS: Today's *Advertiser* reports the alarming rate of suspended sentences given in South Australia as compared with those in other states. South Australia has the highest proportion of suspended sentences in the country, and it is 13 per cent clear of the next highest contender. My questions are:

1. Will the Attorney admit that the government's rhetoric about being tough on criminals and crime does not match its actions?

2. Does the Attorney agree that this rate of suspended sentencing would not be in line with public expectations of doing the time?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): This is a matter that I understand the Attorney has addressed. One always has to be careful in using any statistics. Particularly if one is comparing one jurisdiction against another, one needs to be sure that one is comparing apples with apples and not apples with oranges. I note that my colleague and, I think, The shadow attorney were on radio this morning having a discussion in relation to the impact of these issues. I think the point needs to be made that there is more than just the simple superficial statistic that one needs to take into consideration when looking at the impact of suspended sentences. There are certain differences between what happens from one state to another.

I am sure the Attorney-General would be pleased to place on record the information that he has been providing on radio in relation to answering this particular question, and I am happy to get an answer and bring it back to the council, because I think it important that the council is informed about what the true situation is. One certainly should not use those raw statistics to draw conclusions in relation to this government's law and order policies.

BETFAIR

The Hon. NICK XENOPHON: I seek leave to make a brief explanation before asking the Minister for Industry and Trade, representing the Minister for Gambling, questions in relation to the British betting exchange business Betfair.

Leave granted.

The Hon. NICK XENOPHON: A front page report in today's *Australian* headed 'Betfair's lucky break in Apple Isle' refers to the Tasmanian government being close to granting a licence to the British betting exchange Betfair, giving the company a toehold in the Australian gambling industry that would break the monopoly of regulated TABs and on-course bookmakers.

The Australian reports that Premier Paul Lennon yesterday confirmed that his government was holding discussions with Betfair's Australian partner, Publishing and Broadcasting Limited, and that he had met PBL Executive Chairman, James Packer, in Hobart last week. The report also goes on to say:

> A Tasmanian licence would allow punters in other states to bet legally with Betfair by telephone or via the internet, a move Access Economics estimates could cost state governments between $30 million and $40 million a year.

The report also makes reference to how betting exchanges work, that they allow punters to bet on horses to lose as well as to win, prompting claims that it can lead to corruption. Punters bet against each other over the internet, with Betfair taking a commission on winnings.

I have been contacted by the welfare sector that is concerned about betting exchanges and the impact they can have on problem gambling in terms of opening up internet betting in Australia and the very nature of the Betfair product. My questions are:

1. Does the minister share the concern of the welfare sector that betting exchanges would increase levels of problem gambling in South Australia, given the nature of the product?

2. Is the minister concerned about claims and reports overseas that betting exchanges and the nature of betting exchanges can lead and have led to corruption in terms of race fixing overseas?

3. Will the government act to void bets placed by any Australian or locally based version of Betfair as a matter of urgency?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I will refer that question to the minister for gambling in another place and bring back a reply.

MATTERS OF INTEREST

LIBERAL PARTY

The Hon. R.K. SNEATH: Today I will speak on the unrest in the Liberal opposition party. In *The Advertiser* on Monday I read with interest an article headlined 'Liberal's chief seeks seat as unrest grows—no messiah on horizon for party'. The Liberal Party State President, Bob Randall, is stepping down to make a bid for parliament, amid growing internal unrest about the party's performance at the state level. Mr Randall, who announced the move at a meeting of the party's State Council on Friday night, threw out a challenge to the party to find a cause to fight for. Mr Randall, who was an MP for the state seat of Henley Beach in the 1980s, will now try to get a seat in the Legislative Council. Nominations for the council close on 18 April, with pre-selections in June.

As many as 10 people are expected to nominate to fill the winnable fourth and fifth positions behind the Hons Rob Lucas, Michelle Lensink and John Dawkins. Rumours in the corridor tell me that the only one safe of those three is the Hon. John Dawkins—the only one who has the full support of the party. They tell me in the corridors that the Hon. Rob Lucas is on the nose—they want him to go. If he is successful in preselection and wins another eight years, he will be here for something like 30 years. Some of his colleagues in the

corridors say that that is 20 years too long. The Hon. Ms Lensink is not wanted either—only by Christopher Pyne.

When asked about the party's performance Mr Randall said that parliamentary performance was up to the MPs to sort out between themselves. What he really meant was: God help us. Pressed on what the cause should be, Mr Randall said, 'Quite clearly market research will identify the policy issues we need to work on.' Mr Randall said that he comes from a sales and marketing background, and he went on to say that, when you are selling a product, you try to differentiate between yourself and the opposition. You would want to be the best salesman in the world to sell this mob!

Mr President, look at the members over there. They have no talent. The Hon. Mr Lucas, who is going for 30 years, is obviously tired; the Hon. Mr Lawson is tired as well and uninterested; and the Hon. Caroline Schaefer is not interested any more. She had five minutes as a minister and is not interested in being a shadow minister—and she, too, is tired. The Hon. Angus Redford wants to move because he is tired of sitting on the backbench behind the Hon. Mr Lucas. As I said, the Hon. John Dawkins is the only one being supported by the majority of the party, but he is also frustrated. However, he is not as frustrated as the Hons Mr Ridgway, Mr Stephens and Ms Lensink, who are frustrated by the lack of movement at the top to make way for them so that they can progress to the front bench.

Of course, the Hon. Mr Stefani, who laughs, has already been dumped by the party, or he dumped the party—one or the other—and he does not even want to sit on the same side of the chamber as them. They say that they have no policies. They had a love-in at Mannum and came back with nothing—no ideas and no opinions. It reminds me of the old Slim Dusty song about the militant's rouseabout—he had not ideas and no opinions. I think Slim might have been singing about the opposition. Their federal colleagues are disappointed with them. They say that they are the worst opposition and the worst branch of the Liberal Party in the country. Their policies and their ideas are rarer than bikinis in Iceland. Some of their own people are saying in the corridors that this group of Liberals is as useful as a truckload of post holes.

Time expired.

PUBLIC SERVICE MORALE

The Hon. J.M.A. LENSINK: It gives me great pleasure to follow that erudite contribution from the Hon. Mr Sneath, who clearly has a problem with the concept of competition for political pre-selections. My topic today is in relation to Public Service morale and this state government as a bad boss. There is a series of alarming trends within the government which are not being attended to. As I have mentioned previously in this council, Public Service morale is at an all time low, with the rates of sick leave per full-time equivalent on the increase. In 2001, it was 6.1 days per FTE; 2002, 6.7; 2003, 7.2; and in 2004, it has increased to 7.4. We have also seen through the Office of the Commissioner for Public Employment alarming responses to issues of workplace bullying, which, it is reported, is at a rate of some 26 per cent.

In response to the question: 'How has your morale changed over the past 18 months?', 14 per cent said that it had deteriorated. I will not outline the previous contributions I have made from the Public Service Association as they are on the record, but I will refer to the issue of women's advancement in the Public Service and how appalling that is. I refer to Labor's platform for government titled 'Women: Reaching Equality' and its second point that women have the right to work—rather a patronising statement, I think—and that Labor will recognise that women are still the primary care givers in the community, including those who care for children, the disabled and the aged.

As I will outline, that does not apply to their own employees in the Public Service. Under the heading 'Status of Women', it states:

> Labor believes:
>
> 21. That the involvement of women is essential to policy making in the government.
>
> 22. That government should provide a structure and partnership with the private sector—

let us enforce these rules on the private sector but not in our own patch—

> to ensure women's choices and interests are supported and maintained.

When we look at the record of the way in which the government is treating women in the Public Service, it makes a sort of sly leaning in its bill to have 50 per cent of women on boards but neglects the people who are doing the work on the ground in the Public Service. In fact, the number of female executives employed under the PSM act has fallen, with the equity index still showing that the employment of women is skewed towards the lower end of the classification scale. A number of public servants are not even aware of their rights in terms of flexible working arrangements such as purchased leave, compressed weeks and job sharing.

Dr Barbara Pocock is worth noting for her comments, in which she has heavily criticised the government for its attitude in its current negotiations in respect of paid maternity leave. She describes it as the 'national delinquent and the family unfriendly government'. The OCP has also pointed out that there is continued under-representation of women in leadership positions. While it may be commendable that the gender balance bill recognises that women make up 51 per cent of our population and that we do need to make efforts in that regard, the government is actually completely neglecting women in the Public Service and treating them in the same way it does with respect to everyone else who tells it something that it does not want to hear.

If one looks at the Liberal Party's record, we were able to steadily increase the representation on boards and committees—and a lot of this was driven by the Hon. Di Laidlaw; and I think she needs to be recognised for that—from 25.2 per cent in 1993 to 33 per cent in 2002. That is a very significant amount, without having to put in measures to address that, as this government has to do because with its male-driven culture it does not like to give the girls a go, unless it recognises that it is a politically popular move.

ORONTES STAR

The Hon. J. GAZZOLA: I am pleased to be able to report on a new addition to the Australian Volunteer Coast Guard fleet with the commissioning of the *Orontes Star* to the Port Vincent flotilla. The need for a new vessel arose from the limited rescue capacity of the existing vessel, which has now been transferred to the Port Augusta Coast Guard flotilla.

On 5 March, the former minister for emergency services (Hon. Patrick Conlon) and I attended the naming and commissioning of the new and improved craft for the Port Vincent flotilla, which has a primary operational area covering the eastern coastline of Yorke Peninsula from

Stansbury in the south to the northern waters of the gulf. To celebrate the occasion, the vessel was escorted into the Port Vincent marina by the South Australian water response vessel and fire boat MV *Gallantry*.

Some statistics about government help in general and the specific $190 000 marine rescue package are impressive. We heard on the day from Coast Guard representatives that on a per capita basis the South Australian government leads the way on funding and support for volunteer marine rescue groups. The new purpose-built vessel is impressive. Made in South Australia by Clayton Marine and powered by a Volvo Penta inboard diesel, the new $165 000 7.4 metre vessel, under a crew of three to four members, is able to operate with its 300 litre fuel capacity up to 30 nautical miles out to sea.

In order to complement these specifications, it is fitted with the very latest navigation and safety equipment, and it offers the volunteers a high level of safety and comfort. This was made possible, primarily, by a grant of over $149 000 from the government's Community Emergency Services Fund. Acknowledgment must also be made of the fundraising efforts of the flotilla volunteers and the local community that contributed the remaining funds for the vessel. This, though, is not the end of the story of government and local assistance for the flotilla. The government also provided an additional $13 000 for the construction of a storage shed at Bennett Park at Port Vincent, which the volunteers constructed and made ready for the security and storage of the vessel.

As well, the government provided an additional $30 000 to fund the flotilla to enable it to buy a four wheel drive tow vehicle, given that it is an operational requirement that rescue vessels need to be trailerable to meet all contingencies. Due to the efforts of volunteers and government financial assistance, the Coast Guard now has volunteer marine rescue resources strategically placed on Yorke Peninsula at Port Vincent, Edithburgh and Port Victoria where volunteers can respond to the needs and safety of local communities and other nearby coastal towns.

I acknowledge the opening welcome and introduction by Deputy Squadron Commodore Keith Dalling, the blessing introduction by Squadron Commodore Cheryl Dalling and the presence and participation of John Culshaw (Honorary Commodore of the Port Vincent flotilla), Commander Brent Wellington and Vice Captain Margaret Wellington, Mrs Mary Kelsey for the naming, Pastor Jewell Grant for the actual blessing and, finally and importantly, the volunteers who give so much of their time and effort so that others can feel safe in their work and leisure. I thank the Port Vincent flotilla for allowing us to inspect its impressive acquisition, and for taking us on a little cruise around the marina courtesy of the inclement weather outside the marina from which we were gratefully spared.

SEXUAL ASSAULT

The Hon. SANDRA KANCK: Most people think that the sexual offence of flashing, otherwise known to most of us as indecent exposure, is a trivial offence. Its mention usually results in giggles and jokes. However, it may be a far more serious offence than we know. The murders of Maya Jakic and Megumi Suzuki, plus the rape of another woman (who continues to live with the emotional pain of that attack and the knowledge of how close to death she came), stand as a testimony to that link. Although I have been denied an FOI request of details of the previous criminal activity of the murderer in question, Mark Erin Rust, fortunately an article in *The Advertiser* of 25 May 2003 chronicles his criminal record.

The article's title, 'From scaring girls to arson and murder', gives some clue to the direction of my thinking and the reason for this speech. There is no information about the first time his behaviour was reported to the police but, in 1983, Rust was first charged with an indecent act. In 1984, he was charged with acts of indecency; in 1987, he was charged with four indecent behaviour offences; in 1988, he was charged with indecent behaviour; in 1991, he was charged with gross indecency; and, on another two occasions in 1991, he was charged with indecent behaviour; in 1996, he was charged with offensive behaviour; and, in 1999, he was charged with two counts of indecent behaviour.

Of course, in that same year, Maya Jakic was murdered. Given his record, I suspect that other incidents might not have been reported or were reported but, perhaps, without sufficient willingness by police to follow up what many regard as a minor offence. Clearly, over time, ignoring or brushing aside these apparently minor offences as inconsequential did nothing to curb this man's behaviour. With my FOI application having been denied, it is impossible to determine the exact nature of these offences, but that first charge in 1983 was most likely not the first time he offended but merely the first time that he was charged.

The Advertiser article quotes Rust's friend Craig as saying that he knew of 'several incidents when Rust would wait at a North Adelaide bus stop to harass women'. The response of the judicial system to the litany of charges against Rust is instructive also of how seriously we take the offence of flashing. The 1983 charge was dismissed, four indecent behaviour charges in 1987 resulted in either no convictions or just fines, the 1988 charge resulted in a $50 fine with a two year good behaviour bond, the 1991 charge of gross indecency got him a three-month suspended sentence, and the other two 1991 charges of indecent behaviour got him a $300 and $500 fine respectively.

By 1996, the offensive behaviour charge got him six months imprisonment, but in 1999 the two counts of indecent behaviour got him nothing more than a suspended four month gaol term and yet another two year good behaviour bond. As I became vaguely aware of this man's criminal behaviour leading up to the rapes and two murders, I began to speculate about a link between the apparently harmless behaviour of flashing and sexual assault.

I wrote twice to the Attorney-General but got no joy from that. An FOI application for more information about Rust's crime and punishment, and any rehabilitation that might have occurred, has been denied. Finally, I got in touch with the Australian Centre for the Study of Sexual Assault and asked for information it might have about this speculative link. It got back to me with a reading list but it is not extensive, as it appears that no-one is looking for such a link and, therefore, the crime statistics do not supply the necessary information. However, one of the studies referred to by Rabinowitz Greenberg and others said that, in a study at a university teaching hospital between 1983 and 1986, 221 exhibitionists were assessed. The results indicated that, over a mean follow-up period of 6.84 years, 11.7, 16.8 and 32.7 per cent of exhibitionists were charged with or convicted of sexual, violent, or criminal offences, respectively. Sexual reoffending recidivists were less educated and had more prior sexual and criminal offences.

There are very good reasons for more research to be done on this question of a link between flashing and serious

criminal assault. It is time that the South Australian Office of Crime Statistics started compiling the information. It may well be that proper analysis will reveal that this behaviour should not be taken as a joke, but that it should be taken with the utmost seriousness by our police and justice systems.

PORT STANVAC OIL REFINERY

The Hon. A.J. REDFORD: Today I want to talk about the future of the Port Stanvac Oil Refinery site and the surrounding area. In early 2003, Mobil announced that it would mothball the Port Stanvac Oil Refinery and, not long after that, Mitsubishi announced that it would be closing its Lonsdale engine plant. There has been a great deal of disruption and dislocation amongst the people who had jobs in those two major industries. Quite rightly, all of us were shocked and stunned and went through a period of mourning in relation to the loss of jobs that occurred in relation to those two significant announcements. Indeed, it was pleasing to see that the Premier announced the establishment of a task force, with which I assume he was involved, and the Minister for the Southern Suburbs was involved.

I think, at the time, when he was making the announcement, he also referred to it as being a working group, and I assume that there were not two groups being established. It is disappointing that we have heard nothing publicly about what that task force has done and what it proposes to do. In fact, that was more than 24 long months ago that the announcement of that task force was made by the Premier. One would assume that there are minutes, position papers, calls for submissions, public meetings, etc. involving the residents of O'Sullivan Beach and Hallett Cove, but my research indicates that residents of those communities have not been brought into the government's confidence. Indeed, what we did get was the establishment of the southern suburbs office, and I was pleased to see Fij Miller appointed to head up that office. She is a person for whom I have some regard.

However, again, we have not heard anything specific about what the government proposes in relation to that matter. I understand that the government was given a report on the extent of the site contamination prepared by Mobil in December 2003. That is a document that has not been shared with the local community; it has not been publicly issued so that the community can become engaged in the debate about what should happen in respect of the future of that land. We also understand that the EPA was given that document and, again, there appears to be a lack of public consultation and community involvement in what the EPA might or might not do in relation to the remediation of the land at Port Stanvac. My challenge to the government is to release the site contamination report so that everyone knows what we are dealing with and so that the community can be fully and properly engaged.

There is also a remediation action plan but, again, the residents of Hallett Cove, Lonsdale and O'Sullivan Beach have not been fully briefed or told about what is contained in that plan. All we have had is the release of an infrastructure plan last week which says that industrial use should be negotiated—but it does not say with whom it should be negotiated, by whom it should be negotiated, or the terms of any negotiation regarding access to that particular site. Again, the residents should be brought into the confidence of this government so that they can become involved in the future of their own area.

Indeed, the plan issued by the Minister for Urban Development and Planning last week says—from what I can understand—that there is to be no residential development nor any open space in that particular area. That is a great disappointment. The communities of O'Sullivan Beach and Hallett Cove deserve better, and it is about time that the government brought those local communities into their confidence. There are rumours abounding everywhere down there. I was talking to the man who managed the boat ramp the other day and he said that all he was seeing on that site was large numbers of people in suits with big plans in their hands wandering.

If this government is to get any brownie points out of this particular matter it must release all these documents, it must bring the community into its confidence, and it must engage with the local residents so that we can get a better outcome for all South Australians.

Time expired.

WORKCOVER

The Hon. A.L. EVANS: In October 2004 WorkCover decided to remove what it described as 'stand alone mediation' for workers' compensation claims and requested rehabilitation consultants and case managers to undertake the task. I understand that the overwhelming majority of cases where such mediation services were used have involved workers who have alleged harassment and bullying in the workplace, and who have been diagnosed with stress, anxiety or depression.

I have received rough estimates from the mediation practitioners that around two-thirds of the injured workers who have participated in mediation have returned to work on terms mutually agreed with the employer. By negotiating in a non-threatening environment, workers and employers are facilitated to agree on measures and strategies to assist in safe workplace reintegration, achieving a rapid return to work. Workers were encouraged to invite their doctor to make an independent assessment of the agreements reached with their employer. Mediation processes were taking an average of about five weeks from start to finish, according to some industry participants. I understand that independent mediators have provided both the injured worker and the employer with an opportunity to take control of their concerns at work and focus on the future.

A recent survey by the South Australian Rehabilitation Providers Association of its members and non-members has shown that 91 per cent oppose this WorkCover decision. As a result of this decision, employers are now faced with using either the WorkCover model of engaging case managers or rehabilitation providers, or paying for the services themselves. If the former option is used the provider is neither skilled nor accredited to provide professional independent mediation. If the latter option is exercised it is possible that there will be a perception by workers that the employer has influenced the mediator. Employees may also be disinclined to pay for mediation services, but in the longer term this will adversely impact on their levy penalties.

Mediation has not been conducted to establish workers' entitlements: it has been used primarily to distinguish between industrial relations and workers' compensation issues and the issues which inhibit the worker's return to work. In such cases, delays create negative impacts socially and psychologically for workers, their families and also employers. There is a financial burden on the workers'

compensation scheme and on families as well. Without mediation, workers will fall back into the time-consuming process of investigation, with multiple interviews and consultations. Witnesses, investigators and a number of medical specialists could be involved. This process can take many months.

This method is lengthy and increases the anxiety of the worker and their dependent family. Until a claim is determined, they are not eligible for weekly wage maintenance, but they may apply for interim payments subject to them repaying these amounts if the claim is subsequently rejected. This only adds to the concern and anxiety of the worker and the family, who may not be eligible for Centrelink payment during that time, should their spouse be earning an income. It is also unhelpful for the employer, because it creates uncertainty as to when the employee will return to work, and they do not know whether they should recruit a replacement. I have been told that, in those instances where the employer has recruited a replacement, it has heightened the anxiety of the injured employee. Increasing rumours in the workplace act as a disincentive to return to work. Constituents have expressed the hope that the corporation will review this decision and resume funding for independent mediation services.

ADELAIDE PLAINS

The Hon. J.S.L. DAWKINS: For sheer variety, few places anywhere in Australia play host to the range of activities to be found across the broad reaches of the Adelaide Plains. On 4 March this year, I attended the launch of the Adelaide Plains marketing brand at the Virginia Horticulture Centre. The launch was hosted by the District Council of Mallala, the Wakefield Regional Council and the Yorke Regional Development Board. A feature of the event was the release of the marketing plan which was prepared for the Marketing The Adelaide Plains Management Committee, and the Virginia Horticulture Centre. The marketing plan has sought to combine the region's historical activities, current initiatives, future visions and pathways to inform a set of objectives, strategies and tactics that are achievable.

As a result of this, inputs into the plan have been gathered from many sources. A large proportion has been anecdotal, including one-on-one interviews with people in the region. In addition, published documents have been referred to to provide background information pertaining to specific projects in the region. This outcome has sought to provide the Adelaide Plains marketing committee with a strategic road map, plotting the objectives, strategies and tactics for the region over the next five years and beyond. The plan recognises the region's need to look to the future, seek new investor opportunities, plan for change and overcome barriers to change, and establish valuation and review criteria. The objective of the proponents of this plan is to stimulate the diverse economy of the Adelaide Plains region in a sustainable manner, and this will be best achieved by attracting new regional revenues. The role of this marketing plan is to identify these revenue sources and capitalise upon them to the benefit of the Adelaide Plains region.

At present, the majority of all revenue sources have little knowledge of the Adelaide Plains region. As a broad generalisation, the plan notes that federal and state governments have not perceived the benefits that additional spending may bring to the region. Industry does not perceive the financial rewards they will reap from establishing operations in the region, and families do not know that they can realise their domestic and social gaols from living in, and being a part of, the region's community. In addition, few tourists plan a trip to the region.

In many cases, the region simply does not figure in the minds of prime revenue sources as an alternative for them to consider. They do not know where the Adelaide Plains region is, what it offers them, why they should consider it, and how to go about finding out more. Before generating demand for the region, the region itself must create awareness. A new committee will be incorporated to manage and coordinate the implementation of this plan. The current committee will determine the scope of its replacement, along with the method in which it will be appointed.

A proposal is that the new committee, tentatively named Adelaide Plains Association, be comprised of representatives of the following bodies; the Wakefield Regional Council, the District Council of Mallala, the Virginia Horticulture Centre, the Yorke Regional Development Board, Clare Valley Tourism, the Area Consultative Committee—that is, the Barossa Mid-North Riverland area consultative committee—and possibly ex officio representation from the adjoining regional local government bodies.

A brand identity manual will be developed to standardise all uses of the branding outlining colours, logo, type, print templates, sign designs and so forth. The brand identity manual should be circulated to all groups using regional branding in order to maintain a common look in theme and their use. A series of 10 public meetings will be held to involve individual communities specifically. Each of these will specify community involvement, feedback and suggestions. I congratulate all participants in the development of the marketing plan, which will lead to a significant opportunity for the future of economic growth within the Adelaide Plains.

SELECT COMMITTEE ON THE STATUS OF FATHERS IN SOUTH AUSTRALIA

The Hon. CARMEL ZOLLO (Minister for Emergency Services): I move:

That the report of the committee be noted.

On 22 October 2003, the Legislative Council appointed a select committee to investigate and report on the status of fathers in South Australia. Its establishment was proposed by the Hon. Andrew Evans, MLC. Following the receipt of broad ranging evidence and the committee's subsequent deliberations, the committee's final report was tabled in parliament on 6 April this year.

As chairperson of the select committee, I am pleased to have this opportunity to share some of the key findings of the committee with the chamber. Evidence to the committee highlighted not only similarities between the needs of fathers but also the diversity of experiences between fathers. The committee recognised the importance of services that have the capacity to cater to the diverse needs of fathers, especially those in crisis. The report also highlighted changes in traditional parenting roles as many families today do not conform to traditional nuclear family stereotypes.

While many of the issues raised in submissions related to difficulties experienced by separated fathers, particularly in relation to family law and child support processes, the

committee was limited by its state jurisdiction to respond to this evidence. The committee recognised that increased funding is not necessarily the answer to improving services for fathers in need of support: rather, a more coordinated approach is required to provide support services for fathers in need.

I take this opportunity to thank members of the council who were appointed to the committee for their contributions: the Hons Andrew Evans, John Dawkins, John Gazzola, Michelle Lensink and Kate Reynolds. Evidence received by the committee raised many complex issues, but I think we have ended up with a report that will assist the government to build on existing services and contribute to stronger support for fathers and their families in this state. I take the opportunity to thank Mrs Monika Schofield, the research officer who worked with such diligence on behalf of the committee.

The Hon. J.S.L. Dawkins: Hear, hear!

The Hon. CARMEL ZOLLO: Hear, hear, as the Hon. John Dawkins has said, and we all agree with him. I also thank our committee secretary, Ms Noeleen Ryan—

The Hon. J.S.L. Dawkins: Hear, hear!

The Hon. CARMEL ZOLLO: Hear, hear—all members agree. The support of both officers was invaluable and I thank them.

The Hon. A.L. EVANS: I support the motion. I acknowledge and thank my fellow members of the Select Committee on the Status of Fathers in South Australia—the chairperson, the Hon. Carmel Zollo and the Hons John Dawkins, Michelle Lensink, Kate Reynolds and John Gazzola—for their work on this inquiry. I acknowledge and thank the committee's research officer, Ms Monika Schofield and the secretary to the committee, Ms Noeleen Ryan, for their extensive work and patient cooperation in the challenging task of inquiring into the status of fathers in this state.

On 24 September 2003, I proposed the establishment of this select committee to inquire into the status of fathers in South Australia. I am most grateful that this motion received bipartisan support. A range of constituents had raised concerns that indicated that they were experiencing significant difficulties in seeking to exercise their fathering roles. Some had sought to share their difficult experiences of family separation and relationship breakdown, while others indicated a need for greater assistance and support in their endeavours to father their children.

As I looked into the situation, I found that there was a growing body of social science, medical and psychological literature uncovering the vital, unique and irreplaceable role fathers play in the lives of their children. The various studies describe in a range of mainstream and reputable peer reviewed journals reveal that, even after all other factors—such as wealth or poverty, employment, race and environment—are taken into account, the presence of a father in the life of his children was a key determinant to the successful development of children. Many studies show that the active and positive expression of a man's fathering relationship with his children has a positive effect that can be seen long into a child's adult life.

It was also found that 'father absence' within families was having a devastating impact on our children and our nation. Father absence also has a devastating impact on the lives of many separated fathers. I found that a range of social science and public policy makers are increasingly giving attention to the unique and vital role fathers play and the problems they can face. I found that some of those active in research acknowledged that they had been forced by their findings to re-evaluate many of their assumptions about children's parenting needs and the equivalence of mothering and fathering roles.

Some prominent researchers are single mothers, and they have admitted that the statistics challenge our society's complacency about father absence. In no case has such research sort to devalue the importance of mothering in relation to fathering. I found that attention to these issues is improving, especially in a range of overseas countries. Indeed the research literature is coming out of Europe and especially some of the Scandinavian countries, the United Kingdom, Canada, New Zealand and the United States. A number of Australians have also done work in this area. In the United States the National Fatherhood Initiative has been leading the way in education on this issue and addressing the needs for policy change to build up the status of fathers and to encourage fathers and policy makers to recognise the power of fathering.

In the light of this kind of research, I began to have a greater understanding for the suffering some fathers experience because of separation from day-to-day involvement in the activities of their children. The natural bonds fathers feel towards their children are often powerfully experienced, but many men expressed uncertainty about how to marry these bonds with the perceptions of workplace and social expectations. The committee met on 18 occasions and received a range of submissions and evidence from a wide cross section of the community. Individuals and couples, community organisations and support services, and a number of government departments and agencies gave evidence to the committee. In the course of its deliberations, the committee made 18 broad recommendations, which, it hopes, will lead to practical improvements to services for all South Australian fathers and their children and families.

The experience of investigating this issue of fatherhood has been valuable and informative to all members of the committee. The committee found that our community generally recognises the value of father's role in family formation and child rearing. Many submissions emphasised the important impact that a father has on their children's lives. However, a range of submissions revealed that, in many cases, the practical expressions of this value were insufficient. The report also noted that parenting, in general, tends not to be supported adequately; and discussion about work and family balance was particularly relevant on this issue. I hope this inquiry and its report helps to facilitate improvements to services and the dissemination of information about the range of actual or potential services which can be accessed by fathers in this state.

I believe that this report will highlight the diversity of circumstances and needs facing fathers in South Australia. I was very glad that the committee was able to explore some of these very particular challenges faced by those such as older brothers, grandfathers and stepfathers in our community who seek conscientiously to step into the father role in order to promote the best interests of the child in their care. While I would like to see more funding recommended to address areas of need, I believe that this inquiry has been a very positive step in the right direction. The committee has recommended a range of measures to improve awareness, practical expression, acknowledgment and consistency in social policy development and delivery for the support of fathers and families.

Other committee recommendations concerned the positive promotion of fathers and fatherhood, the promotion of positive parenting for fathers and family-friendly and public workplace policies that better accommodate the needs of families for their involvement with their fathers. The committee recommended improved targeting of parenting education to fathers, and one submission in particular revealed a strong demand and positive outcome of such programs. The committee's recommendations also dealt with the area of need with regard to men's health and crises services. Whilst I have some concerns about aspects of the report, I am grateful that I was able to have some of those concerns noted. I commend this report to the council and trust that the government will extend additional resources to the range of issues which need addressing in the 18 recommendations of the committee.

Once again, I thank everyone involved in the challenging work of this inquiry. I also put on record my thanks to the many people and community and government organisations who gave their time to present submissions and evidence. I am grateful that a range of voices and experiences were heard on the question of the needs and status of South Australian fathers. I hope that this report will help generate renewed interest in the vital, unique and irreplaceable role fathers play in the lives of their children. I hope that, as a community, we will continue to develop our understanding of how best to support fathers. The youngest generation of South Australians will thank us in due course if we do so.

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

CONSTITUTION (OATH OF ALLEGIANCE) AMENDMENT BILL

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

That the bill be restored to the *Notice Paper* as a lapsed bill, pursuant to section 57 of the Constitution Act 1934.

Motion carried.

ADELAIDE SYMPHONY ORCHESTRA

The Hon. SANDRA KANCK: I move:

That the Legislative Council—

1. recognises the extremely high standards of performance of the Adelaide Symphony Orchestra; and
2. expresses concern at the threat to that orchestra's long-term financial viability and survival as a symphony orchestra.

The release of the Strong report into Australia's symphony orchestras brought the worst news to South Australia: the recommendation that the Adelaide Symphony Orchestra (ASO) should have its numbers reduced from 75 to 56 full-time equivalents. What irked so many South Australians was that the Sydney Symphony Orchestra has remained unscathed in the process. Members of the ASO swung swiftly into action, emailing members of parliament, and I think the very next day a trio of ASO performers plus a chair on which was positioned a musical instrument—together purporting to be a quartet—performed in Rundle Mall to show the impact of a 25 per cent cut in orchestra numbers—gaining national media attention in the process.

The call went out for the four South Australian members of federal cabinet to get in there and represent South Australians—and it must have worked because arts minister Kemp got a very clear message from cabinet that these cuts were unacceptable. However, the federal government's response to the lobbying remains unacceptable to the Australian Democrats—and I hope every other member of this chamber. Minister Kemp's so-called solution has been basically to handball it to the state government.

The terms of reference given to Strong probably gave him little alternative, but the outcomes certainly demonstrate that when it comes to arts funding so many of those in control of the purse strings seem to think that Australia stops at the Blue Mountains; and it still leaves the ASO's musicians hanging, with no certainty for the future. Let us look at what the Sydney-centric method of funding delivers. Sydney gets $26 million worth of annual funding while Adelaide gets $9 million. The consequence of that is the entry salary for a musician in the ASO is $39 000 per annum, and for section leaders it is $61 000. This compares with the entry salary of $65 000 for the Sydney Symphony Orchestra.

I went to the ASO's gala concert in March and I was absolutely wowed by the solo violin work of Margaret Blades, when she played Ravel's Tzigane. It is an extraordinarily complex work—and I am not even a huge fan of the violin. Yet, as I sat there and admired so much what she was doing, I wondered why it would be worth her while to even hang around with the ASO, because she has no certainty that the orchestra with which she is playing will be the same one in 12 months. It could very much be a minor symphony orchestra.

The skewed funding to our orchestra sees the Tasmanian Symphony Orchestra as a double wind orchestra; our ASO as a triple wind orchestra; and—wait for it—Sydney as a quintuple wind orchestra. Yet, despite the disadvantage the funding arrangements bring to the ASO, we know that it continues to prove itself to be a world-class orchestra. So far this year, I have been to three performances of the ASO, and, of course, like many others I took in Wagner's *Ring* in November and December last year. I have to say that I went to hear the orchestra, rather than to listen to the singers. I purchased a seat right in the very front row so that I could see the orchestra in the pit and see the conductor. I could not see the surtitles, but I could not have cared less because, from where I sat, I was right above the sound of those glorious Wagnerian tubas, contra-bass trombones and French horn choirs.

It was a glorious sound, which received accolades from around the world—deservedly so. There is no doubt that, despite the funding restrictions, the ASO punches above its weight, and the performances of the *Ring* are proof of that. But drop down its numbers as is proposed and Wagner will be out of the question; so, too, will be Bruckner, Brahms and Berlioz. It will be an orchestra that will have to revert to the playing of Mozart and Bach. While I have no truck against Bach, the performance I saw last Friday night of Beethoven's 9th would also be out of the question. I note the Hon. Carmel Zollo was also at that performance, and I am sure she would think that would be a tremendous kick in the guts for South Australia.

The Hon. R.D. Lawson interjecting:

The Hon. SANDRA KANCK: I have to acknowledge that their Bach is definitely better than their bite! The argument that the Strong report would advocate is that the orchestras could be enlarged from time to time with casuals. Mr Strong might think that, but the reality is that those casuals would not be around in Adelaide for the ASO to call in. Why would they be? They would have moved on to Sydney or Melbourne where they would have far more

certainty of a job in an orchestra and at a higher rate of pay than they could get in Adelaide. The Chairman of the Wiener Philharmoniker, Dr Clemens Hellsberg—who is also a player in that orchestra—has written a general letter of concern in support of the Adelaide Symphony Orchestra. The letter states:

> . . . the most important thing is to recognise that the cutting or downsizing of ensembles is extremely problematic and stressful for the remaining players. As an experienced official, I am able to say that such action is, in fact, suicidal. . . I doubt that it is necessary to mention the overwhelming repercussions of being a world renowned cultural city without having a symphonic ensemble.

Unfortunately, we have to mention that because it seems to have escaped the knowledge or understanding of our decision makers on the east coast.

The Hon. T.G. Cameron interjecting:

The Hon. SANDRA KANCK: Or ignored, yes. Surely, the federal government should learn from the example of the Queensland Symphony Orchestra where insufficient funding led to low morale, which led to poor quality performance, which resulted in diminishing audience numbers, which led to reduced revenue, which, in turn, led to reduced funding.

I received a letter from one of the members of the Melbourne Symphony Orchestra who previously played with the Adelaide Symphony Orchestra. Simon Collins wrote:

> The two most important priorities for performing arts companies must be performance standard and accessibility for all Australians—

please note, Mr Kemp—

> Hence, savaging the single most important asset of these orchestras—the musicians—will do nothing to ensure their long-term vibrancy and sustainability.

The mentality of the arts funding providers is to tell the South Australian government to put in more funding; and, while more money from the South Australian government would most certainly be welcome, the South Australian government, I acknowledge, is already a significant contributor to the ASO, and its contributions proportionately outweigh the contributions of other state governments in support of their local orchestras. I bet that the Sydney Symphony Orchestra does not have to go cap in hand to the New South Wales government and ask for money.

However, I ask: why should a child growing up in South Australia not have the experience of hearing a full symphony orchestra as I did at 11 years of age? That experience transformed my experience of music. Why should a child growing up in Sydney have what then becomes a privilege for a few? Imagine if the federal government commissioned a report on the Art Gallery of South Australia and demanded that a quarter of its paintings be taken down, because that is effectively what has happened to the ASO. Imagine if it had commissioned a report on the State Library and demanded that it reduce its books by 25 per cent, because that is effectively what has happened to the ASO.

There would be an outcry. It would be an outrage. On 18 March this year, as a guest columnist in *The Advertiser*, Greg Barns, a councillor for the Sydney Symphony Orchestra (at least he had the honesty to say so), had the temerity to tell South Australians how to get it right with our orchestra. It might have helped him a little if he had done his research. He told readers of boring programming of symphony orchestras around the world. Check out the ASO's programming then, Greg. Versatility has become a hallmark, with the recent Bugs Bunny and Lalo Schifrin concerts. I must say that I am very much looking forward to going to the Led Zeppelin concert coming up in June.

Promote our chief conductor, he says—easily done if you have the Sydney Symphony Orchestra budget behind you. Sydney has a budget of $3.9 million just for visiting conductors, and that amount exceeds the accumulated debt of the ASO. With that sort of budget, the Sydney Symphony Orchestra can fly in an international conductor for a week, put him up at the best hotel in Sydney and fly him out again. South Australians can only drool at that prospect. Barns suggested following the London Symphony Orchestra's example of dropping admission prices to its concerts. Good idea, Greg, but it does not factor in the cost subsidy it gets from playing for operas. By contrast, when the ASO performed for the *Ring* last year, it got the princely payment of $350 000 from the state opera for 12 weeks' work. Effectively, the ASO became one of the principal sponsors of the *Ring*.

The Hon. T.G. Cameron interjecting:

The Hon. SANDRA KANCK: Effectively, that $350 000 was a subsidy. As a supporter, I received a letter from 5MBS-FM last week in which it described the recommendations of the Strong report as 'Eastern states triumphalism'. Surely, it must be, because, at the same time as minister Kemp is threatening the future of the ASO because of an apparent lack of funds, our Prime Minister has talked of budget surpluses and more tax cuts. Now, you and I pay taxes for the things that we cannot do on our own.

If I want to hear serious, expertly played music I cannot afford to hire a full symphony orchestra, and neither can you. But if enough people pool their money together (and that is what we do when we pay our taxes), then together we can have a symphony orchestra play for us. The Strong report is a wake-up call to the federal government that treating orchestras as corporate entities was always the wrong way to go. Orchestras are not primarily money making profit or loss businesses. We do not ask for public transport to make a profit. The environmental, economic and social benefits that arise from having fewer cars on our roads accrue to the whole of society—similarly with orchestras.

The benefits that they provide to the culture and soul of a city far outweigh the costs. The first sticker that has gone on my relatively new car is an ASO one, and it says, 'Great cities have great orchestras'. Previously, I mentioned the letter I received from Simon Collins. His letter states:

> I grew up in Adelaide and trained there as a musician. I was taught and mentored by members of the Adelaide Symphony Orchestra for 14 years before winning an audition into the Melbourne Symphony where I am currently engaged. Professional symphony orchestras provide the nucleus for musical activity in a city. The ASO fed my first aspirations to become a musician and for those 14 years provided the opportunity to access the first-class training I needed to fulfil that dream.

The South Australian Democrats look forward to support for this motion from all members of this chamber. We must all commit to ensuring that our Adelaide Symphony Orchestra is able to continue as a fully constituted orchestra, and not just a glorified chamber orchestra.

The Hon. A.J. REDFORD secured the adjournment of the debate.

JULIA FARR SERVICES

Order of the Day, Private Business, No. 2: Hon. J.M. Gazzola to move:

> That the regulations under the Superannuation Act 1988, concerning Julia Farr Services, made on 13 January 2005 and laid on the table of this council on 8 February 2005, be disallowed.

The Hon. J. GAZZOLA: I move:

That this order of the day be discharged.

Motion carried.

NATURAL RESOURCES COMMITTEE: EASTERN MOUNT LOFTY RANGES CATCHMENT AREA

The Hon. R.K. SNEATH: I move:

That the report of the committee be noted.

Two of the fundamental aims of the Natural Resources Committee pursuant to section 15L of the Parliamentary Committees Act 1991 are:

- to take an interest and keep under review the protection, improvement and enhancement of the natural resources of the state, and
- the extent to which it is possible to adopt an integrated approach to the use and management of the natural resources of the state that accords with principles of ecologically sustainable use, development and protection.

For its first inquiry, the Natural Resources Committee decided to investigate the environmental, economic and social impacts of the prescription of the water resources in the Eastern Mount Lofty Ranges. The committee's terms of reference for the inquiry were to examine:

- the importance of stream flow from the Eastern Mount Lofty Catchment Area for the health of the River Murray and its tributaries;
- the importance of access to water for landholders in that area;
- whether it is necessary for the government to prescribe the whole area;
- the impact on landholders of that prescribing; and
- the impact on the environment of that prescribing.

In October 2003, the government began the process of working towards sustainable water resource management in the Eastern Mount Lofty Ranges region by proposing that the resources become prescribed under the Water Resources Act.

The term 'prescription' refers to the introduction of permanent controls on the taking and use of water resources in a specific region. Before an area can be prescribed, the minister must participate in consultation on the intention to prescribe. This involves a consultation period of at least three months. The minister is obliged to bear in mind all the submissions as a result of that consultation before recommending to the Governor that the resource become prescribed. At the same time as the notice of intent is issued, a notice of prohibition is announced. Basically, this introduces a two-year moratorium on new or increased water use, unless varied or revoked. During this period, current users can continue to draw water at their current levels of usage.

The committee received 10 submissions and took evidence from 13 witnesses. The committee also visited important sites in the area and met with community groups, local government, irrigators, industry, the River Murray Catchment Water Management Board and representatives of the Department of Water, Land, Biodiversity and Conservation. After looking at the evidence, the committee decided that the prescription would benefit the environment and the community immensely. The catchment of the Eastern Mount Lofty Ranges is part of the Murray-Darling system in South Australia.

The Eastern Mount Lofty Ranges run from north to south at an elevation of 400 to 550 metres. Mean annual rainfall can vary from 1 600 millimetres at the summit of Mount Lofty to less than 300 millimetres in the rain shadow around Monarto. The catchment's water resources are vital to the region's prosperity and way of life. An increase in development over the past couple of years has put pressure on the level of obtainable water. Across the region there are about 7 500 farm dams, 4 400 bores and an indefinite number of direct watercourse—extractions where people extract water from permanent pools or a watercourse.

The major freshwater streams that flow from the Eastern Mount Lofty Ranges to the River Murray include Reedy Creek and the Marne River. Other streams in the ranges include the Burra, Truro, Saunders, Salt and Mitchell Creeks, as well as the Dry Creek/Rock Gully creek system. The streams that flow into Lake Alexandrina include the Bremer system encompassing the Nairne, Dawesley and Mount Barker Creeks, and the Finniss system. Development tends to be concentrated in certain areas where the resources are superior. Naturally, development is not spread evenly across the region and there tends to be development 'hot spots'. Surface water is conceivably a primary concern in that dam development in some areas is at or surpassing sustainable diversion limits.

Demand for resources is increasing, and the number of dams and wells is escalating steadily each year. As development increases, so does localised pressure and the impact on existing users. As development continues, these risks rise. In the dry years of 2001 and 2002, we saw conflicts arise with local water sharing in parts of the catchment. Moreover, long-term rainfall records from the catchment indicate an overall decreasing trend in annual rainfall, with the decline being more obvious in the past 20 years. All of these issues contributed to the Minister for Environment and Conservation announcing his intention to prescribe the region.

Once an area becomes prescribed, a Water Allocation Plan is prepared and existing users are licensed in accordance with that plan. In the case of the Eastern Mount Lofty Ranges, this notice will end in October 2005. In the meantime, following public consultation, the minister is considering submissions received from landholders, irrigators, the general public and key industry groups and advice from departmental staff before making a recommendation to the Governor on the prescription of the area. The proposal to prescribe the Eastern Mount Lofty Ranges stirred up a lot of community interest both throughout the mandatory consultation period and when the Natural Resources Committee called for submissions for its inquiry.

By and large, prescription for the area was met with support. Many of the submissions made to the Natural Resources Committee indicated support for the better management of this essential water resource. Concerns were also expressed to the committee, including concerns for the process, particularly the process of determining water allocations when, or if, the area becomes prescribed. A number of landholders were apprehensive about additional costs as a result of prescription, such as the required installation of water use gauges in prescribed areas. Others, particularly those from the wetter parts of the catchment, did not believe prescription was necessary at all. After examining all the evidence received for the inquiry, the committee concluded that there is a definite need to prescribe the Eastern Mount Lofty Ranges.

The existing rate of water use is unsustainable in some parts of the proposed region. Development cannot be allowed to continue at the current rate as this will lead to considerable ongoing conflict between water users in different parts of the region and to a devastating decline in the environmental

health of local rivers. Throughout the course of this inquiry, the committee heard many comments about the area currently recommended for prescription. The committee is of the opinion that all parts of a catchment cannot be considered in isolation. Therefore, the other parts of the catchment cannot be left unprescribed whilst the bottom of the catchment is prescribed. The rainfall is often greater at the top of the catchment and flows into streams and into groundwater stores. Adequate water must be left in the streams for users at the end of the catchment, for environmental flows and flows into the River Murray.

The committee concluded that access to water is very important for landholders in the Eastern Mount Lofty Ranges and prescription is a means of ensuring that continuing access. The committee also believes that the streams of the Eastern Mount Lofty Ranges contribute significantly to the health of the River Murray, particularly at times of low flow. Seasonal flow in the River Murray is essential to maintain the biodiversity of these ecosystems and preserve habitat for endangered species of native fish. In addition, the committee believes that careful management of the water resources within South Australia that directly impact on the Murray-Darling Basin system is essential to set an example for other states and to show that South Australia is earnestly trying to restore the health of the River Murray.

The committee was satisfied that the decision to prescribe this water resource is based on adequate scientific research that indicates that two-thirds of natural flow is needed for healthy rivers and catchments. The committee believes that the prescription will provide protection for the environment, certainty for current water uses, and enable water trade with potential new irrigators in the region.

Prescription does result in some cost implications for irrigators. It will mean changes to infrastructure, with a necessity to install meters. It may mean a limit on expansion of businesses and possibly a clawback of water in some areas. There may be some consequential loss of land value because new landholders will not automatically be able to get access to free water. Nonetheless, it will be of great benefit in the long term. There will be no more conflicts between water users in the upper and lower catchments, landholders will have guaranteed access to water and actually gain the right to sell this water, and the resource will be maintained and available for use into the future. A system will be in place to measure water use and determine whether additional water can be made available or whether cutbacks are necessary—this is most important.

Given the possibility of increased costs to be incurred by irrigators during the prescription process, the committee suggests that provision for assistance be made for those in difficult circumstances. The potential impact of prescription on the irrigators and other stakeholders has caused some anxiety in the community; however, community involvement in this process has been overwhelming and it is most important to its overall success. The committee supports the suggestion that prescription will provide a more optimistic outlook for the future of the Eastern Mount Lofty Ranges environment. Water will be available for environmental flows and, together with the introduction of low-flow bypasses, streams will be likely to survive the development occurring around them.

The committee notes that, by law, the Department of Water, Land and Biodiversity Conservation and the River Murray Catchment Water Management Board are required to consult widely on the development and implementation of policies and plans. The committee realises that the community has extensive knowledge of the Eastern Mount Lofty Ranges and suggests that all key stakeholders be invited to participate in the development of the water allocation plan for the Eastern Mount Lofty Ranges.

In conclusion, the findings and recommendations have been arrived at in a bipartisan manner, with each member of the committee recognising the significance of the prescription and supporting its implementation in the Eastern Mount Lofty Ranges. I know the Hon. Caroline Schaefer will also have an extensive report to parliament on the committee's findings as, I am sure, will Mitch Williams in the other house, because he has always taken a great interest in water issues.

I would like to take this opportunity to thank everyone who contributed to this inquiry. I thank those who made the effort to prepare submissions or appear before the committee, and I extend my sincere thanks to the members of the committee: the Hon. Sandra Kanck and the Hon. Caroline Schaefer and, from the other place, Paul Caica, Vini Ciccarello, John Rau and Mitch Williams. I also acknowledge the work of the Hon. Karlene Maywald, the previous chair of this committee. Finally, I thank members and staff for their assistance. I commend the report to the house.

The Hon. T.J. STEPHENS secured the adjournment of the debate.

LEGISLATIVE REVIEW COMMITTEE: SUPPRESSION ORDERS

Adjourned debate on motion of Hon. J.M. Gazzola:

That the report of the committee be noted.

(Continued from 6 April. Page 1489.)

The Hon. J. GAZZOLA: I will concentrate my remarks on recommendation one, as it generated the most debate within the committee and media circles. Recommendation one prohibits the publication of information that would identify a person who has been charged with a criminal offence before there has been a verdict handed down by the court. Once the accused has been found to be innocent or guilty, there would be no restriction on publication. The media obviously opposed this recommendation and argued that, because it acts in the public interest, it should be allowed to publish information that identifies a person charged with a criminal offence.

I believe that the media does not act in the public interest when it publishes information about criminal court proceedings: rather, it is motivated by its own commercial interests, and I argue that this conclusion is based on commonsense. For example, *The Advertiser* reports on only a small fraction of the 30 000 criminal matters considered in South Australian courts each year. There is a disproportionate focus on cases that involve public figures and, often, these reports imply guilt or wrong-doing by an accused even though an offence has not yet been proved.

To add more weight to this argument, I would like to comment on an Australian Press Council adjudication where the council found that *The Advertiser* had, in fact, made misleading reports, encroached on people's privacy and provided unbalanced reporting. In other words, it had not acted in the public interest. If you looked at the Australian Press Council web site, you would find that there have been over 1 000 adjudications by the council in relation to breaches by the media of its reporting principles. A quick glance at

recent adjudications shows that several of these were made in relation to reports by *The Advertiser*. By further example, adjudication 1 193 in May 2003 was about a report of a coronial inquest into the death of a man shot by police. In reporting this case, *The Advertiser* published derogatory remarks that the man had made about his teenage daughter in the lead-up to his fatal shooting.

The Advertiser claimed it was justified in reporting these remarks, because they helped to illustrate the man's agitated state before his death. As a consequence of the report, the daughter was readily identified by the local and Aboriginal communities, and consequently she and her family suffered serious stress. Although *The Advertiser* acknowledged the distress, it argued that 'The journalist was simply doing her job in reporting on a matter of significant public interest.' I quote from the Press Council's findings, as follows:

> Publishing the insult against the man's daughter was not essential to readers' understanding of the coroner's findings, and, as a result, it was not a fair and balanced report. The coroner had canvassed the dead man's known history of drug taking, violence, imprisonment and mental health problems. The article referred to none of these, although all of them could have been cited, without identifying the man's daughter, to explain his mental state. The Press Council has generally supported the right of newspapers to report open court hearings, including inquests. In this instance, however, the council does not believe that there was an overriding public interest to justify breaching a minor's privacy and sensibilities.

This is just one example of the media overstepping the mark. Evidence to the committee argued the reality that the media is driven by a profit motive and has little regard for the public interest and people's privacy and sensibilities. Again, by way of example, Mr David Peek QC, representing the Law Society of South Australia, said media reporting is selective and in its own commercial interest as opposed to the public interest. He also said the media is not the designated entity responsible for delivering or publishing information about court proceedings. He said in his submission:

> There is no doubt that the reporting of cases in court by the media is highly selective. The process is governed by considerations primarily addressed to attracting readership or television radio ratings rather than discharge any civic duty or to satisfy some right said to be possessed by a person other than the publisher. The level of competition between elements in the media has undoubtedly increased since 1975, as has the level of aggressive intrusion, particularly by the television media. However, the media seems to use the term 'right to know' as if to assert that each member of the public had, in some way, been granted (by a constitution, bill of rights or whatever source is not specified) an enforceable right to receive some type of information transmitted to them in the comfort of their home.
>
> The content of the information that the public has the right to receive is never stipulated, and nor is the person or entity who has the duty to fulfil that right specified. And for good reason. If one were to attempt logically to state the so-called right from the point of view of the public, it could only be in terms of a right to be informed of all the proceedings in all of the courts, and in the fullest detail. The media have no interest or capacity to be responsible for the provision of information to this extent, since it would be totally unprofitable to even attempt it. It is obvious to the most casual observer that the right proclaimed is, in truth, not a right of the public at all. Rather, it is an assertion made by and for the media. It is to the effect that the media have the right to publish (and not publish) whatever they please, in the manner that they please, and irrespective of the harm it causes.

Evidence to the committee also indicated that the media does not effectively report acquittals. That is, it does so in such a way as to cast doubt on the innocence of the accused. For example, the Law Society said that, aside from not being given equal prominence, reporting of the acquittals is phrased to imply that the accused was, in fact, guilty. I refer to the following example:

> The reporting of the acquittal is largely required by section 71B of the Evidence Act where the matter has been reported already, but the fact of the matter is that this is no antidote. I do not want to dilate upon this too much because I think you are all aware that the common situation is all too often encountered where the prosecution opening address, at the beginning of the trial, is reported with its allegations being at their highest—and this is no particular criticism of crown counsel—but there is usually very little subsequent reporting of, say, the cross-examination by defence counsel or defence witnesses, and how and why it is that the man is acquitted. Sometimes the acquittal is reported in such terms as to really connote, or lead to the impression, that it was a wrong acquittal. We hear a lot of talk these days about loopholes and technicalities and so forth and, against that background, people might well think, 'Oh well, here's another guilty man who has, for some reason, been acquitted.'

To conclude, I point out that, if recommendation 1 was, in fact, implemented, there would be sufficient scope for the media to report on court proceedings. That is, it could still report on all other aspects of the proceedings. The restriction is only in relation to the accused person's identity. If it was truly inclined to report in the public interest, the media would comprehensively report on a criminal trial once proceedings had concluded, at which time all facts could be reported without restriction. Recommendation 1 would encourage more responsible reporting by a media which necessarily acts in its commercial interests, not the public interest. It would help to prevent the undue hardship suffered by an accused and his or her family when the media reports on the proceedings in such a way as to imply guilt.

The claim that South Australia is the suppression order state in comparison to other states needs qualifying, in that there is no equivalent statutory reporting requirement in other states, and that the number of orders in South Australia suppressing a person's name, or identity, is approximately equivalent on a per capita basis. The majority support of recommendation 1, I believe, guarantees a fair trial, the right to an assumption of innocence until proven guilty, and balances the community's right to know against the right to privacy.

The media have a role to play but not at the expense of the balance of interests under recommendation 1. In closing, I thank all witnesses who appeared before the committee and also thank the committee secretary, Mr George Kosmas and Ms Kristina Willis-Arnold. I commend the report to the council.

The Hon. IAN GILFILLAN: I was of the majority that was strongly supportive of the report of the Legislative Review Committee and I endorse the remarks of the chair of the committee, the Hon. John Gazzola. I make the observation that I felt that his arguments were put very succinctly on behalf of the majority. It was a very interesting chemistry on the committee. It was unanimous, except for one member, who saw the scenario differently. I have had some complimentary communications since publicity came out on the way the committee dealt with this matter. They commented on our bravery on the expectation that it would not be welcomed by the media. We knew that beforehand; in fact, the evidence given to us quite clearly made that plain.

I apologise to the chamber for not having made it plain, but it would be an advantage for me to seek leave to continue my remarks. I will not go over the ground that the Hon. John Gazzola commented on in covering the argument for us, but with the indulgence of the council I seek leave to conclude, particularly as I realise the Hon. Angus Redford is not

contributing today and that the debate will go on to another Wednesday.

Leave granted; debate adjourned.

EYRE PENINSULA BUSHFIRES

Adjourned debate on motion of Hon. Ian Gilfillan:

That this Council—

1. Notes with sympathy the disastrous Eyre Peninsula bushfire of January 2005 that caused the deaths of nine people and a heavy loss of private and public property.

2. Requests that the Government of South Australia undertakes an independent inquiry into the preparation for and operational response to those bushfires by South Australia's emergency services in order to identify improvements that might enhance the capacity to respond effectively to large-scale events of that kind that can be implemented prior to the next fire season.

(a) That the terms of reference for the inquiry be to examine and report on the adequacy of the response to the bushfires by the SA Department of Justice and its components (CFS, MFS, ESAU, SES, SAPOL) and other relevant agencies, including EnvironmentSA,with particular reference to—

(i) the preparation, planning and response to the bushfires and of strategies for the evaluation and management of bushfire threat and risk;

(ii) CFS's management structure, command and control arrangements and public information strategy;

(iii) the coordination and cooperative arrangements with local government, other South Australian, interstate, Commonwealth and non-government agencies, including utility providers, for managing such emergencies; and

(iv) the adequacy of CFS's equipment, communication systems, training and resources.

(b) In undertaking its work, the inquiry team should consult closely with the Coroner conducting inquests into the deaths caused by the bushfires to avoid any interference with the process of inquiry being directed by him.

(c) The inquiry should report by 30 June 2005 in order that relevant recommendations resulting from the inquiry may be fully implemented prior to the onset of the 2005-2006 bushfire season.

(Continued from 16 February. Page 1084.)

The Hon. CAROLINE SCHAEFER: I will speak to the motion and move a significant amendment to the inquiry that the honourable member has sought to be referred to a select committee of the upper house. Mr Gilfillan has sought an independent inquiry into the Eyre Peninsula bushfires. We all want the same thing: for the mistakes that were clearly made during the Eyre Peninsula bushfires not to happen again and, if they do, to be sure we have implemented the best possible means of preventing them. There will always be tragedies and we are all human and mistakes will always be made. As parliamentarians and citizens we want for the mistakes made this time not to be repeated. We are all seeking the best method of finding out what were those mistakes so that changes can be made and, as the Hon. Ian Gilfillan says, preferably implemented prior to the next bushfire season. I will not go down the emotional path of going through the tragedies that happened on 11 January because I have already done that once and because we all know what were the tragedies.

The Hon. Ian Gilfillan interjecting:

The Hon. CAROLINE SCHAEFER: As the Hon. Ian Gilfillan interjects, I do not want to have to see it happen again ever in my lifetime. In some ways, at least anecdotally, the mistakes made on 11 January and on the night of 10 January were, to some degree, the same mistakes made a year or so prior at the Tulka fires. I am not here about witch-hunts or about anything more than a desire to see the best possible outcome. As a nation we are prone to bushfires and I want our state to have the best possible methods in place that will respect local knowledge and mean that professionals are communicating with volunteers of all sorts, including those who perhaps do not belong to the CFS. This would ensure that cooperation and methods are in place should we be faced again with those exceptional circumstances which we had on 11 January.

The Hon. Mr Gilfillan has sought an independent review. We discussed this as a party. We believe that the most independent review that we can have is a select committee. In the upper house, as members know, that select committee would be represented by a number of parties. We would have the ability to travel to Eyre Peninsula and that we would have the ability to invite those people to have their say who may not have the professional contacts to be invited to give evidence. We would have the ability to give them parliamentary privilege and for them to go in camera (that is, to go off the record) and, indeed, to subpoena those who may not wish to give evidence. I have also added some additional areas which I fervently believe need to be looked at. I have considered very carefully how I have done that.

However, I do believe that some of the things which need to be considered and inquired into do involve, as I said, local knowledge, local farmers. There is, as there always is in a grieving process, a great deal of anger at the moment, and much of that is centred on issues involving a lack of communication between locals who were on the ground and who were present when the fire broke out on the afternoon of 10 January. I do not think anyone is to blame. No-one wanted what happened to happen. Therefore no-one should be punished for what happened, but there is a need for those ordinary citizens who, in some cases, because it was such a bad day, were sitting inside their houses or inside their caravans at North Shields and did not know that a fire was approaching, to express their opinions.

We need to improve our methods of warning ordinary citizens. We need to improve our knowledge of and respect for local knowledge. Some 300 hectares were burnt out just last weekend at Mount Dutton, which is right near where the bushfires took place. There was an acknowledgment this time that, because local aircraft and local knowledge were used immediately, they were able to put the fire out. What I want is some formalisation of that understanding. As I say, none of us want witch-hunts or to blame anyone. What we want is a thorough investigation so that this does not happen again. My belief that the most independent and best resourced way in which we can do that is via a select committee. While I respect the Hon. Ian Gilfillan's motion, I would urge members in this chamber to support my amendment. I move:

Leave out paragraph 2 and insert:

2. That a select committee be appointed to inquire into and report on the preparation for an operational response to the Eyre Peninsula bushfires by South Australia's emergency services in order to identify improvements that might enhance the capacity to respond effectively, noting the need for implementation of such improvements prior to the next fire season.

In its inquiry the select committee should consider—

(a) The adequacy of the responses to the bushfire by the South Australian Department of Justice and its components (CFS, MFS, ESAU, SES, SAPOL) and other relevant agencies, including Environment SA, with particular reference to—

(i) the preparation, planning and responses to the bushfire and of strategies for the evaluation and management of bushfire threat risk;

(ii) CFS's management structure, command and control arrangements and public information strategy;
(iii) the coordination and cooperative arrangements with local government, other South Australian, interstate, commonwealth and non-commonwealth agencies, utility providers and private operators for managing such emergencies; and
(iv) the adequacy of CFS's equipment, communication systems, training and resources

(b) The adequacy of communications with and between emergency services and other volunteers, such as farmers and volunteer aircraft;
(c) The adequacy of warning systems to warn citizens of an approaching fire and possible improvements to those systems;
(d) Why decisions were taken not to extinguish the fire on 10 January 2005 when it was possible to do so and whether the protocol for decisions in future such events be changed; and
(e) Reporting by an appropriate date in order that relevant recommendations may be fully implemented prior to the onset of the 2005-2006 bushfire season.

3. That standing order 389 be so far suspended as to enable the chairperson of the committee to have a deliberative vote only.

4. That this council permits the select committee to authorise the disclosure or publication, as it thinks fit, of any evidence or documents presented to the committee prior to such evidence being reported to the council.

5. That standing order 396 be suspended to enable strangers to be admitted when the select committee is examining witnesses, unless the committee otherwise resolves, but they shall be excluded when the committee is deliberating.

While I recognise that an independent authority would have some other talents, if you like, that we would not, there is currently a Coroner's investigation and several internal investigations within the various emergency services, but it is likely that, in particular, a Coroner's report will not be brought down for many months, possibly years. The other investigations are internal inquiries.

I believe that the most credible investigation that could be held for the people of Eyre Peninsula would be a select committee. We would have the ability to travel over there to take evidence from people, if necessary in their own homes. We would have the ability to be either formal or informal, as the case required, and to have a much broader reference than any independent inquiry. As I have said, a committee of the parliament represented by a cross-section of the parties and members, I believe, is the most independent inquiry that can be introduced.

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

ENVIRONMENT, RESOURCES AND DEVELOPMENT COMMITTEE: WASTE MANAGEMENT

Adjourned debate on motion of Hon. G.E. Gago:

That the report of the committee, on an inquiry into Waste Management, be noted.

(Continued from 6 April. Page 1495.)

Motion carried.

HERITAGE (BEECHWOOD GARDEN) AMENDMENT BILL

Second reading.

The Hon. J.M.A. LENSINK: I move:

That this bill be now read a second time.

I move the second reading of this bill on behalf of Liberal members and, in particular, the member for Heysen, Ms Isobel Redmond. This bill fulfils a commitment that the honourable member gave to her constituents in regard to the protection of Beechwood Garden in Stirling. As members would no doubt recall, last year this council passed a bill which ensured that the garden would continue to be cared for. Previously, it had been in the ownership of the government. It has been sold to the owner of the house who resides within the property itself.

Concerns were expressed by some residents that the garden would not be properly protected, access provided and so forth. Protection is now being provided through an amendment to section 32 of the Heritage Act of 1993. This bill seeks to insert a schedule, which specifically relates to Beechwood Garden. In addition to naming those certificates of title, the bill also outlines some aspects of the heritage agreement. I do not propose to go into all the details of the previous debate—

The ACTING PRESIDENT (Hon. R.K. Sneath): Order! Some members might want to take their seats or go outside and hold their discussions, to be fair to the speaker.

The Hon. J.M.A. LENSINK: Thank you for the courtesy, Mr Acting President. Clause 4 of the bill seeks to insert new schedule 2, and the government has added a significant variation in terms of clause 2(3) to that schedule. My understanding is that, with respect to this heritage agreement, a number of conditions will be outlined in the regulations that will enable the government to allow the owners of the property to make changes to the place without taking any rats and mice stuff back to the parliament. Some constituents in the electorate of Heysen have been concerned about the infamous saying, 'We are from the government and we are here to help.'

Perhaps they do not trust the government to make decisions such as that on their behalf: they would prefer that they be brought back to the parliament for approval. That clause, which was moved and passed in the House of Assembly, provides that only significant variations will be brought back to the parliament for approval. Clause 2(3) of new schedule 2 provides:

(a) that the division of the prescribed land (being a division of land within the meaning of the Development Act); or
(b) the granting of any lease, licence, easement or other right relating to the use, occupation or control of the prescribed land (but not including a case that only involves the transfer of the prescribed land to a new owner).

In other words, the land cannot be subdivided and so forth. I foreshadow that I will be drafting an amendment (which I hope to file before the next sitting weeks) to expand that subclause somewhat because, as it reads, it has only these two conditions. We would like to see it expanded to include other substantial alterations to the terms or operation of the heritage agreement. For instance, if the owners of the property want to move a gazebo, they would need to come back to parliament, whereas if they want to move a tap they do not. Those protections would provide the local residents with a great deal more comfort. I commend this bill to the council.

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

PARLIAMENTARY SUPERANNUATION (SCHEME FOR NEW MEMBERS) AMENDMENT BILL

In committee.

Clause 1.

The Hon. P. HOLLOWAY: I would like to apologise to the chamber. Yesterday I completed my summing up, but the Hon. Sandra Kanck indicated to me earlier that she wished to make a second reading contribution but, unfortunately, I misinterpreted the note. I thought she was talking about the parliamentary committees bill, rather than the parliamentary superannuation bill. I ask the indulgence of the committee to let the Hon. Ms Kanck make her remarks on clause 1.

The Hon. SANDRA KANCK: I know it is not appropriate to make a complete second reading speech, so I will simply make a few remarks about this bill. I know that some members of the media and the public are going to sigh an exaggerated sigh when I say what I have to say. From my personal experience of this job, it is an 80-hour a week job. It involves going out to meetings during the week, at night and on weekends, and we do not have weekends to ourselves. On nights when I am home, I take home reading to do, bills to work on, and so on. It is not an easy job but we have all gone into it voluntarily and we are aware of that downside. We are in it for various reasons, whatever our beliefs are, and we believe that we are doing what we can to advance the things that we believe in. The Democrats will not be voting against this bill, but we want to register some concern about this continual downgrading of what is available to politicians.

We would like to see all that we get in an upfront way. Because of continual criticism, over the years we have tended to do our pay increases by back-door methods with various allowances. I would prefer, and the Democrats would prefer, that we are able to do this in an upfront way. I have to say that I think superannuation is one of those upfront ways; it is something that is very visible. It is not like our global allowances where each of us spend differently, and it is not generally available for the public to know how much we are spending and whether, in fact, we are misspending. The superannuation is there—it is visible—and anyone can find out what it is. The effect of diminishing the superannuation will be to cause MPs to look for further allowances to compensate for what is happening with the superannuation. From that perspective, it is not going to alter the balance overall, but it is more likely to result in less visibility and perhaps even an accusation of less accountability. So, from that perspective, I want to record the Democrats' concern at this continual downgrading of what are the salaries and other benefits for MPs.

Clause passed.

Clauses 2 and 3 passed.

Clause 4.

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

Page 5, after line 5—
Insert:

(6a) Section 5(1), definition of member—after 'receipt of salary' insert:
but does not include a non-participating member

The committee has before it some four pages of amendments being moved by me on behalf of the opposition, but I indicate that they all relate essentially to one policy decision, which I will explain. In the interests of expediting the committee stage discussion of this legislation I will treat the debate on the first clause as a test clause for the four pages of amendments. If it is unsuccessful I do not intend to proceed with the remaining amendments to the legislation. In doing so, I will argue the toss in relation to the policy issue that I think has to be decided.

The opposition, as I outlined briefly in the second reading, in essence, is trying to provide a once-off option for the new members of parliament to be elected after the next general election. The government's position is that, after the next election, the new members of parliament will have only one option: they will join PSS3, which is the third and least attractive of all the parliamentary superannuation schemes open to members. In essence, it will be the only option open to them. Put simply, it is very similar to the scheme currently available to public servants who entered the Public Service after the mid-1980s when the more generous pension scheme was closed down. That is, that there will be a 9 per cent contribution by the government, and if members contribute more than 4.5 per cent of salary then the government would put in an additional 1 per cent. That is the option.

A number of people have, in varying degrees, bemoaned where we have arrived at in relation to the total remuneration package for members: those of us who are here are to be better treated than those of us who arrive after 2006. While there was earlier discussion about a compensating salary increase for members to compensate for the cut in conditions for new members, that is not going to happen—the federal government is not going to go down that path and nor is the state government. As I said to the Hon. Bob Sneath during the second reading, the brutal reality is that I know of no occupation that has willingly cut its own throat in terms of its remuneration package and, in essence, imposed on all new members of that occupation such a significant reduction in its total remuneration package.

The Liberal party is saying that those members who come in have a once-only option after the election, within a specified period, to choose the government option or to have their 9 per cent deposited in some private sector-run scheme. It may be that those members—for either ideological or business reasons, or based on their own assessments—will believe that a private sector-run scheme will earn them more money than the government-run scheme.

The Hon. Nick Xenophon interjecting:

The Hon. R.I. LUCAS: They will have a choice of super. We are taking away a very significant benefit, but we are saying to them that they will have a choice, because if they believe they can get a better deal from a private sector scheme then they can have their 9 per cent deposited into one of those. I hasten to add that the government's position is that it thinks the government option is a very good one: it provides death and disability insurance and, as the leader outlined in his response to the second reading, that is an attractive option, depending on how healthy and how old you are.

The Hon. P. Holloway: Or how you drive.

The Hon. R.I. LUCAS: Well, maybe, but in terms of insurance I suspect it is more likely to be your lifestyle and how old and how healthy you are. Clearly, what you can get from death and disability insurance as a young, active and healthy 30-your old will be different to someone who comes into parliament at 45 or 47, having smoked for 20 years, and a variety of other things. In that latter case, you may not be able to access death and disability insurance of the type that is being provided by the government scheme.

I am not arguing against that—I think there are attractive elements to the scheme and, possibly, if I was in that position after the next election I may want to explore the other options. It may well be that I would come down on the side of joining the government scheme. But we are arguing: why not give that option or choice to the new member of parlia-

ment? The government's view is that the members might choose a scheme that is not as good as the government scheme and, as I understand its position, if a member died soon after being elected, there might be pressure on the government of the day to make an ex gratia payment or something. There may be that pressure, but in my judgment a member and his or her family have made a decision one way or another and there is no requirement or need for the government to be making ex gratia payments because a member made the wrong choice and did not get sufficient insurance in terms of their particular financial circumstances.

We do not adopt such a paternalistic view in relation to many other financial decisions that members take, and I am not going to be diverted by referring to some well-known examples of financial decisions that individual members of parliament in South Australia have taken in relation to their own personal financial circumstances. Some make good decisions and some make bad ones, but I do not believe it is the responsibility of the parliament or the government, to that extent anyway, to protect members against themselves and their own decisions.

We are saying that we are taking away this significant benefit, so why not give this benefit to new members as a very minor potential compensation? As I said, if the scheme is as attractive as it potentially may be, the overwhelming majority of members—if not all of them—may choose the government scheme, which would just be competing in terms of trying to attract them to become members of the PSSS scheme rather than any other scheme.

I suspect one of the government's arguments against it will be that it has not yet arrived at a policy decision in relation to choice for public servants and others. Well, frankly, I do not think we need to take that into consideration at all. This is a scheme as it relates to members of parliament; no significant benefits that accrue to that particular occupation have been taken away from any member of the Public Service. However, for new members of parliament we are taking away a very significant benefit and all we are saying is: let the new member have a choice between the government scheme and a private scheme.

As I said, should we get over the test clause, the details of the scheme are outlined in the other amendments. I indicate to the government that we have excellent parliamentary counsel in relation to the drafting of this particular issue, assisted by excellent Treasury advice. I know that the government is opposing this but, in the event that the first amendment gets up, and I believe there is a chance that it will get up, I am very happy for the government to take advice on the remaining clauses if it wants to do so.

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: Yes, but in relation to the drafting of the other amendments, I am not locked into the current drafting we have in relation to the other amendments. If the government believes that a particular drafting provision could be improved, given that the parliament expresses a view that this ought to get up, I am very happy to either report progress or take further government advice through Treasury and parliamentary counsel as to how we might better provide for the policy option that the parliament has agreed to. So, whilst we are voting on this as the test clause, if there are particular aspects of the other clauses that are causing concern, and if they do not move away from the essential issue of the policy choice that we are talking about, the opposition is very flexible and accommodating in terms of being prepared to accept amendments to try to get this option up.

The Hon. P. HOLLOWAY: The government opposes the amendment. I outlined some of the reasons in the second reading response the other day, but I will go through them again. This amendment is consequential to the main package of amendments that the Hon. Rob Lucas is proposing to clause 7. That main package of proposed amendments to clause 7 seeks to provide members of the new PSS3 scheme, as it is called, with an option to select a fund other than the Parliamentary Superannuation Scheme to which the Treasurer must direct their contributions in satisfaction of the superannuation guarantee.

What is being proposed is a fund choice arrangement for members of PSS3, that is, in respect of persons who join the parliament after the next general election. The major concern with this proposal is that it makes no requirement for the member who chooses an outside scheme to have an adequate level of death and disability insurance. The government is concerned to ensure that all members of parliament have adequate death and disability insurance, and the only way to ensure this is by making the PSS3 compulsory for future members. The PSS3 automatically provides a good level of insurance.

Just by way of an example of the sort of thing that can happen, in New South Wales some country firefighters were caught, tragically, in a bushfire over there. The insurance scheme was voluntary and people had chosen not to have it, and as a result of the outcry that those people were not rewarded, the government was forced to provide ex gratia payments. That is not the sort of situation that we believe we should be in. We have had significant legislation through this chamber in relation to the Ipp reforms and so on, to try to ensure that, with codes of conduct, professionals and the like have adequate insurance. I would suggest that it is important that we, in this case, ensure that all future members entering parliament after the next election are adequately and properly covered in relation to death and disability, and the best way to do that is to ensure that they are members of the PSS3 scheme. So I ask the committee to reject the amendment.

The Hon. NICK XENOPHON: I indicate that I support this test clause because I am attracted to the amendment. In fact, it would be very inconsistent of me not to support this, given that I have an amendment that will give me the ultimate choice of opting out of the existing PSS2 scheme that I am in. I have just had a brief discussion with my colleague the Hon. Mr Lucas. As I understand it, the PSS3 scheme is based on the current Public Service Superannuation Scheme. Super SA runs a pretty tight ship in terms of administration fees, and the benefits that it gives with respect to death and disability are very good benefits. I think that any MP who wants to opt out of this would probably have rocks in their head, in terms of the financial consequences. Notwithstanding that, given that we have choice of super legislation that applies to virtually everyone else in the work force, save for state employees, because of the distinction between commonwealth and state legislation—the fact that it does not cover the field in terms of commonwealth legislation—it is important that this amendment be supported.

What I have raised with the Hon. Mr Lucas privately, and I do not think he would object to me raising it in the committee, is that perhaps there could be some modification to this amendment to ensure that in the event that a new member, or any member who is eligible to go into the scheme, wants to opt out of the parliamentary scheme in favour of a private

scheme, a very specific and explicit waiver should be signed saying something along the lines of, 'If you opt out of this scheme, you won't be getting these benefits. It will be on your head for death and disability and any other benefits that you would get under the state scheme.' Perhaps there should be a requirement to sign a cooling-off type form so that the consequences of anyone opting out of the PSS3 scheme into a private scheme are made very clear. Perhaps it should be a requirement that it be signed in the presence of a legal practitioner as it is with other forms where key financial decisions are made.

The Hon. R.I. LUCAS: Possibly also in the presence of their husband or wife.

The Hon. NICK XENOPHON: The Hon. Mr Lucas says possibly also in the presence of their husband or wife, so their spouse. There could be a range of hoops to go through and that touches on the Family Law Act, which I will refer to in the context of my amendment. So, I believe this has merit. It would be entirely inconsistent for me not to support such an amendment. I would like to think, though, that given Super SA's reputation there would be very few, if any, members who would want to opt out, but that is not to say that people should be denied that choice.

The Hon. P. HOLLOWAY: It is all very well for the honourable member to talk about waivers and all this sort of thing, but what is going to happen? The point is, the person who dies and who signed the form is not going to be the issue. The issue is going to be the widow, or widower, and family, and the like of the people who are left. That is always the case.

The Hon. R.I. Lucas: Don't reduce the superannuation then.

The Hon. P. HOLLOWAY: The Leader of the Opposition knows why we are doing this, and my views on that are very similar to his. The fact is that we have this situation—let us not make it any worse. If those people vote for this situation, against someone who does not have a good scheme, the television cameras will not be on the person who died and their foolishness for not looking after their affairs properly but on the innocent victims, that is, the family, and the government of the day will be under pressure. How does that help?

The Hon. Nick Xenophon talks about being entirely consistent. He has been a tireless advocate in his seven years for the victims of just these sorts of situations. Let us make sure we do not have any victims by ensuring that everyone is adequately covered. What better way of ensuring that we do not have people falling out of the system than by ensuring that they are all covered by a thorough, proper, adequate scheme?

The Hon. R.I. LUCAS: Most people are in these private schemes anyway. We are talking about a very select group of people, members of parliament. Is the minister saying that the benefits that accrue to virtually all the work force in relation to private superannuation schemes are such that the sort of circumstances he is outlining eventuate for all of them as well as for the small number of members of parliament we are talking about? It seems a stark view that the minister is portraying of private sector superannuation schemes. There are schemes and arrangements that people in the private sector can invest in that adequately provide for their futures.

Yes, there are some attractive benefits with this, and as I understand it they are more attractive potentially for older people who enter parliament in relation to the level of death and disability insurance they can get, but that is different for someone who is young, fit and in their 30s. I understand the potential benefits of this scheme, but to portray the private sector superannuation industry as in essence being the hard stones and rocks upon which the disillusioned and disabused fall seems to be a rather stark way to portray the private sector superannuation industry.

Yes, there are benefits in this (and I agree with the Hon. Mr Xenophon), but I suspect the majority of members, particularly older members, may well join the PSS3 scheme. However, if financial circumstances are such that you do not want to be a member of the Public Service superannuation scheme, or if you are young enough to get the death and disability insurance cover that you want, together with your own private sector superannuation scheme, this offers that option.

The Hon. P. HOLLOWAY: That somewhat misrepresents the situation in relation to private schemes. Of course, there are many good funds and corporate schemes that provide very good coverage for their employees, but we are talking of fund choice here. The Leader of the Opposition is proposing fund choice. If someone chooses and their fund choice, for whatever reason, is one with the lowest possible benefits because they want the lowest contribution, whatever wavers they sign, if they end up leaving widows or widowers and children in a poor position as a result of their not having that coverage, and because their fund choice is deliberately one that is a poor fund—

The Hon. Nick Xenophon interjecting:

The Hon. P. HOLLOWAY: That is all right for them—they are gone; they are dead and buried. No-one will worry about them, but the pressure will inevitably be on those who are left. There are cases around, although not relating to members of parliament, for perhaps no-one will have sympathy for our dependents. The same thing exists in the Public Service of this state, and it is worth pointing out that government employees, on my advice, are not covered by this fund choice. It is important that we reject this fund choice proposition because, inevitably, some injustice will result from it, and I will bet that their political descendants will stand up here in parliament demanding that the government of the day do something about the situation that their political predecessors voted in favour of. I urge the committee to reject the amendment.

The Hon. R.I. LUCAS: My understanding of the Treasurer's position—I understand the government is still reserving its position—is that he has been a supporter of fund choice for members. What is the government's position in relation to fund choice for public servants?

The Hon. P. HOLLOWAY: It is my advice that the government has been invited by the federal Assistant Treasurer Mal Brough to have government employees exempt from the fund choice provisions of the government, and the Premier has taken up that offer.

The Hon. R.I. LUCAS: There will be no fund choice—is that the government's position? I understand the minister is indicating that the state government has taken a decision that there will not be choice of funds for state public servants. Is that the state government's policy position?

The Hon. P. HOLLOWAY: Yes.

The Hon. SANDRA KANCK: The Hon. Mr Lucas is suggesting that people who are somewhat older and who are entering parliament for the first time may want to go down this path. Without giving specific names, can he give some examples and how it would apply to someone who falls into this category?

The Hon. R.I. LUCAS: Just to clarify what I have been advised, and this has come from the government's advisers in terms of selling the merits of the scheme; that is, the government's position on the government scheme is that it is quite attractive for an older person entering parliament for the first time because it gives them a significant level of death and disability insurance cover up to five times their salary. The suggestion is (and I do not know the accuracy because I do not know the market currently) that, if you are an older person coming into parliament, to obtain a level of death and disability insurance which gives you five times your salary in the early stages of your new career might be difficult or might be very costly—

The Hon. T.G. Cameron: Or might be impossible.

The Hon. R.I. LUCAS: Or might be impossible, depending on your health and your wellbeing. What I am saying is that, when they have the choice, they may well choose the government scheme because that is attractive to them. What I am saying is the option we are providing is for a member of parliament to choose the government scheme or, if personal circumstances permit, to choose a private scheme. It might be that, if you are 35 and you have just been elected to parliament and you are very healthy and you may have your own private superannuation, you would want to continue your own private superannuation arrangements. You may have your own arrangements in relation to death and disability insurance, and therefore you may choose to have the superannuation put into your own superannuation scheme—you have that option.

The point I am making about the examples was based on the advice that I was given; that is, for someone who is older and who may be not in the best of health and who becomes a member of parliament, the government scheme might be quite an attractive option in terms of the level of death and disability insurance you can get. The amendment we are moving does not change that at all. It allows those members—

The Hon. T.G. Cameron: If you are 60 and terminally ill, yes.

The Hon. R.K. Sneath: It might be attractive to a young person with a mortgage, too.

The Hon. R.I. LUCAS: Everything might be possible. All I am giving are the general examples that have been raised. However, there are examples where people, for a variety of reasons, might not want to go into the government scheme. They might want to continue their own superannuation arrangements. There are a number of examples of people who have had quite satisfactory superannuation arrangements in terms of the private sector before they come into parliament and who have had to wind those up, put them on hold, or whatever, and then start paying 11.5 per cent super into the government scheme. There are too many to mention.

All we are saying is, 'Okay, this new scheme will be very much less attractive to new members. They will have the choice of the government scheme, or, if they want, 9 per cent can go into the private sector scheme.' That will suit some people, but other people should choose the government option, but it is up to them to choose the option.

The Hon. P. HOLLOWAY: I wish to make a couple of additional points. First, in relation to choice, there are investment choices within the PSS3 scheme, so members can elect to choose between all the usual choices that one has within a superannuation scheme. However, in relation to why the scheme would be more attractive to older members, in many cases before a member can get the insurance cover, they have to have a medical check and they may or may not pass that in a private scheme.

The Hon. T.G. Cameron: We were not required to have a medical check.

The Hon. P. HOLLOWAY: My advice is that it would be required under the PSS3 scheme. The other inevitable result is you will have adverse self-selection in relation to the scheme, which I do not think is necessarily desirable, anyway, because eventually it will put pressure on the scheme and that will be the next point of attack, which is what the Leader of the Opposition was lamenting in the first place. For a number of reasons, the best thing we can do is reject the amendment and support what is in the bill. Okay, there are these changes and we all know why they have been brought about. We all know the background to them and we all have our own views, and I am sure, Mr Chairman, you share my views in relation to the background of this, but nonetheless let us not make it any worse.

The Hon. SANDRA KANCK: From listening to what the minister is saying about putting pressure on the scheme, I think he is saying that having all 69 MPs contributing to the parliamentary super scheme at the moment is integral to keeping it afloat and to making it a successful scheme. Is that what the minister is saying?

The Hon. P. HOLLOWAY: If all members contribute, it does reduce your administration costs. It does have that balance. If you bring in the fund choice, there is a likelihood—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Nonetheless, that will happen. Once you start fragmenting, obviously it will increase the unit cost—that is inevitable.

The Hon. R.I. LUCAS: Does the Leader of the Government argue that there are no private sector superannuation schemes that have better financial performances than the government superannuation scheme?

The Hon. P. HOLLOWAY: Of course not, I said that earlier, but I am saying that, if you have a fund choice, some people will inevitably choose the no choice or the close to no choice, and inevitably that will create problems. That is the history: it does that. It did so with the country firefighters in New South Wales who made their choice not to be part of the scheme. However, when these people lost their lives fighting a fire, the pressure was on the government of the day to give ex gratia payments because they were not covered because they had exercised their voluntary right not to take the cover. They are the sorts of things that happen.

The Hon. R.I. LUCAS: I am not being critical about the government fund performance arrangements. They have been better in the past in terms of industry averages, but they are still quite solid. The reality is that there are schemes out there that will do more and perform better with the 9 per cent per year that the member—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: No; hold on. The Minister has just acknowledged that. What we are saying is that a member is able to choose to put his or her 9 per cent into a scheme that will earn more for their retirement, and their family's retirement, and the government is saying, 'We will prevent it.' There are people out there and schemes out there where they will be earning more, from the 9 per cent that is being put in, through that particular scheme than through the government's scheme. The reality is that the government scheme is not the best performing scheme that exists within South Australia or Australia. It has been a solid performer in

recent times. Certainly, four or five years ago it performed exceptionally well for a period of time. I am not being critical of its performance. It has been a solid performer—there is no doubting that—but the minister has acknowledged that there are schemes out there that will earn more money for the member and his family.

We are in a position where we are saying to new members, 'Okay, you will get nowhere near the superannuation we have got because of the circumstances which have arisen; and we will also lock you into the government earning performance, even though you might believe you can make more money for your family, in terms of the retirement benefit, by going through your existing superannuation scheme.' How fair is that in terms of providing for members' families when we are saying, 'You have to stay with the government scheme which over a period of years might be performing less well than an industry scheme that has 10 years' performance,' or whatever else it might be over a period of time?

The Hon. P. HOLLOWAY: There is one factor that needs to be remembered; that is, under the PSS 3 scheme there is the capacity for members to contribute with the extra 1 per cent, in which they get the 4.5 per cent contribution. As I understand it, it would not be available to the fund of choice. Under that scenario, I do not think there is any scheme that could give a better return than would be available through that option in the PSS 3 scheme.

The Hon. R.I. LUCAS: The minister is arguing that in every case members will decide that money put into superannuation is the best way to spend their money. It may be that a person will come in with a very attractive existing superannuation scheme arrangement. They might want to put the equivalent of 4.5 per cent of salary in shares or property, or whatever, in terms of their own investments to provide for their future. There is nothing that proves conclusively one way or the other that putting 4.5 per cent into the PSS 3 scheme is the best way of spending a new member of parliament's money. In some cases it might be, but in some cases it might not be. All we are saying is: give the members a choice.

The Hon. P. HOLLOWAY: In every case I suggest it would be because of the extra 1 per cent salary component.

The Hon. A.J. REDFORD: The other aspect of this—and I know it has been touched upon—is the issue of income protection. I started an income protection policy when I was in my mid 20s. They set the premiums at a level across my working life. When I had the opportunity to join the scheme in which I am currently, I did not have to continue it, but new members will not have that opportunity and they may wish to continue the benefit that they managed to contract in their mid 20s when they get in here in their mid 30s. I think it is entirely appropriate for them to continue that income protection arrangement. Generally speaking, they preserve a lifetime benefit in terms of the setting of a premium. I would think that is yet another benefit that the Hon. Rob Lucas is trying to deliver to our future colleagues.

Progress reported; committee to sit again.

[Sitting suspended from 6.05 to 7.51 p.m.]

The PRESIDENT: Just before we start proceedings, I draw to the attention of all members their responsibility in respect of the procedures of the parliament. I am getting quite concerned at the length of time the bells are ringing. Standing orders are very clear. It is normally the responsibility of the government to maintain a quorum, but I note that all government members are present. We all have a responsibility to maintain the dignity of the council and the quorums. In future, I will take a dimmer view of these proceedings.

The Hon. R.I. LUCAS: I rise on a point of order, Mr President. I seek clarification from you. A quorum was present for four or five minutes prior to your entering. What is it that you are waiting for—a quorum or a quorum greater than a certain number?

The PRESIDENT: I expect all members to honour their responsibilities and to be here. There will be times when that is not possible, and I understand that. The bells rang for 12 minutes tonight, which is an unacceptable practice. Standing orders say that the bells will ring for five minutes. I am not casting aspersions on any one group. All members have a responsibility to maintain the numbers in the council. I get the signal when a quorum is present, and that is when I enter the chamber. My officers, diligent as they are, normally advise me that a quorum is present. In the past couple of weeks it has been an embarrassment. Last Wednesday night the bells rang for 15 minutes. It is unacceptable and disrespectful to the people of South Australia.

FISHERIES (PROHIBITION OF NET FISHING IN GULF ST VINCENT) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 13 October. Page 258.)

The Hon. J. GAZZOLA: The government is disappointed that the Hon. Ian Gilfillan has not contacted the Minister for Agriculture, Food and Fisheries on this bill. The government will not be supporting the bill. It is the view of the South Australian Fishing Industry Council (SAFIC), as expressed in its media release, that:

> If the Democrats and SAFIC have their way, the community will no longer enjoy local fish, such as garfish, tommy rough, silver whiting and snook—the staple catch of the commercial net fishery. The destruction of an industry that has served the state and community for well over 100 years, together with the loss of employment in metropolitan, regional and rural communities, will be significant.
>
> What can the Democrats offer the many hundreds of people employed directly or indirectly largely in regional and rural South Australia who will lose their business or livelihood? Consumers will be forced to use only frozen imported trawl fish, while our waters and fish stocks become the exclusive domain of only those who own a boat and choose to access a—

The Hon. R.K. Sneath interjecting:

The PRESIDENT: Order! I am not sure that sledging is out of order, but it is certainly unusual.

The Hon. J. GAZZOLA: Thank you for your protection, Mr President. It continues:

> They will become the domain of only those who own a boat and choose to access a community-owned resource at no direct cost.

While I acknowledge SAFIC's comments, we all know whose interests it represents. While I acknowledge its views, I state the obvious for the record: not all net fishers are saints. Equally, not all recreational fishers are saints. We have all heard stories from both commercial and recreational fishers blaming each other for the diminishing returns on efforts. The Hon. Ian Gilfillan's bill does not do anything to resolve—and I am not sure that there is any legislative solution—the differences between the competing sectors.

The bill sides with one sector over another in the Gulf St Vincent. The bill does not provide any answers to important questions such as the impact on jobs, cost to the community and cost on consumers who choose not to fish. In conclusion,

I look forward to the Minister for Agriculture, Food and Fisheries presenting to the parliament the outcomes of the Fisheries Act review and a well-considered and balanced bill to deal with fishing and netting in South Australian waters. I urge honourable members not to support the bill.

The Hon. R.K. SNEATH: I support the remarks of the Hon. John Gazzola but, when it comes to fishing, I am not sure why because he actually marks his fishing spots by putting a line on the bottom of his boat. He continually pulls up in other people's burley streams when he has forgotten his bait and burley. However, I support the Hon. John Gazzola's position.

The Hon. CAROLINE SCHAEFER: May I begin by saying that I have great respect for the Hon. Ian Gilfillan; in my view, he is one of the elder statesmen of the parliament and a very clever politician. However, one would have to, even with the great sincerity of Mr Gilfillan, wonder at a political move that forces a vote on a bill that has been lying around for I do not know how long two days before the minister says that he will bring down a government plan to restore some of the garfish stocks in St Vincent's Gulf.

One would have thought that, if the Hon. Ian Gilfillan's desire is to have a sustainable fishery, he might well have waited to see what the minister of the day is going to propose, rather than take up a petition and have a vote, as I say, two days before there is a government policy. One would have to say that, if it were anyone other than the Hon. Ian Gilfillan, it would be a publicity stunt. As it is, it may be a minor lapse in judgment; but either way, the Liberal Party put down its policy last year, and that has not changed. We have a policy for a voluntary buyback of the netting licences in St Vincent's Gulf, and that has not changed since the last election. The minister has said that, if there is any buyback, this time there will be proper compensation and, perhaps, that is at the cost of the river fisheries. No 'perhaps'—it is at the cost of the river fisheries but if that is now an established policy we should be grateful for that.

There is no doubt that the whole of the fishing industry is an entirely vexed question—particularly the scale fish industry. There is a diminishing pie or cake, and there is an increasing number of people who want a larger slice of that. However, it is far too simplistic to say that by removing commercial netting we are going to solve all the problems of the fishery in St Vincent's Gulf.

The Liberal Party will not be supporting this bill, which is not to say that we are not open to suggestions for a sustainable fishery. Indeed, I think that is about the only thing that the recreational and commercial sectors agree on—that is, that they want a sustainable fishery. Sadly, in most cases it is at the expense of the other sector. However, in the minister's position and in my position we have a duty first of all to see that there is a sustainable fishing stock and then to try to proportion it equitably. I think this is merely a simplistic knee-jerk reaction, which I will not be supporting.

The PRESIDENT: The honourable elder statesman.

The Hon. IAN GILFILLAN: I assume since I am on my feet, sir, that you must be giving me the floor! If I were to wait for the minister or for this government to do something constructive I think I would be an even more elder statesman—in fact, even a statesman who may have demised.

The minister has postured that a bill that has been before the parliament and the public for approximately four months is a spontaneous, knee-jerk reaction and should have waited for a couple of days. This is from a minister whose nose is out of joint because I actually decided, on behalf of the people of South Australia, that the fisheries of South Australia should be protected. But he gets indignant, and therefore I should say, 'I'm sorry Mr Minister, I'm not going to do anything further about my bill; I will let you come through and show what pussyfooting and pusillanimous, ineffectual steps you will take.' Mr President, the minister has shown no backbone in any attempt; it has been an exercise in making noise with no substance. There is no attempt to address what is palpably a crisis in South Australian fisheries.

The actual response, which I did appreciate, was an email from one of the thousands of people who are really sensitive to the fisheries in South Australia. It says:

> WELL DONE!!! On your bill to protect the gulf waters of South Australia!! I have been watching the fish stocks decline over the past eight years. . . I have written to politicians (obviously the wrong ones) and now there is fear of garfish stocks collapsing in the gulfs. . .

These are SARDI's alarm notes, the government department's alarm notes. King George whiting, a threatened species, garfish now a threatened species—as I will come to in a moment because I think the indulgence of the council will allow me to speak more than just the two minutes that the government gave to it and the five minutes that the opposition did. The email continues:

> The most amazing comment was from the commercial fishers saying take the bans off whiting (put in place because their numbers were dropping like a stone) and we'll stop targeting garfish!!! (as quoted in the [Yorke Peninsula] Country Times). This is a sad indicator of the 'me, me, me' attitude that the commercial fishers have and what little regard they have for the average family that drive to the Yorke. . . drop a line and catch a couple of fish or squid and take them home for tea!
>
> I have been friends with a couple of commercial fishers on the Yorke and their talk made me sick. . . their arrogance and illegal habits that are almost impossible to catch. . . like dropping 44 gallon drums (with holes punched in the sides) full of blood and guts to attract fish on slow release. . . makes fishing very easy. . . At Ardrossan last year there was a school of mullet coming into the boat ramp area and people were going down to the breakwater over a 10 day period and catching a couple for tea. . . that is until a pair of boats with a net came in and spooned out the entire school in 30 minutes!

I go to some other comments, and there is one from another email (it is lovely the way that email can send through real interpretations of the threat to South Australian fisheries).

The Hon. T.G. Cameron: You only read out the good ones.

The Hon. IAN GILFILLAN: There weren't any bad ones—now, that will spur them on, I can tell you. This email states:

> If the opening of coastal waters to fishing with small mesh nets (50mm and 30mm) in depths of 5 metres was legalised in 1982—

and that is the year in which it was. Prior to 1982 there was an abundance of all fish stocks, none were at risk, there was no threat, everyone in South Australia had plenty of fish to eat and the recreational fishers had plenty to catch and the commercial fishers were making plenty of money catching. Then in came the 50 millimetre and 30 millimetre nets and a depth of five metres. The email continues:

> . . . then the collapse of our fishing industry was much quicker than I had visualised and has been accomplished in a mere 23 years!
>
> Prior to this legislation [that is, the introduction of the netting being enacted] there was about 1 200 South Australians licensed to take and sell fish. The use of small mesh nets was confined to within 200 yards of high water mark. The maximum 'drop' of the nets was

6 feet. Additionally, large areas in both gulfs were totally closed to all net fishing.

There was an abundance of our most prized species, King George whiting, with the shallow less than 5-metre juvenile nursery areas protected. The fish stocks were self-replenishing. The decision to open the nursery areas to nets not only resulted in vast numbers of juvenile fish being killed and injured but also in the destruction of delicate and vital algae growths that formed the basis of food chains required to sustain large numbers of developing fish.

On the subject of netting juvenile fish, the 1994 Net Review Committee report indicates that King George whiting of 15cm to 31cm length accounted for almost 100 per cent of whiting caught in the 30mm mesh nets.

Honourable members, I know, right off, will realise they are all under size, that 100 per cent of the whiting caught in those nets were under size. The email continues:

Snapper were also present in prolific numbers but the effect of modern fishing methods with large mesh nets rapidly reduced their numbers. The Department of Fisheries denied that net fishing was the cause of declining numbers but after the horse had bolted was forced to impose global limits of netted snapper.

The S.A. State Government, Liberal and Labor, has since 1995 encouraged, permitted and defended the use of 50mm mesh nets designed to catch and to kill undersized King George whiting, the use of 30mm mesh nets designed to catch and to kill undersized garfish. The use of 30mm mesh nets proven to catch and to kill juvenile and undersized King George whiting. Documented in the Net Review Committee Report of 1994.

It is in the government's documentation. How long does it take a minister to read his own documentation? Is he not across his portfolio? It was 1994—that is over 10 years ago. How much longer do the fisheries of South Australia have to wait before some measure, such as the Democrats move to ban the netting in Gulf St Vincent, is to be implemented to protect the fisheries for future generations?

A good point was made by those who want to criticise SARFAC. They say SARFAC members are a self-centred lot—and of course there are none amongst honourable members here—but the activity of catching fish is a reasonable expectation of any South Australian. If SARFAC, as the South Australian Recreational Fishing Association, is purely self-interested, then surely what it is recommending is an increase in the population of fish throughout the coastal waters of South Australia. I would ask all honourable members to consider this: is that a bad thing? Is that a detriment to South Australia, by actually increasing the populations of fish species that are caught by recreational fishers? They are not the only exclusive catchers of those fish.

At the spontaneous gathering of fishers on the steps of Parliament House—it was not a publicity stunt; it was just an up-boiling of people who felt they were concerned about it—were people who are commercial fishers who fish by line. They asked, 'Should we be here?' and I said, 'Certainly. We welcome you. You are not the exploiters.' So there are people in the commercial field who can make a very comfortable living, thank you, by catching fish by line. They do not have to have nets.

By chance, there happened to be a woman from Port Pirie who indicated the extraordinary profits made by commercial fishers who used nets in the early days, and I cannot blame them, because the opportunity was there for them to virtually exploit the fishery. The minister may claim—I am not sure that he is in the state at the moment, but that does not matter too much—that we should have waited for two days. The fact is that SARFAC has provided the minister with direct communication indicating its concern and providing the argument. I have a copy of a letter dated 3 March from SARFAC to the minister, and one dated 11 March. I also have one dated 22 March, and I want to read that. Addressed to the minister, the letter states:

Dear Rory, Re: Over-Fished Fish Stocks Status.
For the past decade SARFAC has been raising—

Past decade! Just a couple of weeks ago! A decade!—

has been raising its concern with successive ministers and directors of fisheries on the declining stocks of our state's marine scale fish.

If the recreational fellows feel that they are not catching fish, that they cannot catch fish, is that because they have lost the skill or because there are less fish? If there are less fish for the reccies to catch, there are less fish, theoretically, for the commercials to catch, or the commercials are catching them in a way which is exploiting the resource, and we believe that the latter is the case. The letter continues:

Over the past year, an alarming trend is emerging that signals and confirms that many of our marine scale fish species are being over-fished, and this vindicates our long-held belief that past and current management practices are unsustainable. As one species begins to collapse, additional pressure is then placed on other key species by both commercial and recreational fishers having a domino effect.

Note, the recreational fishers are not excluding themselves from being part of the problem. They want to catch fish, and they are catching fish in a reducing resource. It continues:

The following examples from recent reports are typical of the emerging trend.

Mr President, because of your impartiality and your acute hearing ability, I would like you to take note of this, because these are the sort of data which have been provided, and are available to the minister and have been for some time. It continues:

1. Shark: 'A sharp rise in whaler shark catches has generated concern about their sustainability in South Australian waters.' Southern Fisheries, Autumn 2005.

2. Blue Crab: 'It is recommended that the blue crab FMC note that a general decline in crab abundance has been observed' and 'note that surveys into decline in the number of undersized crabs (recruits), that enter into the fishery has been observed.' Blue Crab Fishery Assessment Report 2004 SARDI.

3. Yellow-eyed mullet: '29 per cent (most recent five-year average), of South Australian catch of yellow-eyed mullet was taken in the MFS and this consisted mostly of catches from haul nets. Catches using this method declined steadily after a peak in 1998-99 and CPUE (fisher days) declined after mid-1990s. Trends in both catch and CPUE (fisher days) were similar for gill net catches from this sector. This could reflect a decline in abundance of yellow-eyed mullet in both the South Australian gulfs.' Lakes and Coorong Yellow-eyed Mullet Fishery Assessment report 2005—

from where?—

SARDI.

4. Tommy ruff (herring): 2003-04, commercial catch data indicate that the ten-year rolling average is down—

How much?—

61 per cent.

How much more do I have to emphasise this? This is not just a gimmick—61 per cent in 10 years. It continues:

5. Southern sea garfish: 2003-04 commercial catch data indicate that the ten-year rolling average is down 16.7 per cent. SARDI are now reflecting our concerns and warning of the risk of stock collapse in this fishery.

Boy, I hope I am not over-emphasising this, but when I hear the response from the government I just feel most concerned that it is not listening—from its own department. I quote again:

We believe that there is now a clear possibility of recruitment over-fishing, and a risk of stock collapse.' SARDI 2005. Currently this risk appears to be substantially greater in Gulf St Vincent.

That was SARDI in 2005. How many more years do we have to wait? It continues:

Most garfish are taken by haul nets.

That was SARDI in 2005. It was not SARFAC and it was not me—the elder statesman who does not know what he is talking about. It continues:

6. Southern calamari: 2003-04, commercial cash data indicates that a 10 year rolling average is down 26 per cent. We expect the current situation to be far worse as the commercial sector move their effort from King George whiting—

which they've stuffed—

and garfish.

7. Southern bluefin tuna: notwithstanding that this is a commonwealth managed species—

a nice excuse when it was raised before—

the Bureau of Rural Sciences reports that the level of southern bluefin tuna remains at historically low levels after a decline since the 1950s.

8. Snook: 2003-04 commercial catch is the lowest recorded catch since 1987 and the 10-year rolling average is down 38 per cent and the northern zone rock lobster spawning biomass is at an historically low level and below 25 per cent. Strong action urgently required.

That was SARDI in 2004. SARFAC is not playing a game in a self-interested way but is doing its best to bring to the attention of this parliament and the people of South Australia that there is a serious crisis in our fishery stocks. The commercials will not come in and advocate that netting be banned as it is their bread and butter. If they are to lose that aspect of their bread and butter because of this legislation, it is only fair that there is compensation for the loss of their capacity to earn money from their licence. I do not believe for a moment that we would have any serious obstacles from either the government or the opposition in providing adequate compensation on account of the loss of what almost certainly would be in the short term a loss of revenue from netting.

The Hon. T.G. Cameron: Will King George whiting be cheaper tomorrow if we vote for the bill?

The Hon. IAN GILFILLAN: Not tomorrow. They will not be cheaper in the short term as they are still very scarce. Unless we change the pattern so that the juveniles increase in number and grow through to marketable size so that they can be caught in numbers that will provide the population with a reasonable amount, they will not only continue to be very expensive but will be almost unprocurable. Under those circumstances I ask the council rhetorically: who wins? We ban netting in gulf St Vincent: who loses?

Some commercial netters lose a proportion of their income. They do not lose it altogether, because the price of whiting is so high. It is competitive with crayfish. You can go with a line and catch a reasonable return if you have the markets and the skill. If we do not do that, the commercial fishers will find a diminishing resource upon which they can make a living and there will be no winners. To coin the old chewed phrase: to not support our legislation is a no-brainer, a distinct and arrogant no-brainer on behalf of the minister who is using the mouthpiece of the prow of one of the most efficient fishing boats in South Australian waters. Therefore, the government should be embarrassed to take that position. It is very shallow to not acknowledge a good initiative and become indignant because it has been upstaged.

I am afraid the Hon. Caroline Schaeffer's sense of timing is a little abrupt, because there have been several months in which this matter should and could have been considered. I appreciate her involvement in the debate because a lot were not involved, and hers was probably the second best contribution, other than the Democrats contribution. I offered other members the opportunity to contribute, but they all declined.

The Hon. T.G. Cameron: You won me over in your first speech—I didn't need to speak.

The Hon. IAN GILFILLAN: Having won the Hon. Terry Cameron, there is probably no more that I could achieve, so I could have sat down. However, even with the Hon. Terry Cameron's support, it does not appear that that will be enough of a majority to save the fishing stocks from further deprivation in not only Gulf St Vincent because the whole coastal area is a breeding and spawning ground for fisheries. I hope that, although the petty-mindedness and lack of vision at this stage means that the bill is unlikely to pass this evening, this does not stall the process of moving towards totally banning netting. All the evidence that has come to me, either directly or from other sources—people who have been on boats and provided me with the data—indicates that it is not so much the volume of fish caught and marketed by the long haul netters but it is the waste and slaughter of the juvenile fish.

Although there may have been some amusement during the debate, the end result if this bill is lost will be tragic for South Australia. Unless the minister, when he gets back into his seat of duty and make these statements, has a clear, categorical plan that does not quibble or beat around the bush about whether there will be partial bans or further controls on recreational fishers and does something in the next 12 months, future generations of South Australians will say, 'Why and how could you have stuffed it up so badly?' I urge members to support the bill.

The council divided on the second reading:

AYES (7)

Cameron, T. G.	Evans, A. L.
Gilfillan, I. (teller)	Kanck, S. M.
Reynolds, K.	Stefani, J. F.
Xenophon, N.	

NOES (11)

Dawkins, J. S. L.	Gazzola, J. (teller)
Holloway, P.	Lawson, R. D.
Lensink, J. M. A.	Lucas, R. I.
Redford, A. J.	Schaefer, C. V.
Sneath, R. K.	Stephens, T. J.
Zollo, C.	

Majority of 4 for the noes.

Second reading thus negatived.

MOTOR VEHICLES (LICENCES AND LEARNER'S PERMITS) AMENDMENT BILL

In committee.

Clause 1.

The Hon. P. HOLLOWAY: On 12 April 2005 during the second reading debate on this bill, the Hon. Nick Xenophon asked the following question: what level of monitoring will there be, and what provision of ongoing statistics will there be, with respect to crashes resulting in fatalities and serious injuries involving young drivers as a proportion of total injuries and fatalities? The Department of Transport and Urban Planning continually monitors road crash statistics for fatal, serious and minor injuries. Statistical information is examined for younger drivers, in addition to all other road user groups, and is freely available to the public and published on the Transport SA web site. Following the introduc-

tion of this act, crash statistics will continue to be closely monitored and reported; and I am sure the Minister for Transport will make regular information on young drivers, and indeed all road users, available to members.

The Hon. T.J. STEPHENS: I indicate that the opposition supports the bill. I want to emphasise the fact that we feel there is a lack of spending on country roads by this government, and we think that is part of the problem. We hold grave concerns for our young people and would like the bill passed as quickly as possible. There will be no further contributions from the opposition.

Clause passed.

Clauses 2 to 11 passed.

Clause 12.

The Hon. SANDRA KANCK: I am asking questions probably about what is not here rather than what is here. I referred to this in my second reading contribution last night. Everyone is welcoming this bill and saying that it is an improvement on what we have, but I am not sure how much improvement there is. Clearly, from the definitions, we know that these drivers, I think the P2 qualifiers, have to pass a hazard perception test. Obviously, there is talk about a range of other things that might or could be included along the way. I am not seeing evidence that they actually are included. Will the minister indicate whether, within the context of this legislation, there are any added extras for training for people who are moving up the scale from L plates to P1s and P2s, other than the hazard perception test? Where will I find that?

The Hon. P. HOLLOWAY: My advice is that there are no other added extras. There is the driver awareness course for those who wish to transition from P1 to P2. If those persons have incurred one but less than three demerit points they can go through the driver awareness course to make that transition after 12 months. They can make that transition after 12 months if they have incurred one but less than three demerit points by doing that driver awareness course.

It is anticipated that P1 drivers who take this option to get to P2 early would find such a course worthwhile as it provides a realistic understanding of driver abilities and the everyday risk associated with driving, and the opportunity to develop simple strategies to reduce the risk of crashing and be better prepared to drive safely.

The Hon. SANDRA KANCK: The documentation, which the Minister for Transport's office provided to me and which is headed 'Information sheet: enhanced graduated licensing scheme', states:

- Learner drivers would be required to complete a logbook record of 50 hours of supervised driving in varied road conditions, including 10 hours of night driving;
- Other road conditions could—

and I emphasise 'could'—

include peak hour or city driving, freeway driving, unsealed road driving, wet weather.

I am looking to find out where the hard detail of this will be. It says 'could'. I am looking for more certainty in this legislation than 'could'.

The Hon. P. HOLLOWAY: My advice is that, at this time, it is a requirement that 10 of the 50 hours of driving should be at night. The point is that there is the capacity to introduce other requirements on those hours of driving if the specific need arises. For example, if it was discovered that the statistics showed that there appeared to be a number of city P-platers killed in the country, one could, for example, increase the number of hours relevant to country driving. That capacity will be in the bill, and those provisions will be introduced according to specific need. However, the night driving is the initial requirement.

The Hon. SANDRA KANCK: The Democrats certainly welcome the night driving requirement. In fact, a few years ago I was a member of the Hon. Diana Laidlaw's joint select committee which looked at transport safety, and, I think, that was one of the committee's recommendations. The minister says that, if statistics show the need for it, it would be introduced. I point out to the minister that 58 per cent of road fatalities in South Australia occur outside the metropolitan area. It seems to me that statistics already exist to show that young drivers need some sort of schooling in driving on country roads, and particularly unsealed roads. What is the government waiting for?

The Hon. P. HOLLOWAY: Those provisions are not strictly relevant to the bill. They are the sorts of things that are provided in the courses through regulation. As I say, this is a start. We are starting with night driving. The evidence is there for that requirement in relation to country driving. I am not sure what statistics we have, whether it is for people from the city or the country, but, if there is a need, that can be introduced under this bill. I do not see what the debate is about in terms of the bill. The provision is here for such measures to be introduced.

The Hon. SANDRA KANCK: In terms of the list in this memo that was sent by the transport minister's office, namely, road conditions that could include peak hour or city driving, freeway driving, unsealed road driving and wet weather, one assumes that (because such things are in a list that comes from the minister's office) there might be some intention somewhere down the track to introduce these add-ons (I suppose you might call them) into the requirements at varying levels, either learning, P1 or P2. Is there any timetable for the introduction of these?

The Hon. P. HOLLOWAY: I can only repeat that the provision is there, but I can give one example of some of the issues that would require us to be very careful in the introduction of these measures. Let us take the example of wet-weather driving. Obviously, wet-weather driving would depend on the time of the year. If we were in the middle of a prolonged drought, obviously, it will be difficult to have a requirement there for hours of wet-weather driving. We do need to think through fairly carefully before we introduce these measures. Again, I make the point:a start is there with night driving.

Obviously, that is not an issue. I think that it is a very good and important start, because there is a lot of difference between driving at night and in the day. While there is no specific timetable for the introduction of any of these other measures, I can assure the honourable member that the government will be looking closely at the statistics and responding if the specific need is there. Of course, if there are no particular difficulties of the kind I mentioned earlier, these matters will be introduced as the need arises.

The Hon. SANDRA KANCK: The government does not seem to want to answer these questions, which is its right. I find it strange to say that the wet-weather requirement is an example because you do not know whether or not it will be raining and at what time of the year. However, considering the length of time that these people will be on P and L plates, I do not think that it would be difficult to find some rainy weather somewhere along the line in about a three-year period. I would also ask the government to take on board that, in this list of 'coulds' (which, in most cases I hope, will become 'wills'), some sort of training with trailers, boats or

caravans trailing behind the car might also be worth considering. Certainly, I am aware of when I first drove a car at 20, towing a caravan. I had no training whatsoever and just went into it without any knowledge or experience and, now, as an older person, I understand that there are a lot of risks attached to that. I am asking whether the government will add this to the list of 'possibles'.

The Hon. P. HOLLOWAY: The government could look into that. I guess the number of people who are likely to tow caravans in this day and age is not significant, and that is something we need to look at. Obviously, I do not disagree with the honourable member's comment that it requires some skill and it would be desirable to have some practice, so we could look at that. The only other point I make is on the issue raised earlier. With the 50 hours, if someone were to do fairly intensive training over a couple of hours a day, they could clearly meet that within a month. That is why I referred to the example of wet weather. It has been known not to rain in some of our areas for two or three months, so that is a factor that would have to be looked at.

Clause passed.

Remaining clauses (13 to 17), schedule and title passed.

Bill reported without amendment; committee's report adopted.

Bill read a third time and passed.

ANZAC DAY COMMEMORATION BILL

Second reading.

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I move:

That this bill be now read a second time.

On 24 April 2003, the government announced its intention to introduce legislation honouring the memory of the ex-service community involved in the Great War and subsequent conflicts, as well as those involved in peace-keeping efforts. Whereas the importance of ANZAC Day was originally to provide a solemn occasion of remembrance and a sense of mourning for the gallantry of sacrifices at Gallipoli, the ANZAC inspiration was evident in Australia's later participation in both war and peace-keeping efforts, and it is equally applicable today. Accordingly, ANZAC Day now has a broader significance and is also about recognising the importance to the nation of the ideals and values that service men and women exhibit in war, also described as the ANZAC spirit.

This bill achieves the goal of honouring these ideals and values in several ways. The ANZAC Day Commemoration Council will be established to consider the long-term needs for the commemoration of ANZAC Day, given the dwindling number of ex-service men and women. The council will be the key to the longevity of the commemoration of ANZAC Day and the ANZAC spirit.

The bill also establishes the ANZAC Day Commemoration Fund. The fund will be administered by the council and will be used for the purposes of welfare, commemoration and education. The bill aims to enhance South Australia's commitment to ANZAC Day by restricting the operation of sporting and entertainment venues on ANZAC Day. The government and the RSL have several loose arrangements in existence already with sporting clubs such as the SANFL whereby the ANZAC Day football match does not commence until 12 noon, and the SAJC does not commence race day until 1.30 p.m.

The bill reinforces this commitment and restricts all other sporting activity and entertainment with tickets for admission (or similar devices) being made available for pre-purchase and required for entry from commencing until 12 noon. The intent of the ANZAC Day Commemoration Bill is not to replace the significant work that is undertaken by the RSL and other ex-service bodies in the organisation of commemoration activities on ANZAC Day. Rather, it is to enhance South Australia's commitment to ANZAC Day, and to ensure this commitment is sustained well into the future. I commend the bill to members. I seek leave to have the explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal.

3—Interpretation

This clause defines terms used in the Bill.

4—Object of Act

This clause sets out the object of the Bill.

Part 2—ANZAC Day Commemoration Council

5—Establishment of Council

This clause establishes the *ANZAC Day Commemoration Council*, and sets out provisions relating to the corporate nature of the Council.

6—Membership of Council

This clause provides that the Council is to consist of 9 members appointed by the Governor. The Premier must nominate the members (to be, as far as practicable, equal numbers of men and women), and such nomination may only occur after the Premier has consulted with the RSL.

7—Terms and conditions of membership

This clause sets out the terms and conditions of an appointment to the Council, including that the term of appointment is not to exceed 3 years, the power for the Governor to appoint deputies, and provisions relating to casual vacancies on the Council.

8—Presiding member

This clause provides that the Premier must appoint a member of the Council to be its presiding member.

9—Vacancies or defects in appointment of members

This clause provides that an act or proceeding of the Council is not invalid simply because of a vacancy in its membership, or a defect in a member's appointment.

10—Remuneration

This clause provides that a member of the Council is entitled to remuneration, allowances and expenses determined by the Governor.

11—Functions of Council

This clause provides that the functions of the Council are to keep and administer the Fund established by the Bill, and to carry out such other functions as the Premier may assign to it.

12—Council's procedures

This clause sets out the procedures of the Council, including that a quorum is to consist of 5 members.

13—Staff

This clause provides that the Council may be assisted by Public Service employees assigned to the staff of the Council by the Premier, and also that the Council may, by agreement with the relevant Minister, make use of the services of the staff, equipment or facilities of an administrative unit.

14—Annual report

This clause requires the Council to submit an annual report to the Premier on its operations and requires the Premier to table copies of the report in both Houses of Parliament.

Part 3—ANZAC Day Commemoration Fund

15—Establishment of Fund

This clause establishes the ANZAC Day Commemoration Fund.

16—Application of Fund

This clause sets out the purposes for which the Fund may be applied by the Council, including making payments to an organisation for the purpose of educating the community

about the significance of ANZAC Day, payments for aged veterans to maintain, alter and improve their homes, payments to maintain and care for aged veterans in homes, payments for the welfare of spouses and children of deceased veterans, and similar applications.

17—Accounts and audit

This clause requires the Council to keep proper accounts of receipts and payments in relation to the Fund. It requires the Auditor-General to audit the accounts of Fund at least once each year.

Part 4—Regulation of public entertainment on ANZAC Day

18—Restriction on public entertainment before 12 noon on ANZAC Day

This clause sets out provides that it is unlawful to hold public sporting and entertainment events between the hours of 5 a.m. and 12 noon on ANZAC unless authorised to do so in writing by the Premier. A public sporting or entertainment event is defined to mean a sporting or entertainment event or activity to which tickets for admission (or similar devices) are made available for purchase by a member of the public prior to the holding of the event or activity and are required for entry to the event or activity.

If such an event is held, the organiser is guilty of an offence for which the maximum penalty is a fine of up to $1 250, or an expiation fee of $160.

The Premier must liaise with and have regard to comments made by the RSL before granting an authorisation for such an event.

The clause provides an offence for a person to contravene or fail to comply with a condition of an authorisation.

19—Two up on ANZAC Day

This clause provides that, subject to certain exceptions, two-up is not an unlawful game for the purposes of the *Lottery and Gaming Act 1936* if played in ANZAC Day on the premises of a branch or sub-branch of the RSL, or Defence Force premises.

Part 5—Miscellaneous

20—False or misleading statement

This clause provides that it is an offence to make a false or misleading statement in relation to information provided under the Bill, the maximum penalty for which is a $5 000 fine.

Schedule 1—Related amendment

This Schedule deletes section 59AA of the *Lottery and Gaming Act 1936* which has been incorporated in clause 19 of the Bill.

Schedule 2—Further provisions relating to Council

1—Duty of members of Council with respect to conflict of interest

This clause sets out provisions dealing with conflict of interest on the part of a member of the Council. The provisions are in the same terms as those found in the *Public Sector Management Act 1995* (as amended by the *Statutes Amendment (Honesty and Accountability in Government) Act 2003*) which is yet to come into operation.

2—Protection from personal liability

Subclause (1) provides that no personal liability is incurred by a member of the Council, or a member of the staff of the Council, for an act or omission in good faith in the performance or purported performance of a power, function or duty under this Bill. A civil liability that would, but for subclause (1), lie against a person lies instead against the Crown. This is also consistent with the *Public Sector Management Act 1995* (as amended by the *Statutes Amendment (Honesty and Accountability in Government) Act 2003*).

3—Expiry of Schedule

This clause provides that this proposed Schedule will expire on the commencement of section 6H of the *Public Sector Management Act 1995* (as inserted by the *Statutes Amendment (Honesty and Accountability in Government) Act 2003*), or, if that section has come into operation before the commencement of this proposed Schedule, will be taken not to have been enacted.

The Hon. R.D. LAWSON: I am glad to accommodate the government in speaking immediately in support of the ANZAC Day Commemoration Bill, and the Liberal opposition will certainly support this bill. The RSL had discussions with the Leader of the Opposition, the Hon. Rob Kerin, at the same time as they were having discussions with the government in 2003, and the leader was pleased to indicate our support for legislation of this kind. The object of this bill is:

> To ensure that the contribution of all men and women who have served Australia in time of war or armed conflict, or in international peace-keeping operations, in which Australia has been involved, is recognised and commemorated in this state.

That is a worthy object and we are happy to support it, but it may be worth recording that to date it has not actually been necessary to have an act of parliament to ensure that the contribution of our service men and women is recognised. Without any legislation of this kind the South Australian community has been strong in its support and in continuing to recognise and commemorate the service of Australians over the last 100 years.

However, we do recognise that it is now many years since ANZAC and Gallipoli. Whilst the Australian spirit burns strongly at Gallipoli each year, and even more strongly with the coming generation, it is important that with the passing of the last of the ANZACs—and soon it will be the last of those who served in the First World War—we ensure there is some structure in place to continue that commemoration. The RSL has done a sterling job over many years, as a voluntary non-government organisation made up of service men and women, in keeping the flame alight. We do not see the ANZAC Day Commemoration Council, established by this bill, as in any way taking over that torch from the RSL and other service organisations; however, we do think that a structure of this kind will assist in ensuring that future generations never forget the contributions made by brave Australians.

The opposition has no quarrel with the membership of the council. We note with pleasure that its members will be supported on the nomination of the Premier after consultation with the RSL. An earlier proposal was that various nominated service organisations have power to nominate, but we believe that the RSL, as an umbrella or peak organisation, is capable of representing all interests appropriately.

I ask the minister to indicate, either in his response or later, what financial contribution the government proposes to make in supporting the fund which is to be established under this act, because one of the principal functions of the council is to keep and administer the fund. However, there has been no announcement and I do not believe that the minister, in his speech to the council today, announced exactly what that contribution will be. We believe that it would be appropriate for the government to make a significant endowment to this council to ensure that it is not simply an empty vessel but one that will have funds to apply to the causes as set out in clause 16 of the bill, they being:

- payment to organisations for the purpose of educating the community about ANZAC Day;
- payments for aged veterans to maintain, alter and improve their homes;
- payments to maintain and care for aged veterans in homes;
- payments for the welfare of spouses and children of deceased veterans;
- payments to any organisation established for the purpose of helping veterans or having a membership consisting of or including veterans, spouses, children or other dependents;
- payment to any other organisation for the purpose of conducting commemoration services on ANZAC Day; and
- payment of the expenses of administering the fund.

Bearing in mind that long and very worthy list of possible recipients of the fund, it would be inappropriate for the government to be in any way miserly in its contribution, so I ask the minister to indicate, if not the precise amount, the range of amounts that is proposed to be paid to the fund and also whether it is intended that there be an annual payment to that fund.

This is a bipartisan exercise, and we would not want to see the Premier seeking to make political capital out of announcing significant donations at dawn services and the like. That would be entirely contrary to the spirit of this legislation. The opposition does support the restriction on sports and entertainment occurring before 12 noon on ANZAC Day. We note that the provisions which already appear in the Lottery and Gaming Act permitting the playing of two-up on ANZAC Day on RSL premises is removed from that act and placed in this act.

It ought be recorded that the RSL was keen for additional provisions to be included in legislation of this kind. In particular, the RSL would have preferred to see some statutory control over the opening of licensed premises before noon on ANZAC Day, and also amendments to the Shop Trading Hours Act to prevent those businesses such as hardware stores opening before 12 noon. The government has not accepted that submission of the RSL, and we do not quarrel with that position.

Many of the Liberal Party's country members have indicated that hotels, in country areas particularly, are often the central point for functions on ANZAC Day, whether it be a community barbecue, or a reunion or the like, which can occur immediately after the dawn service, and restrictive provisions like no opening until 12 noon would operate unfairly in those places. There have been some problems in the past with licensed premises and ANZAC Day commemorations. They have been pretty well handled, usually by negotiations between the RSL, or organisers of marches and the like, and local publicans. We would believe that that spirit of cooperation should continue.

Likewise, we believe that the existing provisions of the Shop Trading Hours Act do not inappropriately interfere with the due commemoration of ANZAC services on the morning of ANZAC Day. So it is with pleasure that I indicate opposition support for the second reading and the rapid passage of this bill.

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I thank the honourable member for his comments. Since there are no other speakers, I indicate I will have an answer tomorrow, and we can do the committee stage then. I thank the honourable member for his contribution and commend the bill.

Bill read a second time.

PRIMARY PRODUCE (FOOD SAFETY SCHEMES) (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 11 April. Page 1569.)

The Hon. CARMEL ZOLLO (Minister for Emergency Services): This amendment bill was a technical amendment to the act to allow regulations to be made so that the diary industry can continue to collect fees from industry on a monthly basis. This is a very efficient method for industry, as it minimises administrative costs, and hence the amendment is strongly supported by the industry. Other industries in the future may also use this method. The bill also allows improved transitional arrangements for business in the meat and dairy industries. This may also be used by the industries in the future. These amendments demonstrate this government's commitment to meeting industry's need for effective and efficient regulation. I thank all honourable members for their support and commend the bill to the council.

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

CHIROPRACTIC AND OSTEOPATHY PRACTICE BILL

Second reading.

The Hon. CARMEL ZOLLO (Minister for Emergency Services): I move:

That this bill be now read a second time.

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

Leave granted.

This Bill is one of a number of Bills being drafted to regulate health professionals in South Australia. Like the previously introduced *Podiatry Practice Bill 2004* and the *Physiotherapy Practice Bill 2005*, the *Chiropractic and Osteopathy Practice Bill 2005* is based on the *Medical Practice Act 2004*. This Bill is therefore very similar to the Medical Practice Act and for the most part, identical with the Physiotherapy Practice Bill. The provisions are again largely familiar to the House and my comments on this Bill will reiterate those I have made previously for those other Bills.

The Chiropractic and Osteopathy Practice Bill replaces the *Chiropractors Act 1991*. Consistent with the Government's commitment to protecting the health and safety of consumers, the long title of the Chiropractic and Osteopathy Practice Bill states that it is a Bill for an Act "to protect the health and safety of the public by providing for the registration of chiropractors and osteopaths". At the outset it is made clear that primary aim of the legislation is the protection of the health and safety of the public, and that the registration of chiropractors and osteopaths is the key mechanism by which this is achieved.

The current Act was reviewed in line with the requirements of the National Competition Policy. The Review identified provisions of the Act restricting competition that were not justifiable on the grounds of providing a public benefit. Consistent with the Government's commitment to National Competition Policy, the Chiropractic and Osteopathy Practice Bill 2005 omits these provisions.

The Bill removes the ownership restrictions that exist in the current legislation and allows a chiropractic or osteopathy services provider, being a person who is not a registered chiropractor or osteopath, to provide chiropractic or osteopathy through the instrumentality of a registered chiropractor or osteopath.

The Bill includes the same measures that exist in the Medical Practice Act and the other Bills to ensure that non-registered persons who own chiropractic or osteopathy practices are accountable for the quality of chiropractic or osteopathy services provided. These measures include:

- a requirement that corporate or trustee chiropractic or osteopathy services providers notify the Board of their existence and provide the names and addresses of persons who occupy positions of authority in the provider entity and of the chiropractors or osteopaths through the instrumentality of whom they provide chiropractic or osteopathy;
- a prohibition on chiropractic or osteopathy services providers giving improper directions to a chiropractor, osteopath chiropractic student or osteopathy student through the instrumentality of whom they provide chiropractic or osteopathy;
- a prohibition on any person giving or offering a benefit as inducement, consideration or reward for a chiropractor, osteopath, chiropractic student or osteopathy student referring patients to a health service provided by the person, or recommending that a patient use a health service provided by the person or a health product made, sold or supplied by the person;

· a requirement that chiropractic or osteopathy services providers comply with codes of conduct applying to such providers (thereby making them accountable to the Board by way of disciplinary action).

The definition of ***chiropractic or osteopathy services provider*** in the Bill excludes "exempt providers". This definition is identical to that in the Medical Practice Act and the other Bills and the exclusion exists in this Bill for the same reason. That is, to ensure that a recognised hospital, incorporated health centre or private hospital within the meaning of the *South Australian Health Commission Act 1976* is not accountable to both me and the Board for the services it provides. I have the power under the South Australian Health Commission Act to investigate and make changes to the way a hospital or health centre may operate, or vary the conditions applying to a private hospital licensed under that Act. Without the "exempt provider" provision, under this Bill the Board would also have the capacity to investigate and conduct disciplinary proceedings against these providers should they provide chiropractic or osteopathy services. It is not reasonable that services providers be accountable to both me and the Board, and that the Board have the power to prohibit these services when the services providers were established or licensed under the South Australian Health Commission Act for which I am the Minister responsible.

However, to ensure that the health and safety of consumers is not put at risk by individual practitioners providing services on behalf of a services provider, the Bill requires all providers, including exempt providers, to report to the Board unprofessional conduct or medical unfitness of persons through the instrumentality of whom they provide chiropractic or osteopathy. In this way the Board can ensure that all services are provided in a manner consistent with a professional code of conduct and the interests of the public are protected. The Board may also make a report to me about any concerns it may have arising out of information provided to it.

The Board will have responsibility under the Bill for developing codes of conduct for chiropractic or osteopathy services providers. I will need to approve these codes. This is to ensure that they do not contain provisions that would limit competition, thereby undermining the intent of this legislation. It also gives me some oversight of the standards that relate to the profession and providers.

This Bill, like the Medical Practice Act, deals with the medical fitness of registered persons and applicants for registration and requires that where a determination is made of a person's fitness to provide chiropractic or osteopathy, regard is given to the person's ability to provide chiropractic or osteopathy without endangering a patient's health or safety. This can include consideration of communicable diseases.

This approach was agreed to by all the major medical and infection control stakeholders when developing the provisions for the Medical Practice Act and is in line with the way in which these matters are handled in other jurisdictions, and across the world. It is therefore appropriate that similar provisions be used in the Chiropractic and Osteopathy Practice Bill.

The Bill establishes one Board for both chiropractors and osteopaths. When the Chiropractors Act was reviewed, it concluded that it was not practical to enact separate legislation for osteopaths because of the very small number registered in South Australia. The costs of registration would therefore be prohibitive and it would not be viable to establish a separate Board for this profession. However, the Bill recognises osteopaths as a profession distinct from chiropractors in the title of the Bill, the name of the Board and in providing separate definitions of "chiropractic" and "osteopathy" and establishing separate registers for each profession. The current Act includes osteopathy as part of the definition of chiropractic and therefore only provides for a register of chiropractors. The Chiropractors Board only notes on that register that a person is practising as an osteopath. The Board has advised that there are currently 10 osteopaths practising in South Australia, 258 persons practising as chiropractors and another 46 practising as both chiropractor and osteopath. The membership of the Board reflects the difference in numbers between chiropractors and osteopaths.

Apart from the numbers, the Bill recognises that while there are differences in the philosophy and practices of these two practitioner groups, the essential practice that poses a risk to the public (and therefore requires regulating) is the same. I will describe this practice at a later point.

Provision is made for 4 elected chiropractors and 1 elected osteopath on the Board. The membership of the Board also includes a legal practitioner, a medical practitioner and 2 persons who are not a legal practitioner, medical practitioner, chiropractor or osteopath. This ensures there is a balance on the Board between the professions of chiropractors and osteopaths and non-chiropractors and osteopaths and enables the appointment of members to the Board who can represent other interests, in particular, those of consumers.

In addition there is a provision that will restrict the length of time which any one member of the Board can serve to 3 consecutive 3 year terms. This is to ensure that the Board has the benefit of fresh thinking. It will not restrict a person's capacity to serve on the Board at a later time but it does mean that after 9 consecutive years they will have to have a break.

Standards and expectations by Government in regard to transparency and accountability are now much more explicit than in the past and the *Public Sector Management Act 1995*, as amended by the *Statutes Amendment (Honesty and Accountability in Government) Act 2003*, provides a clear framework for the operation of the public sector, including the Chiropractic and Osteopathy Board of South Australia.

Provisions relating to conflict of interest and to protect members of the Board from personal liability when they have acted in good faith are included in Schedule 2 of the Bill pending commencement of the amendments to the Public Sector Management Act.

Consistent with Government commitments to better consumer protection and information, this Bill increases the transparency and accountability of the Board and ensures information about a chiropractic or osteopathy services provider is available to the public.

Currently most complaints are taken to the Board by the Registrar acting on behalf of the complainant. Complainants do not usually take their own case to the Board because of the possibility of having costs awarded against them and, because they are not a party to the proceedings, they do not have a legal right to be present during the hearing of those proceedings. This is obviously an unsatisfactory situation and I have had the relevant provisions of the Medical Practice Act mirrored in this Bill to provide a right for the complainant to be present at the hearing of the proceedings. This ensures that the proceedings, from the perspective of the person making the complaint, are more transparent. The Board will be able however, if it considers it necessary, to exclude that person from being present at the hearing of part of the proceedings where, for example, the confidentiality of certain matters may need to be protected.

New to the Chiropractic and Osteopathy Practice Bill is the registration of students. This provision is supported by the Chiropractors Board. It requires that students undertaking a course of training in chiropractic or osteopathy from interstate, overseas or in South Australia, should one commence again in this State, be registered with the Board prior to any clinical work that they may undertake in this State. This provision ensures that students of chiropractic or osteopathy are subject to the same requirements in relation to professional standards and codes of conduct as registered chiropractors or osteopaths while working in a practice setting in South Australia.

Chiropractors, osteopaths and chiropractic or osteopathy services providers will be required to be insured, in a manner and to an extent approved by the Board, against civil liabilities that might be incurred in connection with the provision of chiropractic or osteopathy or proceedings under Part 4 of the Bill. In the case of chiropractors and osteopaths, insurance will be a pre-condition of registration. The *Chiropractors Act 1991* has a requirement that the registered person has an agreement approved by the Board to be compensated for any loss by reason of civil liability incurred in the practice of chiropractic. This is a condition placed on practising as distinct from a requirement for registration. The Chiropractic and Osteopathy Bill ensures that the insurance requirement is consistent with the other Bills and the Medical Practice Act and that there is adequate protection for the public should circumstances arise where this is necessary. The Board will also have the power to exempt a person or class of persons from all or part of the insurance requirement. For example, where a person may wish continue to be registered, but no longer practice for a time.

The Bill replaces the broad prohibition on the provision of chiropractic or osteopathy for fee or reward by unqualified persons, with offences of providing "restricted therapy" unless qualified or providing "prescribed physical therapy" for fee or reward unless qualified. This is consistent with the need for the legislation to be as precise as possible in describing the services that should be provided only by registered persons.

"Restricted therapy" is defined to mean "the manipulation or adjustment of the spinal column or joints of the human body involving a manoeuvre during which a joint is carried beyond its normal physiological range of motion" or any other physical therapy

declared by the regulations to be restricted therapy. This definition of "restricted therapy" is common to both chiropractors and osteopaths. It is also the same as that used in the *Physiotherapy Practice Bill 2005*.

The similarity of the definitions arises out of the purpose of the legislation which, in keeping with the National Competition Principles, is to regulate only those practices that are necessary to protect the health and safety of the public. In this regard, it is the "restricted therapy" that poses the greatest risk. Since chiropractors, osteopaths and physiotherapists all practice this restricted therapy, it is necessary to have a common definition in order to ensure that each profession can be exempted under the other's legislation and that the provision of such therapy is restricted to the registered person. It is therefore clear to a practitioner and the public precisely what can be done only by a chiropractor or osteopath or other suitably qualified person such as a physiotherapist. The role of describing and communicating a more complete meaning of chiropractic, osteopathy or physiotherapy and how these may differ belongs to the professions.

Chiropractic and osteopathy services other than restricted therapy or prescribed physical therapy can be provided by other practitioners so long as they do not hold out to be a chiropractor or osteopath, or use words restricted for the use of chiropractic or osteopathy, such as "manipulative therapist" or "spinal therapist" unless appropriately registered. This allows for example, a massage therapist to practice physical therapy that they regard as part of their practice, so long as that therapy has not been prescribed as a restricted chiropractic or osteopathy therapy in the regulations.

This Bill balances the needs of the profession and chiropractic and osteopathy services providers with the need of the public to feel confident that they are being provided with a service safely, either directly by a qualified practitioner or by a provider who uses registered chiropractors or osteopaths.

As I stated in the beginning, the Chiropractic and Osteopathy Practice Bill is based on the Medical Practice Act and the provisions in the Chiropractic and Osteopathy Practice Bill are in most places identical to it. One exception is that unlike the Medical Practice Act, this Bill does not establish a Tribunal for hearing complaints. Instead, like the current practice, members of the Board can investigate and hear any complaint.

By following the model of the Medical Practice Act, this and the other Bills that regulate health professionals will have consistently applied standards and expectations for all services provided by registered health practitioners. This will be of benefit to all health consumers who can feel confident that no matter which kind of registered health practitioner they consult, they can expect consistency in the standards and the processes of the registration boards.

I believe this Bill will provide an improved system for ensuring the health and safety of the public and regulating the chiropractic and osteopathy profession in South Australia and I commend it to all members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal.

3—Interpretation

This clause defines key terms used in the measure.

4—Medical fitness to provide chiropractic or osteopathy

This clause provides that in making a determination under the measure as to a person's medical fitness to provide chiropractic or osteopathy, regard must be given to the question of whether the person is able to provide treatment personally to a patient without endangering the patient's health or safety.

Part 2—Chiropractors and Osteopaths Board of South Australia

Division 1—Establishment of Board

5—Establishment of Board

This clause establishes the Chiropractors and Osteopaths Board of South Australia as a body corporate with perpetual succession, a common seal, the capacity to litigate in its corporate name and all the powers of a natural person capable of being exercised by a body corporate.

Division 2—Board's membership

6—Composition of Board

This clause provides for the Board to consist of 9 members appointed by the Governor—4 elected chiropractors, 1 elected osteopath, 1 legal practitioner, 1 medical practitioner and 2 others. It also empowers the Governor to appoint deputy members and requires at least 1 member of the Board nominated by the Minister to be a woman and at least 1 to be a man.

7—Elections and casual vacancies

This clause requires the election to be conducted under the regulations in accordance with the principles of proportional representation. It provides for the filling of casual vacancies without the need to hold another election.

8—Terms and conditions of membership

This clause provides for members of the Board to be appointed for a term not exceeding 3 years and to be eligible for reappointment on expiry of a term of appointment. However, a member of the Board may not hold office for consecutive terms that exceed 9 years in total. The clause sets out the circumstances in which a member's office becomes vacant and the grounds on which the Governor may remove a member from office. It also allows members whose terms have expired to continue to act as members to hear part-heard proceedings under Part 4.

9—Presiding member and deputy

This clause requires the Minister, after consultation with the Board, to appoint a chiropractor or osteopath member of the Board to be the presiding member of the Board, and another chiropractor or osteopath member to be the deputy presiding member.

10—Vacancies or defects in appointment of members

This clause ensures acts and proceedings of the Board are not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

11—Remuneration

This clause entitles a member of the Board to remuneration, allowances and expenses determined by the Governor.

Division 3—Registrar and staff of Board

12—Registrar of Board

This clause provides for the appointment of a Registrar by the Board on terms and conditions determined by the Board.

13—Other staff of Board

This clause provides for the Board to have such other staff as it thinks necessary for the proper performance of its functions.

Division 4—General functions and powers

14—Functions of Board

This clause sets out the functions of the Board and requires it to exercise its functions with the object of protecting the health and safety of the public by achieving and maintaining high professional standards both of competence and conduct in the provision of chiropractic and osteopathy in South Australia.

15—Committees

This clause empowers the Board to establish committees to advise the Board or the Registrar or assist the Board to carry out its functions.

16—Delegations

This clause empowers the Board to delegate its functions or powers to a member of the Board, the Registrar, an employee of the Board or a committee established by the Board.

Division 5—Board's procedures

17—Board's procedures

This clause deals with matters relating to the Board's procedures such as the quorum at meetings, the chairing of meetings, voting rights, the holding of conferences by telephone and other electronic means and the keeping of minutes.

18—Conflict of interest etc under Public Sector Management Act

This clause provides that a member of the Board will not be taken to have a direct or indirect interest in a matter for the purposes of the *Public Sector Management Act 1995* by reason only of the fact that the member has an interest in the matter that is shared in common with chiropractors or osteopaths generally or a substantial section of chiropractors or osteopaths in this State.

19—Powers of Board in relation to witnesses etc

This clause sets out the powers of the Board to summons witnesses and require the production of documents and other evidence in proceedings before the Board.

20—Principles governing proceedings

This clause provides that the Board is not bound by the rules of evidence and requires it to act according to equity, good

conscience and the substantial merits of the case without regard to technicalities and legal forms. It requires the Board to keep all parties to proceedings before the Board properly informed about the progress and outcome of the proceedings.

21—Representation at proceedings before Board

This clause entitles a party to proceedings before the Board to be represented at the hearing of those proceedings.

22—Costs

This clause empowers the Board to award costs against a party to proceedings before the Board and provides for the taxation of costs by a Master of the District Court in the event that a party is dissatisfied with the amount of costs awarded by the Board.

Division 6—Accounts, audit and annual report

23—Accounts and audit

This clause requires the Board to keep proper accounting records in relation to its financial affairs, to have annual statements of account prepared in respect of each financial year and to have the accounts audited annually by an auditor approved by the Auditor-General and appointed by the Board.

24—Annual report

This clause requires the Board to prepare an annual report for the Minister and requires the Minister to table the report in Parliament.

Part 3—Registration and practice

Division 1—Registers

25—Registers

This clause requires the Registrar to keep certain registers and specifies the information required to be included in each register. It also requires the registers to be kept available for inspection by the public and permits access to be made available by electronic means. The clause requires registered persons to notify a change of name or nominated contact address within 1 month of the change. A maximum penalty of $250 is fixed for non-compliance.

26—Authority conferred by registration

This clause sets out the kind of treatment that registration on each particular register authorises a registered person to provide.

Division 2—Registration

27—Registration of natural persons as chiropractors or osteopaths

This clause provides for full and limited registration of natural persons on the register of chiropractors or the register of osteopaths.

28—Registration of chiropractic and osteopathy students

This clause requires persons to register as chiropractic students before undertaking a course of study that provides qualifications for registration on the register of chiropractors, or before providing chiropractic as part of a course of study related to chiropractic being undertaken in another State, and provides for full or limited registration of chiropractic students. It requires persons to register as osteopathy students before undertaking a course of study that provides qualifications for registration on the register of osteopaths, or before providing osteopathy as part of a course of study related to osteopathy being undertaken in another State, and provides for full or limited registration of osteopathy students.

29—Application for registration and provisional registration

This clause deals with applications for registration. It empowers the Board to require applicants to submit medical reports or other evidence of medical fitness to provide chiropractic or osteopathy or to obtain additional qualifications or experience before determining an application.

30—Removal from register

This clause requires the Registrar to remove a person from a register on application by the person or in certain specified circumstances (for example, suspension or cancellation of the person's registration under this measure).

31—Reinstatement on register

This clause makes provision for reinstatement of a person on a register. It empowers the Board to require applicants for reinstatement to submit medical reports or other evidence of medical fitness to provide chiropractic or osteopathy or to obtain additional qualifications or experience before determining an application.

32—Fees and returns

This clause deals with the payment of registration, reinstatement and annual practice fees, and requires registered persons to furnish the Board with an annual return in relation to their practice of chiropractic or osteopathy, continuing education and other matters relevant to their registration under the measure. It empowers the Board to remove from a register a person who fails to pay the annual practice fee or furnish the required return.

Division 3—Special provisions relating to chiropractic or osteopathy services providers

33—Information to be given to Board by chiropractic or osteopathy services providers

This clause requires a podiatric services provider to notify the Board of the provider's name and address, the name and address of the chiropractors or osteopaths through the instrumentality of whom the provider is providing chiropractic or osteopathy and other information. It also requires the provider to notify the Board of any change in particulars required to be given to the Board and makes it an offence to contravene or fail to comply with the clause. A maximum penalty of $10 000 is fixed. The Board is required to keep a record of information provided to the Board under this clause available for inspection at the office of the Board and may make it available to the public electronically.

Division 4—Restrictions relating to the provision of chiropractic or osteopathy

34—Illegal holding out

This clause makes it an offence for a person to hold himself or herself out as a registered person of a particular class or permit another person to do so unless registered on the appropriate register. It also makes it an offence for a person to hold out another as a registered person of a particular class unless the other person is registered on the appropriate register. In both cases a maximum penalty of $50 000 or imprisonment for 6 months is fixed.

35—Illegal holding out concerning limitations or conditions

This clause makes it an offence for a person whose registration is restricted, limited or conditional to hold himself or herself out, or permit another person to hold him or her out, as having registration that is unrestricted or not subject to a limitation or condition. It also makes it an offence for a person to hold out another whose registration is restricted, limited or conditional as having registration that is unrestricted or not subject to a limitation or condition. In each case a maximum penalty of $50 000 or imprisonment for 6 months is fixed.

36—Use of certain titles or descriptions prohibited

This clause creates a number of offences prohibiting a person who is not appropriately registered from using certain words or their derivatives to describe himself or herself or services that they provide, or in the course of advertising or promoting services that they provide. In each case a maximum penalty of $50 000 is fixed.

37—Restrictions on provision of chiropractic or osteopathy by unqualified persons

This clause makes it an offence to provide restricted therapy unless the person is a qualified person or provides the treatment through the instrumentality of a qualified person. A maximum penalty of $50 000 or imprisonment for 6 months is fixed for the offence. However, these provisions do not apply to restricted therapy provided by an unqualified person in prescribed circumstances. In addition, the Governor is empowered, by proclamation, to grant an exemption if of the opinion that good reason exists for doing so in the particular circumstances of a case. The clause makes it an offence punishable by a maximum fine of $50 000 to contravene or fail to comply with a condition of an exemption.

38—Board's approval required where chiropractor, osteopath, chiropractic student or osteopathy student has not practised for 5 years

This clause prohibits a registered person who has not provided chiropractic or osteopathy of a kind authorised by their registration for 5 years or more from providing such chiropractic or osteopathy without the prior approval of the Board and fixes a maximum penalty of $20 000. The Board is empowered to require an applicant for approval to obtain

qualifications and experience and to impose conditions on the person's registration.

Part 4—Investigations and proceedings

Division 1—Preliminary

39—Interpretation

This clause provides that in this Part the terms ***chiropractic or osteopathy services provider***, ***occupier of a position of authority*** and ***registered person*** includes a person who is not but who was, at the relevant time, a chiropractic or osteopathy services provider, an occupier of a position of authority or a registered person.

40—Cause for disciplinary action

This clause specifies what constitutes proper cause for disciplinary action against a registered person, a chiropractic or osteopathy services provider or a person occupying a position of authority in a corporate or trustee chiropractic or osteopathy services provider.

Division 2—Investigations

41—Powers of inspectors

This clause sets out the powers of an inspector to investigate suspected breaches of the Act and certain other matters.

42—Offence to hinder etc inspector

This clause makes it an offence for a person to hinder an inspector, use certain language to an inspector, refuse or fail to comply with a requirement of an inspector, refuse or fail to answer questions to the best of the person's knowledge, information or belief, or falsely represent that the person is an inspector. A maximum penalty of $10 000 is fixed.

Division 3—Proceedings before Board

43—Obligation to report medical unfitness or unprofessional conduct of chiropractor, osteopath, chiropractic student or osteopathy student

This clause requires certain classes of persons to report to the Board if of the opinion that a chiropractor, osteopath, chiropractic student or osteopathy student is or may be medically unfit to provide chiropractic or ostepathy. A maximum penalty of $10 000 is fixed for non-compliance. It also requires chiropractic or osteopathy services providers and exempt providers to report to the Board if of the opinion that a chiropractor, osteopath, chiropractic student or osteopathy student through whom the provider provides chiropractic or osteopathy has engaged in unprofessional conduct. A maximum penalty of $10 000 is fixed for non-compliance. The Board must cause reports to be investigated. The Board must cause a report to be investigated.

44—Medical fitness of chiropractor, osteopath, chiropractic student or osteopathy student

This clause empowers the Board to suspend the registration of a chiropractor, osteopath, chiropractic student or osteopathy student, impose conditions on registration restricting the right to provide chiropractic or osteopathy or other conditions requiring the person to undergo counselling or treatment, or to enter into any other undertaking if, on application by certain persons or after an investigation under clause 43, and after due inquiry, the Board is satisfied that the chiropractor, osteopath or student is medically unfit to provide chiropractic or osteopathy and that it is desirable in the public interest to take such action.

45—Inquiries by Board as to matters constituting grounds for disciplinary action

This clause requires the Board to inquire into a complaint relating to matters alleged to constitute grounds for disciplinary action against a person unless the Board considers the complaint to be frivolous or vexatious. If after conducting an inquiry, the Board is satisfied that there is proper cause for taking disciplinary action, the Board can censure the person, order the person to pay a fine of up to $10 000 or prohibit the person from carrying on business as a chiropractic or osteopathy services provider or from occupying a position of authority in a corporate or trustee chiropractic or osteopathy services provider. If the person is registered, the Board may impose conditions on the person's right to provide chiropractic or osteopathy, suspend the person's registration for a period not exceeding 1 year, cancel the person's registration, or disqualify the person from being registered.

If a person fails to pay a fine imposed by the Board, the Board may remove their name from the appropriate register.

46—Contravention of prohibition order

This clause makes it an offence to contravene a prohibition order made by the Board or to contravene or fail to comply with a condition imposed by the Board. A maximum penalty of $75 000 or imprisonment for 6 months is fixed.

47—Register of prohibition orders

This clause requires the Registrar to keep a register of prohibition orders made by the Board. The register must be kept available for inspection at the office of the Registrar and may be made available to the public electronically.

48—Variation or revocation of conditions of registration

This clause empowers the Board, on application by a registered person, to vary or revoke a condition imposed by the Board on his or her registration.

49—Constitution of Board for purpose of proceedings

This clause sets out how the Board is to be constituted for the purpose of hearing and determining proceedings under Part 4.

50—Provisions as to proceedings before Board

This clause deals with the conduct of proceedings by the Board under Part 4.

Part 5—Appeals

51—Right of appeal to District Court

This clause provides a right of appeal to the District Court against certain acts and decisions of the Board.

52—Operation of order may be suspended

This clause empowers the Court to suspend the operation of an order made by the Board where an appeal is instituted or intended to be instituted.

53—Variation or revocation of conditions imposed by Court

This clause empowers the District Court, on application by a registered person, to vary or revoke a condition imposed by the Court on his or her registration.

Part 6—Miscellaneous

54—Interpretation

This clause defines terms used in Part 6.

55—Offence to contravene conditions of registration

This clause makes it an offence for a person to contravene or fail to comply with a condition of his or her registration and fixes a maximum penalty of $75 000 or imprisonment for 6 months.

56—Registered person etc must declare interest in prescribed business

This clause requires a registered person or prescribed relative of a registered person who has an interest in a prescribed business to give the Board notice of the interest and of any change in such an interest. It fixes a maximum penalty of $20 000 for non-compliance. It also prohibits a registered person from referring a patient to, or recommending that a patient use, a health service provided by the business and from prescribing, or recommending that a patient use, a health product manufactured, sold or supplied by the business unless the registered person has informed the patient in writing of his or her interest or that of his or her prescribed relative. A maximum penalty of $20 000 is fixed for a contravention. However, it is a defence to a charge of an offence or unprofessional conduct for a registered person to prove that he or she did not know and could not reasonably have been expected to know that a prescribed relative had an interest in the prescribed business to which the referral, recommendation or prescription that is the subject of the proceedings relates.

57—Offence to give, offer or accept benefit for referral or recommendation

This clause makes it an offence—

(a) for any person to give or offer to give a registered person or prescribed relative of a registered person a benefit as an inducement, consideration or reward for the registered person referring, recommending or prescribing a health service provided by the person or a health product manufactured, sold or supplied by the person; or

(b) for a registered person or prescribed relative of a registered person to accept from any person a benefit offered or given as a inducement, consideration or reward for such a referral, recommendation or prescription.

In each case a maximum penalty of $75 000 is fixed.

58—Improper directions to chiropractors, osteopaths, chiropractic students or osteopathy students

This clause makes it an offence for a person who provides chiropractic or osteopathy through the instrumentality of a chiropractor, osteopath, chiropractic student or osteopathy student to direct or pressure the chiropractor, osteopath or student to engage in unprofessional conduct. It also makes it an offence for a person occupying a position of authority in a corporate or trustee chiropractic or osteopathy services provider to direct or pressure a chiropractor, osteopath, chiropractic student or osteopathy student through whom the provider provides chiropractic or osteopathy to engage in unprofessional conduct. In each case a maximum penalty of $75 000 is fixed.

59—Procurement of registration by fraud

This clause makes it an offence for a person to fraudulently or dishonestly procure registration or reinstatement of registration (whether for himself or herself or another person) and fixes a maximum penalty of $20 000 or imprisonment for 6 months.

60—Statutory declarations

This clause empowers the Board to require information provided to the Board to be verified by statutory declaration.

61—False or misleading statement

This clause makes it an offence for a person to make a false or misleading statement in a material particular (whether by reason of inclusion or omission of any particular) in information provided under the measure and fixes a maximum penalty of $20 000.

62—Registered person must report medical unfitness to Board

This clause requires a registered person who becomes aware that he or she is or may be medically unfit to provide chiropractic or osteopathy to forthwith give written notice of that fact of the Board and fixes a maximum penalty of $10 000 for non-compliance.

63—Report to Board of cessation of status as student

This clause requires the person in charge of an educational institution to notify the Board that a chiropractic student or osteopathy student has ceased to be enrolled at that institution in a course of study providing qualifications for registration on the register of chiropractors or register of osteopaths. A maximum penalty of $5 000 is fixed for non-compliance. It also requires a person registered as a chiropractic student or osteopathy student who completes, or ceases to be enrolled in, the course of study that formed the basis for that registration to give written notice of that fact to the Board. A maximum penalty of $1 250 is fixed for non-compliance.

64—Registered persons and chiropractic or osteopathy services providers to be indemnified against loss

This clause prohibits registered persons and chiropractic or osteopathy services providers from providing chiropractic or osteopathy for fee or reward unless insured or indemnified in a manner and to an extent approved by the Board against civil liabilities that might be incurred by the person or provider in connection with the provision of chiropractic or osteopathy or proceedings under Part 4 against the person or provider. It fixes a maximum penalty of $10 000 and empowers the Board to exempt persons or classes of persons from the requirement to be insured or indemnified.

65—Information relating to claim against registered person or chiropractic or osteopathy services provider to be provided

This clause requires a person against whom a claim is made for alleged negligence committed by a registered person in the course of providing chiropractic or osteopathy to provide the Board with prescribed information relating to the claim. It also requires a chiropractic or osteopathy services provider to provide the Board with prescribed information relating to a claim made against the provider for alleged negligence by the provider in connection with the provision of chiropractic or osteopathy. The clause fixes a maximum penalty of $10 000 for non-compliance.

66—Victimisation

This clause prohibits a person from victimising another person (the victim) on the ground, or substantially on the ground, that the victim has disclosed or intends to disclose information, or has made or intends to make an allegation, that has given rise or could give rise to proceedings against the person under this measure. Victimisation is the causing of detriment including injury, damage or loss, intimidation or harassment, threats of reprisals, or discrimination, disadvantage or adverse treatment in relation to the victim's employment or business. An act of victimisation may be dealt with as a tort or as if it were an act of victimisation under the *Equal Opportunity Act 1984*.

67—Self-incrimination

This clause provides that if a person is required to provide information or to produce a document, record or equipment under this measure and the information, document, record or equipment would tend to incriminate the person or make the person liable to a penalty, the person must nevertheless provide the information or produce the document, record or equipment, but the information, document, record or equipment so provided or produced will not be admissible in evidence against the person in proceedings for an offence, other than an offence against this measure or any other Act relating to the provision of false or misleading information.

68—Punishment of conduct that constitutes an offence

This clause provides that if conduct constitutes both an offence against the measure and grounds for disciplinary action under the measure, the taking of disciplinary action is not a bar to conviction and punishment for the offence, and conviction and punishment for the offence is not a bar to disciplinary action.

69—Vicarious liability for offences

This clause provides that if a corporate or trustee chiropractic or osteopathy services provider or other body corporate is guilty of an offence against this measure, each person occupying a position of authority in the provider or body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless it is proved that the person could not, by the exercise of reasonable care, have prevented the commission of the principal offence.

70—Application of fines

This clause provides that fines imposed for offences against the measure must be paid to the Board.

71—Board may require medical examination or report

This clause empowers the Board to require a registered person or a person applying for registration or reinstatement of registration to submit to an examination by a health professional or provide a medical report from a health professional, including an examination or report that will require the person to undergo a medically invasive procedure. If the person fails to comply the Board can suspend the person's registration until further order.

72—Ministerial review of decisions relating to courses

This clause gives a provider of a course of education or training the right to apply to the Minister for a review of a decision of the Board to refuse to approve the course for the purposes of the measure or to revoke the approval of a course.

73—Confidentiality

This clause makes it an offence for a person engaged or formerly engaged in the administration of the measure or the repealed Act (the *Chiropractors Act 1991*) to divulge or communicate personal information obtained (whether by that person or otherwise) in the course of official duties except—

(a) as required or authorised by or under this measure or any other Act or law; or

(b) with the consent of the person to whom the information relates; or

(c) in connection with the administration of this measure or the repealed Act; or

(d) to an authority responsible under the law of a place outside this State for the registration or licensing of persons who provide chiropractic or osteopathy, where the information is required for the proper administration of that law; or

(e) to an agency or instrumentality of this State, the Commonwealth or another State or a Territory of the Commonwealth for the purposes of the proper performance of its functions.

However, the clause does not prevent disclosure of statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates. Personal information that has been disclosed for a particular purpose must not be used for any other purpose by the person to whom it was disclosed or any other person who gains access

to the information (whether properly or improperly and directly or indirectly) as a result of that disclosure. A maximum penalty of $10 000 is fixed for a contravention of the clause.

74—Service

This clause sets out the methods by which notices and other documents may be served.

75—Evidentiary provision

This clause provides evidentiary aids for the purposes of proceedings for offences and for proceedings under Part 4.

76—Regulations

This clause empowers the Governor to make regulations.

Schedule 1—Repeal and transitional provisions

This Schedule repeals the *Chiropractors Act 1991* and makes transitional provisions with respect to the Board and registrations.

Schedule 2—Further provisions relating to Board

This Schedule sets out the obligations of members of the Board in relation to personal or pecuniary interests. It also protects members of the Board, members of committees of the Board, the Registrar of the Board and any other person engaged in the administration of the measure from personal liability. The Schedule will expire when section 6H of the *Public Sector Management Act 1995* (as inserted by the *Statutes Amendment (Honesty and Accountability in Government) Act 2003*) comes into operation.

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

NATIONAL ELECTRICITY (SOUTH AUSTRALIA) (NEW ELECTRICITY LAW) AMENDMENT BILL

In committee.

(Continued from 12 April. Page 1566.)

Clause 12.

The Hon. R.I. LUCAS: We left this issue of civil penalties, and I am struggling to recall what was said the day before. I broached this issue the day before in relation to rebidding, and the minister said:

> My advice is that it is the rules that form the code that have penalty provisions in them. With the regulations covering just miscellaneous matters, penalties do not apply to the regulations, so clearly if one is talking about the sort of behaviour the honourable member is talking about they would need to be part of the rules if they were formally in the code, as that is where the penalty provisions apply.

I am recorded as saying:

> Is the minister's advice therefore that regulations under the National Electricity Law do not include penalty provisions because there is no penalty provision in the National Electricity Law?

The minister responded:

> The advice of parliamentary counsel is that that is the case.

This became complicated yesterday when we were discussing these provisions on page 37 in relation to the civil penalty provisions where we were going through the National Electricity Law, and at least on the surface there would appear to be specific civil penalty provisions up to $1 million in the National Electricity Law. It may well have been in the past 24 hours that the minister has been able to consolidate some advice on this issue, and I would be interested to hear his considered view after the debate of the past couple of days on these admittedly complicated issues.

The Hon. P. HOLLOWAY: In relation to matters raised about transmission service standards, the current National Electricity Law allows jurisdictions to establish reliability standards for transmission. In the case of South Australia, each connection point to ElectraNet's transmission network is allocated to a category from 1 to 5 by ESCOSA's transmission code. Corresponding reliability levels for each category are mandated in ESCOSA's transmission code. It is not expected that the new National Electricity Law would affect this arrangement.

In addition, as part of determining revenue caps, the ACCC has been required to take into account the service standards that transmission network service providers are expected to maintain. The ACCC has established a performance incentive scheme for the TNSPs that have been included in regulatory determinations. If the transmission network service provider exceeds the service standard benchmark, it earns an incentive payment and, if below, it will suffer a penalty. The maximum amount of penalty or incentive is 1 per cent of the revenue cap. Any change to this will be progressed by the AER.

This is the response in relation to registration. Is there any difference from the current arrangements? There are minor drafting changes from part 3 of the old NEL to part 2 of the new NEL, dealing with registration and market participants. In particular, several sentences in clause 9(1)(b)(i) and (ii) of the current NEL have been redrafted and encapsulated in the phrase 'connected to the interconnector transmission and distribution centre' in clause 11(1) of the new NEL. The intention of the registration provisions in the new NEL is to replicate the registration obligations in the old NEL. That intent is captured in the wording of clause 11(1) and (2) of the new NEL.

Please note that the phrases 'interconnected transmission and distribution system' and 'transmission or distribution system' have not been defined in the new NEL, and similar phrases in the old NEL are also undefined because these terms are readily understandable to NEL market participants. In relation to the AEMC fees for services provided not to be treated as a tax, the purpose of clause 47 is to make it clear that the charges which may be provided in the regulations for AEMC services do in fact relate to the services performed by the AEMC and do not amount to taxation. There is an Australian constitutional prohibition that the states are not allowed to impose excise duties (that is, section 90 of the Australian Constitution).

Excise duty is a type of tax that is a compulsory exaction of money by a public authority for public purposes which is not a payment for services rendered. Accordingly, by providing that the fees, which the AEMC may charge under the regulations cannot amount to taxation, clause 47 is making it clear that the regulations may not provide an unconstitutional excise. It is to be noted that there is no constitutional prohibition on either the states or the commonwealth charging fees for service, which is what clause 47(1) is all about. I trust that answers those three matters.

The Hon. R.I. LUCAS: Before we get on to the issue of the regulations, I seek clarification of the responses the minister has just brought down. In relation to the first issue, that is the issues of service standards, I want to clarify what the government is saying. It is currently transmission service standards, but potentially we will be seeing distribution service standards as well in relation to this. Is it contemplated by the government that there will be one transmission service standard across all the states? Is that what the government's answer is indicating? Or is the government indicating that it is possible to have different transmission service standards and reliability standards in each state? I just want to clarify what the government just indicated by way of its answer.

The Hon. P. HOLLOWAY: I am advised that, at present, there is a duality of approach; that is, certain service standards are imposed by the states and certain service standards are imposed by the ACCC. It is my advice that that is

permitted to continue in the future under this National Electricity Law.

The Hon. R.I. LUCAS: So you can have a different service standard or reliability standard in different states?

The Hon. P. HOLLOWAY: That is the current situation.

The Hon. R.I. Lucas: And that is able to continue; is that what you are saying?

The Hon. P. HOLLOWAY: It is permitted under the bill. There is an issue about whether that duality will converge, and that would be part of discussions. My advice is that, at present, it can.

The Hon. R.I. Lucas: What do you mean by 'duality will converge'?

The Hon. P. HOLLOWAY: Certain service standards from the states; certain service standards from the ACCC. The word we have been using would be transition into the new law. I am advised that, at present, service standards are imposed by ESCOSA in South Australia, and service standards are imposed by the ACCC, and they will continue under the new NEL. The transmission standards from ESCOSA relate to licensing, and the service standards from the ACCC relate to the revenue cap determination. They are in different areas now.

The Hon. R.I. LUCAS: I will clarify my question. In the end, policy decisions may well have to be taken, but I want to know what the structure of the National Electricity Law permits as to what options there are. That is, ultimately we may well have a situation in South Australia where there is not an ESCOSA. There may have been a transition of whatever ESCOSA is currently doing to the national regulatory bodies, so we just have these national regulatory bodies. We may well have a position in the future, if the government continues down a certain path, where there is no ESCOSA as it relates to the electricity industry. In those circumstances—and we may be heading down that path—does this National Electricity Law allow the capacity for different reliability and service standards between the states? So, there might be a standard in South Australia as compared with New South Wales. There might not be. It may be the decision is that it is all uniform. I want to know whether there is the capacity, if the decision was taken, to have a different standard in different states to cater for the different arrangements in different states.

The Hon. P. HOLLOWAY: My advice is that currently there is the capacity to have those different standards in different states, and that will continue.

The Hon. NICK XENOPHON: In relation to the issue of reliability standards, referred to by the Hon. Mr Lucas, will the standards be set on a statewide basis or within parts of a state? How will that work; or is that something yet to be determined?

The Hon. P. HOLLOWAY: I am advised that there are differences in reliability standards that are allowed through jurisdictional laws; in other words, the law of the state—in the case of this state it would be the Electricity Act—and that will continue.

The Hon. NICK XENOPHON: Does that mean that under the current act the standards will be uniform throughout the whole state in terms of these various reliability standards; or is there scope for variations intrastate?

The Hon. P. HOLLOWAY: If the state act allows them to vary within the state, that will be the case. If it does not, then they will be uniform throughout the state. In short, it depends on the state. The state jurisdictional law prevails; I guess that is the best way of putting it.

The Hon. R.I. LUCAS: The second issue to which the minister responded was clause 11 in relation to the question I asked about own generation. Will the minister clarify the government's answer to my question? My question was: is there anything in the new drafting which would place greater restrictions on own generators? I gave the example of small businesses that have their own back-up generators, through to bigger organisations, such as hospitals, that have significant back-up generators; and, in both examples, the potential to sell back into the system on various occasions has been contemplated by both the market operator and the owner of the back-up generators.

The Hon. P. HOLLOWAY: I repeat the advice I gave last night: it is not intended to change the situation. There is the registration, and exemption from registration depends on the size of the generator in the name plate capacity. That is the basis on which the exemption exists or registration is required. As I indicated earlier, there were some minor drafting changes to the definition, but, to the best of our belief, they certainly are not intended to change the outcome.

The Hon. R.I. LUCAS: The government's response is that the existing arrangements are that own generators above a certain capacity have to register as a participant; that own generators below a certain capacity do not have to register as a participant; and that the policy position is that that would continue under the new arrangements.

The Hon. P. HOLLOWAY: My advice is that at law it is the same. The existing arrangements will prevail, but these are matters for the Technical Regulator. They are fairly technical definitions, and my advisers do not have the capacity to go into the technical detail of it. All we can talk about is the legal sense; that is, the existing arrangements prevail. We cannot go beyond that. We would have to get the Technical Regulator to talk about the exemptions.

The Hon. R.I. LUCAS: I am not supporting the notion that what the minister says in the committee stage ought to be interpreted by the courts, but, given that is the government's position, I take it that the minister is indicating the government's intention in the drafting of this clause is that existing arrangements are to continue.

The Hon. P. HOLLOWAY: Yes.

The Hon. R.I. LUCAS: I refer to page 37, clause 58, and the issue of civil penalties. While the minister was taking advice, I did refer back to the discussion we had on Monday. My question was: is the minister's advice, therefore, that regulations under the National Electricity Law do not include penalty provisions because there is no penalty provision in the National Electricity Law?

The minister's response was, 'The advice of parliamentary counsel is that that is the case.' When we discussed this yesterday, it seemed to be getting pretty complicated. The National Electricity Law (which we are looking at) under clause 58, clearly, would appear to have civil penalty provisions, including a specific rebidding civil penalty provision. I am wondering whether the minister, having had 24 hours with his advisers, is in a position to clarify this issue that we have now pursued over two days in relation to the rebidding issue, the issue of the rules and regulations and this particular civil penalty provision.

The Hon. P. HOLLOWAY: I believe that what I said the other day is consistent with what we have in clause 58.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Both days. The penalties are in the law. The regulations identify those provisions of the rules that are civil penalty provisions. The regulations do not

contain the penalties themselves. What they do is to set out those rules to which a civil penalty provision applies. It is complicated, but I believe that is consistent with what I have said previously. The regulations themselves do not have the penalties in them; they are here in the law. The regulation simply defines those rules where the civil penalty provision applies. I am also advised that this is exactly the same as it is under the existing provision. There is no change in relation to this.

The Hon. R.I. LUCAS: With respect, I do not think that is correct. The minister has just said that the penalty provisions are within the law, and that is right because we are looking at it as we speak. On Monday I asked:

> Is the minister's advice therefore that the regulations under National Electricity Law do not include penalty provisions because there is no penalty provision in the National Electricity Law?

That is, because there is no penalty provision in the National Electricity Law. The Hon. Mr Holloway said:

> The advice of parliamentary counsel is that that is the case.

That is directly contrary to our understanding now. I am not seeking to make great play of that, but it is impossible to accept what the minister has just said, that is, that the penalty provisions within the national law are exactly the same and consistent with what he said to the committee based on advice (I am not being critical of him) on Monday. My specific question was:

> . . . because there is no penalty provision in the National Electricity Law?

The minister said:

> The advice of parliamentary counsel is that that is the case.

That is, that there is no penalty provision in the National Electricity Law, therefore you cannot include penalty provisions in the regulations. I am happy to leave it at that, but if one reads the answers given on Monday and the answer given now one can see that they are mutually inconsistent. One is a direct reverse of the other. The reason that I was raising this—and that is why the clarification today means that I need to go back to the question—was that on Monday I specifically asked:

> If jurisdictions wanted to amend the regulations under the National Electricity Law to specifically provide guidelines in relation to bidding and rebidding behaviour for generators in the national electricity market, would ministers, if they agreed, be able to do that as opposed to having to go through the rule-making provisions which are governed by the AEMC?

My question was: could the ministers amend the regulations under the National Electricity Law, in essence, to tackle the bidding and rebidding issue? The answer at that stage on Monday, was, no, you could not do that, because if you wanted to provide a penalty there were no penalty provisions in the National Electricity Law and therefore ministers would not go down that path. I therefore did not proceed with the exploration of that question on Monday because that was the advice. Now the advice is that specific penalty provisions are within the National Electricity Law.

Therefore, clearly, regulations can be made in relation to issues that relate to penalties; and a rebidding civil penalty is specifically outlined in the National Electricity Law. My question now to the minister is the same as it was on Monday: given that we do have a National Electricity Law with specific penalty provisions, can the jurisdictions, if they wanted to, amend the regulations under the National Electricity Law specifically to provide guidelines in relation to bidding and rebidding behaviour for generators in the national electricity market; and would ministers, if they agreed, be able to do that as opposed to having to go through the rule-making provisions which are governed by the AEMC?

As we discussed previously, the AEMC must have regard to the views of the ministerial council jurisdictions, but, in the end, it can ignore them—that is, make its own determination. Whereas, clearly, if ministers want to go down a regulation-making path, on my understanding that is something that is completely controlled by the jurisdictions. It requires, on my understanding, a unanimous vote to go down that path of the jurisdictions. It is not an issue to be determined by the AEMC. That was the reason that I was asking the questions on Monday. I now return to them, given that we do have the capacity and the law, it would appear, to go down that path.

The Hon. P. HOLLOWAY: We believe this to be the position. The regulation-making power in section 12 is to make regulations 'contemplated by, or necessary, or expedient for the purposes of' the NEL. To suggest that one might, under that power, be able to make regulations that undermine one of those purposes, namely that the AEMC will be the independent rule maker, is fanciful. Such regulations would be almost undoubtedly beyond power in terms of section 12, because they neither would be contemplated by nor for the purposes of the NEL. That is a view that we have received in relation to that specific question, so I trust that answers the Leader of the Opposition's question.

The Hon. R.I. LUCAS: Frankly, I think that is a nonsense. I do not know whether it actually applies to a different question that I was asking in relation to issues I raised yesterday in relation to the AEMC. It may well be that answer applies to that particular question but, in relation to this, it is a nonsense, because the National Electricity Law—we are looking at it here—contemplates rebidding civil penalty provisions.

Members interjecting:

The ACTING CHAIRMAN (Hon. J.S.L. Dawkins): Order! I think members are having difficulty hearing the Leader of the Opposition.

The Hon. R.I. LUCAS: The National Electricity Law clearly contemplates rebidding civil penalty provisions because we are actually looking at clause 58 of the National Electricity Law at the moment, which outlines civil penalties of up to $1 million, and it specifically refers to rebidding civil penalty provisions. For the minister's advisers to indicate that it is fanciful, that one could do something which might have been beyond the law, which I think he was indicating in some way, is, with the greatest respect to the minister's advisers, a nonsense, in my humble view. This provision is specific. It makes it clear in the law that we are looking at rebidding provisions. My question is: could the ministers bring down a regulation that governs bidding and rebidding behaviour and, as I said, the minister's response on Monday, based on legal advice, is clearly wrong? The minister's advice today, which is different, is obviously correct in terms of this particular issue.

Members interjecting:

The ACTING CHAIRMAN: Order! There is too much audible conversation at the rear of the chamber.

The Hon. P. HOLLOWAY: This matter was raised on Monday night and we gave an opinion based on the first look at it. I understand that the officers who were advising me went away and sought legal opinion from the jurisdictions. While those views were expected in different ways, the advice from New South Wales, Victoria and South Australia has come to the same conclusion. Although from different

perspectives, I understand that, in fact, the regulation-making powers cannot achieve that objective; so, in other words, they do support the proposition that I put on Monday night.

Perhaps I will try one more time to explain. Again, I make the point that there is no capacity in the regulation-making powers of the MCE to impose penalties. Therefore, if you cannot impose a penalty, you cannot enforce any behaviour under the regulations. As we have indicated that on clause 58, regulations can identify those provisions that attract a penalty in the law. But as far as the regulations by themselves are concerned, there is no capacity for any regulation to impose a penalty and, therefore, the argument is that you cannot enforce behaviour because, if you cannot impose a penalty under the regulations, you cannot enforce the behaviour. I guess that is why it is so complicated. The difficulty in explaining this is that there is this indirect way in which the regulations clarify which provisions of the rules are civil penalty provisions.

The Hon. R.I. LUCAS: I defy any court to look at the minister's responses on this particular issue and find them useful—with greatest respect to the minister; I am not being critical of him—in terms of determining what the intention of the parliament was in relation to this particular issue. In my view, and I do not profess to be a legal expert, what the minister has said to me in relation to this question on Monday, Tuesday and Wednesday are different.

It is impossible for all of them to be correct, even though the minister maintains that he has been 100 per cent consistent all the way through in terms of his responses on this particular issue. So, good luck to those future judges who seek to interpret what has gone on in this committee stage. I say to those future judges who will read these particular debates that, as the representative of the opposition party in this place, it is entirely unclear what the government's responses have been on three days to these specific provisions. It is entirely unclear to the opposition what the intention of the government is in relation to these provisions—particularly when we are exploring, in the National Electricity Law, specific penalty provisions on rebidding up to $1 million. The minister's position now appears to be that there is no capacity in the regulations to govern bidding and rebidding behaviour.

For the life of me I cannot understand it, but I will not delay the committee any longer. I am at a loss to determine, with any clarity, the government's position or intention on this. On the surface it appears to me to be possible for jurisdictions, if they choose, to go down the path of a regulation in relation to bidding and rebidding behaviour. It may well be that they do not choose to do so but, as I said, when you go down the rule-making path in relation to some of these issues it goes beyond the power of the jurisdictions to finally determine a decision, because that is a decision of an independent body. Our own minister in South Australia has railed against the independent decisions of independent bodies for the last few years, indicating that that was what was wrong with the national electricity market.

As I said before, the minister said that one of the changes that needed to occur was that there needed to be a greater capacity for jurisdictions and politicians to be able to make decisions in certain areas. To be fair to the minister he was not saying in relation to the day-to-day market decisions of operating the market, but in terms of some of the key policy decisions—and bidding and rebidding behaviour was one of the political hot points for this government when it was in opposition and in its early days in government. I retire on this particular issue perplexed as to the exact intent of the government.

An honourable member: Wounded!

The Hon. R.I. LUCAS: I retire wounded, unable to finally determine the government's position on this particular issue. I will not delay the committee any longer.

The Hon. P. HOLLOWAY: All I can say is that if, on Monday night, I inadvertently said that there were no penalties under the National Electricity Law, that is clearly wrong.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Well, if I said it was not in the law. I can remember enough about Monday night to know what the Leader of the Opposition was driving at, and the point remains that there was no provision under the regulation-making powers to impose penalties. Therefore, it does not make sense to have guidelines if there is no means of enforcing them, because you cannot impose penalties but, as we can see here in clause 58, the regulations do enable the prescription of those rules to which a civil penalty provision applies. So, that is the connection between the regulations and penalties. Yes, it is complex; but it is not that hard.

The Hon. R.I. LUCAS: Mr Chairman, in the last few days I was contacted by the National Generators Forum (I understand they have met with the shadow minister previously). They have raised questions with me, and I seek a government response to these. The draft NEL clause 68 introduces a new liability of aiding, abetting, counselling or procuring a breach or being in any way directly or indirectly knowingly concerned in, or party to, a civil penalty provision by a relevant participant. That is, external contractors, advisers and consultants to market participants are now liable in respect of the civil acts or omissions of their participant clients. Employees and participants can also be liable under this new provision. There is no equivalent under the current regime.

First, can the minister confirm whether the legal view of the National Generators Forum is correct? That is, that there is no equivalent to this provision under the current National Electricity Law?

The Hon. P. HOLLOWAY: I am advised that this provision has been broadened from the provision that was in the existing NEL.

The Hon. R.I. LUCAS: Can the minister indicate what the intent of the Minister for Energy and other ministers was and why it should be broadened?

The Hon. P. HOLLOWAY: I am advised there were two reasons that were considered appropriate to broaden the provisions. First, in the previous National Electricity Law, the aiding and abetting provision applied to criminal offences. I am advised that some of these criminal offences have now been converted to civil penalty provisions. That was one of the reasons why there needed to be some changes. Secondly, I am advised that there are similar regulatory regimes within both the commonwealth Trade Practices Act and the Environment Protection and Biodiversity Conservation Act of the commonwealth.

The Hon. R.I. LUCAS: The position of the National Generators Forum seems to be a preparedness to accept that, potentially in relation to serious offences, such a provision might be acceptable. Certainly, the National Generators Forum argues that in its view the comparisons with the Corporations Act, the Trade Practices Act and environment protection legislation that the minister has just referred to are not relevant or appropriate. It argues that those instruments

deal only with the most serious of matters, whereas the provision that has been drafted here deals not only with serious issues but much of the rules, which are essentially procedural.

The National Generators Forum, I am sure based on good legal advice, highlighting the extent to which such a provision might be interpreted, if I can accept it in that fashion, has given an example, and that is as follows. As the draft NEL has been written, a clerk employed in the office of a network operator, such as ETSA Utilities, ElectraNet or TransGrid, could now be prosecuted and made personally liable for taking 15 days, rather than 14 days, to process a connection inquiry letter for a connection to new premises (rule 53.3(b), plus schedule 1 of the draft regulations, plus the new section 68.1(b) of the draft NEL). The fine for which that clerk could be personally liable is $20 000 plus $2 000 for every extra day that the clerk takes to reply to the letter (Section 58 of the draft NEL).

I am sure the government's position will be that, whilst that is theoretically possible, it is not the intention of the government to pursue lower-level officers in this particular fashion. I would certainly hope that that is the case. Nevertheless, the legal advice available to the National Generators Forum is making a point, by using that example, and that is that there are a lot of lower-level officers. I am surprised that the union representatives in this place are not speaking up on behalf of their union workers. Whereas, in some cases if you are the manager, or the chief executive officer, you have to accept responsibilities. This is saying that workers within these companies—and when we look at clause 85 as well—will find themselves potentially liable for significant penalties for actions that they might take within these particular companies.

The position of the National Generators Forum is that that may well be a defensible position when you look at the Trade Practices Act, and others, for the most serious offences—and maybe that ought to be the case in relation to the National Electricity Law—but should it be the case in relation to, in essence, offences against the rules which are essentially procedural in terms of the structure of the rules in the example that used?

I do not expect the government to be in a position to either (a) agree or (b) amend on the fly, but I must say, on the surface, the National Generators Forum makes a reasonable argument in relation to this—and I will raise similar arguments in relation to section 85, which extends liability to employees as well—in that it appears that the ministers have consciously extended these provisions to apply to a much wider group of people, way beyond, normally, the sort of people you would expect capable of being fined and penalised for actions by a company. As I said, that would normally appear to be the chief executive and senior managers—people in positions of authority—as opposed to employees and workers within those companies; and it is the same case in relation to contractors and advisers.

One of the issues that is being raised is that, ultimately, contractors and advisers provide advice to a company or a participant. The decision ultimately rests with the participant, with the company, and to potentially spread the penalty provisions through to the advisers in relation to some of these issues, I think, further down the track, will make for some very difficult and interesting court cases and, ultimately, as a result of those, we might see further clarification of the law.

When looking at other amendments to the legislation further down the track, I hope the minister will at least be prepared to take up with other ministers some of the issues raised by people such as the National Generators Forum—and I am aware that others have also raised this issue—and at least consider whether or not there is the capacity to make these penalty provisions more reasonable.

The Hon. P. HOLLOWAY: I am advised that the National Generators Forum met with government advisers and they were advised that what they put up were extreme examples. It was not the intention that the types of behaviour the honourable member referred to, the inadvertent breaches, would be prosecuted. The AER has discretionary powers in relation to prosecuting. It is scarcely likely to spend the massive amounts of time and money that would be available in prosecuting inadvertent breaches in any case. Under clause 68 it states:

> (1) A person must not—
>
> (a) aid, abet, counsel or procure a breach of a civil penalty provision. . .
>
> (b) be in any way directly or indirectly knowingly concerned in, or party to, a breach of a civil penalty. . .

I would have thought those clauses would give protection to the sorts of examples given by the National Generators Forum. My advice is that we do not really see it as a problem and the sort of technical breaches of the penalty provisions referred to by the National Generators Forum and quoted by the Leader of the Opposition would be a concern and that was conveyed to the National Generators Forum.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: I suppose we would have to ask them. It often happens with legislation that comes before parliament that one could have a number of bills where one could argue that technically people might inadvertently breach, but the reality of so much of our legislation is that it really is only the serious intentional breaches that are ever prosecuted, and appropriately so.

The Hon. NICK XENOPHON: I move:

> Schedule, clause 70, page 42, lines 18 to 20—Delete subclause (3) and substitute:
>
> (3) In this section—
>
> person aggrieved includes—
>
> (a) a person whose interests are adversely affected by the decision or determination, failure or conduct or proposed conduct; and
>
> (b) a company or association (whether or not incorporated) that has an object or purpose that is affected by the decision or determination, failure or conduct or proposed conduct; and
>
> (c) a person prescribed by the Regulations as representing the interests of end-users of electricity.

This amendment relates to the whole question of standing. The current subclause in relation to applications for judicial review defines in subclause (3), 'in this section a person aggrieved includes a person whose interests are adversely affected'. My amendment, based on the paper provided by the Energy Users Association of Australia, seeks to expand that definition. I will read into *Hansard* some of the comments made by the Energy Users Association of Australia, as follows:

> The NEL should expressly provide that organisations clearly representing end-users, such as the EUAA, have standing pursuant to the proposed section. This would be entirely consistent with the spirit of the NEL and the stated desire of the MCE to include end-users, consumers and energy reform debates and issues.

It makes the point that, in accordance with the Hardiman principle—a decision of the Queen v. Australian Broadcasting Tribunal; ex parte Hardiman (1980) 144 Commonwealth Law Reports at 13—it may be considered inappropriate for

the AEMC or the AER to advocate for those interests in any review process, that is, the interests of end users or consumers, whether acting individually or collectively. The point made by the High Court in the Hardiman case is that if a tribunal (or in this case the AER or AEMC) becomes a protagonist in this court there is a risk that by so doing it endangers the impartiality it is expected to maintain in subsequent proceedings.

The point made also by the EUAA is that it is essential that the NEL be drafted to avoid a potential repeat of the decision in the application by Orica IC Assets Limited and others re Moomba to Sydney gas pipeline system. In that 2004 decision of the Australian Competition Tribunal, both the EUAA and the Energy Action Group were refused standing as neither was considered to be adversely affected by a decision of the minister pursuant to the Gas Pipelines Access (South Australia) Act 1997. The EUAA makes a point, noting that the term 'adversely affected' is the same as that used in this clause of the draft NEL.

The EUAA makes the point that it would be inimical to the market objective with its clear focus on end-user consumers and contrary to the stated desire of the MCE of including end-user consumers in the reform process.

The Hon. P. HOLLOWAY: The government opposes the amendment. The NEL bill provides for judicial review of decisions of the AEMC and NEMMCO for any person who is aggrieved by a decision of those bodies, that is, for persons whose interests are adversely affected by a decision of these bodies. The decision as to whether a person is aggrieved has to be determined by a court by reference to the subject, scope and purpose of the legislation in question. It is the government's view that, as the central part of the national electricity market objective is 'the long-term interests of consumers', those consumer groups that wish to make application for judicial review or decision of the AEMC or NEMMCO should be granted standing, but this is a matter for the court to determine. The decisions of the AER are subject to judicial review pursuant to the Administrative Decisions (Judicial Review) Act 1997 of the commonwealth.

The above is the standard procedure in relation to standing for judicial review of administrative decisions. The only time that this procedure has been varied is in a section 487(2)(b) of the Environment Protection and Biodiversity Conservation Act 1999 of the commonwealth relating to persons with a longstanding involvement in conservation matters and conservation groups, but this was an exceptional situation and such provisions are not appropriate in this context.

The Hon. NICK XENOPHON: What does the minister say about the concerns of the EUAA with its references to the Moomba to Sydney gas pipeline case (a 2004 decision of the Australian Competition Tribunal) and their view that the Gas Pipelines Access (South Australia) Act has similar provisions in respect of a person adversely affected? Is the minister satisfied that groups such as the EUAA will have standing and there will not be a narrow interpretation of it, as appears to have been the case in other decisions? Also, what of the reference to the Hardiman principle in respect of the 1980 High Court decision about the invidious position that the AER or the AEMC might be placed in if it becomes a protagonist in a dispute in respect of an application for judicial review?

The Hon. P. HOLLOWAY: Again I will repeat that it is a matter for the court. It is our view that a court is likely to consider that such a group would be granted standing, but it is a matter for them. In relation to the Gas Pipelines Access (South Australia) Act, I am advised that that was an issue relating specifically to access in the gas context and really does not have any relevance to the issues involved here.

The Hon. NICK XENOPHON: I will not take it any further. As always, I will be interested to hear what the opposition says about this. My argument is that this amendment would enhance the ability of consumers and end users to seek judicial review where it is clear that their interests would be affected. For instance, section 38(1) of the Gas Pipelines Access (South Australia) Act 1997 states:

> A person adversely affected by a decision to which this section applies may apply to the relevant appeals body, in accordance with this part and any applicable law governing the practice and procedure of that body, for a review of the decision.

I would have thought, in a sense, that is pretty similar. Clearly, there were difficulties in the decision to which I have referred and which was handed down only last year.

The Hon. R.I. LUCAS: I understand some of the issues that the honourable member is making, but, as I have outlined on previous days, the opposition's position in relation to these amendments is that we are not prepared to support the amendment and delay the introduction of the legislation. I think some issues which the member has raised merit further consideration, and together with the issues canvassed earlier, one would hope the minister and other ministers may be prepared to at least consider variations on what the member has talked about.

The Hon. P. HOLLOWAY: Why would you include these classifications of people as aggrieved? Why not let the courts determine anyone who the court believes is genuinely an aggrieved person? Surely it is better to leave it up to the courts to make that determination on a case by case basis, rather than further complicating the law by setting a whole new class of persons.

Amendment negatived.

Progress reported; committee to sit again.

[Sitting suspended from 10.12 to 10.40 p.m.]

The Hon. NICK XENOPHON: I move:

Schedule, clause 84, page 48—
After subclause (2) insert:
(3) The AER must, preserving confidentiality to the extent necessary, publish a description of the conduct complained of and the reasons for its decision on its website within 14 days of making the decision.

This seeks to insert into the provisions relating to the AER in informing certain persons of decisions, not to investigate breaches, institute proceedings or serve infringement notices. It seeks to insert that the AER must, preserving confidentiality to the extent necessary, publish a description of the conduct complained of and the reasons for its decision on its web site within 14 days of making the decision. Again, it is a recommendation of the EUAA. This is about transparency in the process. We are dealing with the regulation of one of the most significant industries in the nation. These laws have huge implications in the way that industry will operate. Requiring a publication without infringing confidentiality to the extent necessary I would have thought is quite a reasonable step—not a radical step—to ensure that the public and those who have an interest in these decisions are kept informed.

The Hon. P. HOLLOWAY: The government opposes the amendment. It is not appropriate that the enforcement body (the AER) make public its decision not to investigate or pursue a breach of the national electricity rules. If the AER

has formed the view that there is no breach, or insufficient evidence of a breach, that should remain confidential between the AER and the person concerned. Accordingly, the AER is required to notify the person concerned in clause 84(1) of the schedule. We certainly do not believe that it is appropriate to make that public when, after all, a decision has been made not to investigate with insufficient evidence or, in fact, when there has been no breach.

The Hon. R.I. LUCAS: The opposition does not support this amendment.

Amendment negatived.

The Hon. R.I. LUCAS: I made some comments earlier about the National Generators Forum. I will just place on the record, without going into all the detailed debate again, the National Generators Forum's concern about the provisions in clause 85. This comes from its submission:

> Section 85 of the National Electricity Law specifies that officers of a participant are concurrently liable with the relevant participant for both offences and civil penalty provisions. This is arguably broader than the provisions under the current code where there is some doubt based on the operation of clause 8.5.7 of the code as to whether an officer or an employee can be made liable for a breach by the relevant participant. Certainly, in the more than six years of operation of the National Electricity Law and the code, there has never been a prosecution commenced against an officer based upon a breach by the corporation for whom the officer works, although there have been prosecutions launched against the corporation where the officers knowingly concerned in the alleged breach could have been identified. We suggest that the reason for the lack of prosecutions of officers is that clause 8.5.7 of the current code represents a significant barrier to prosecutions of officers under the existing regime. The fact that clause 8.5.7 of the code has not been adopted in its present form in the new rules also suggests that the draftsman recognises this issue.

Does the minister agree with the legal interpretation of clause 85 as outlined by the National Generators Forum? Does the government accept that this is a broader provision than exists currently in the code? If it does, what was the reason for the government's position on this particular provision?

The Hon. P. HOLLOWAY: It is the government's view that the position is essentially the same as the existing provision that concurrent liability for a corporation and an officer preserves the current position under the existing National Electricity Law in section 80. Similar regimes exist in the Trade Practices Act, namely in section 67 of that act, and also in the Environment Protection Biodiversity Conservation Act in section 494.

The Hon. R.I. LUCAS: Is the minister arguing, based on his advice, that the officer liability provisions in the current code apply to civil liability provisions already?

The Hon. P. HOLLOWAY: Yes; but the provisions are not in the code—they are in section 80 of the NEL at present.

The Hon. R.I. LUCAS: Sorry; I stand corrected on that. The recommendation from the National Generators Forum is to confine the officer liability provisions to offences only, rather than applying them also to civil liability provisions—that is, amend clause 85 of the draft National Electricity Law to delete reference to civil liability provisions. If the minister is arguing that this is the same as the existing provisions, is he arguing that the existing law relates to, or includes, civil liability provisions already?

The Hon. P. HOLLOWAY: Perhaps we can bring back an answer to that one, or come back to it later.

The Hon. NICK XENOPHON: I move:

Schedule, clause 88, page 49—

Delete clause 88 and substitute:

88—Rule must be consistent with national electricity market objective

The AEMC may only make a rule if it is consistent with the national electricity market objective.

The current clause 88, headed 'Rule making tests to be applied by AEMC', states that the AEMC may only make a rule if it is satisfied that a rule will, or is likely to, contribute to the achievement of the national electricity market objective. Subclause (2) of clause 88 states:

> For the purposes of subsection (1), the AEMC may give such weight to any aspect of the national electricity market objective as it considers appropriate in all the circumstances

There is a threshold question there as to what that means—you either have an objective and you stick to it, or you do not. It seems that there is a lot of wriggle room there for the AEMC, and that is why I have moved this particular amendment. It makes it quite clear that the council may only make a rule if it is consistent with the national electricity market objective rather than all this wriggle room—I do not think it makes sense, in terms of the approach in the bill.

There is a question of accountability here. What does it mean, 'may give such weight to any aspect of the. . . objective as it considers appropriate in all the circumstances'? I would have thought this amendment is much clearer in its statement and its intent.

The Hon. P. HOLLOWAY: The government opposes the amendment. We believe that the rule-making test to be applied under the clause is appropriate as it is. Let me just read out what the national electricity market objective is. This is clause 7:

> The national electricity market objective is to provide efficient investment in, and efficient use of, electricity services for the long term interests of consumers of electricity with respect to price, quality, reliability and security of supply of electricity and the reliability, safety and security of the national electricity system.

I think any of us on the electricity select committee and others would know that inevitably there is a trade-off between the issues of price and reliability and security of supply. You can make any electricity system totally secure if you are prepared to make the price high enough, but there has to be some trade-off. Surely, you would expect the AEMC to give weight to those aspects of the objective that it considers appropriate—we would expect nothing less of the AEMC than to do that, to make those determinations between the relative weights.

The Hon. R.I. LUCAS: The opposition's position on these amendments was clear yesterday, I think. If those amendments relate to the objective of the national electricity market then we are not in a position to be able to support them; however, we do acknowledge that there is substance in some of the issues that the Hon. Mr Xenophon is driving at, and they would certainly merit further consideration by the jurisdictions.

Amendment negatived.

The Hon. NICK XENOPHON: I move:

Schedule, clause 94, page 52—

After line 16 insert:

(c) the request appears to be for a rule that is consistent with the national electricity market objective.

The arguments are similar to what has previously been put, that in the request for a rule the AEMC must consider whether the rule is consistent with the national electricity market objective. I would have thought that it just adds some further clarity to that clause.

The Hon. P. HOLLOWAY: The government opposes the amendment. Clause 91 sets out a procedure for initial consideration of the rule by the AEMC, to ensure that the basic information necessary for public consideration of the rule has been included with the application, and that the rule change is not misconceived or lacking in substance, which is of course the AEMC's gatekeeper role. It would not be appropriate at this time, prior to considering industry's views, that the AEMC formed a view as to whether it met the rule-change test. The consideration of this aspect should be undertaken as part of the public consultation process. In short, we would argue that the honourable member's amendment would pre-empt the proper decision-making process. So, we oppose the amendment.

The Hon. R.I. LUCAS: The opposition agrees, significantly, with the government's reasons for opposing the amendment and therefore does not support it.

Amendment negatived.

The Hon. NICK XENOPHON: I move:

Schedule, clause 94, page 52—After line 28 insert:

(c) be published on the AEMC's web site within 14 days of the making of the decision.

So that there is some degree of transparency. Mr Chairman, while I am on my feet I indicate, to the relief of perhaps you and the committee, that I will not be proceeding with amendment No. 19.

The Hon. P. HOLLOWAY: The government opposes the amendment. If, after the AEMC gives initial consideration to the rule-change application, it forms the view that the rule is misconceived or lacking in substance, it must then inform the person who proposed the rule of this decision and its reasons for forming the view. As the application will, therefore, not be subject to the public consultation process, it is, the government believes, inappropriate that the public be made aware of this by way of notification on a web site.

The Hon. R.I. LUCAS: The opposition agrees with the government's reasons for opposing this amendment and also opposes the amendment.

Amendment negatived.

The Hon. NICK XENOPHON: Mr Chairman, because some of my further amendments are consequential, I will not proceed with amendment Nos 20, 22 and 23. I intend to proceed with amendment No. 21, and I am just hoping that it is a case of 21st time lucky! I move:

Schedule, clause 96, page 53—After line 35 insert:

(c) publish its reasons on its web site within seven days of making the decision.

The arguments are similar to those I put previously. I think that is the last the committee will hear from me in relation to my amendments.

The Hon. P. HOLLOWAY: The government opposes the amendment. We believe it is inappropriate that the AEMC would publish reasons as to why a rule application was misconceived or lacking in substance. This is a matter between the person who made the rule application and the AEMC, and the AEMC is accordingly required to give reasons to that person under clause 94(4) of the NEL bill. As I indicated with the previous amendment, there is no purpose in embarrassing the person who makes the rule application.

The Hon. NICK XENOPHON: If I can just respond to that briefly, it is not a question of embarrassing anyone; I think it would have been useful, and I am sure that there would have been an ability not to disclose necessarily the name of the parties involved. If someone is making an application that is getting knocked back, it would perhaps give guidance to others, in terms of applications made. It would perhaps be useful as a precedent with respect to this particular part of the bill. I do not wish to take it any further than that. I just wanted to clarify the intent.

The Hon. P. HOLLOWAY: My advice is that, if someone proposed a rule change, they would go along and talk to the AEMC and get some sort of feedback in any event. To publish it does not really serve any useful purpose.

The Hon. R.I. LUCAS: The opposition does not support the amendment.

Amendment negatived.

The CHAIRMAN: We now move to page 58.

The Hon. R.I. LUCAS: In relation to the provisions under part 8, which start on page 58 and extend for four pages, I will ask the minister a general question. Is there, specifically, anything different in these provisions of the National Electricity Law as compared to the existing provisions in the National Electricity Law?

The Hon. P. HOLLOWAY: We believe it is, but we will check it and get confirmation tomorrow.

The Hon. R.I. LUCAS: Given that a couple of things still need to be checked, I am particularly concerned about the provisions in relation to load shedding. Load shedding is obviously a controversial issue, and questions have been raised with me about whether or not there were changes in relation to the load shedding procedures. They were not suggesting there were but were asking questions as to whether or not that was the situation. After reading the legislation, it was not possible to answer the question. The issue of load shedding is important in the early stages of the national electricity market.

Local knowledge was important in terms of discussions with NEMMCO as to what the load shedding procedures would be and, in particular, how the load would be shared. The minister is aware that he and his colleagues in opposition had great fun about what suburbs experienced shedding and in what order, and there were various allegations that certain sections of Adelaide—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: It did not seem like it from the other side. The view was being put that certain sections of Adelaide were being favoured compared with other sections. In subsequent years there were discussions and debates about the process: whether there is a list of suburbs worked through; and, when you have the next black out with load shedding, do you start at the top of the list again or commence in the middle and work your way through? How one caters for shopping centres, hospitals and other areas like that is an issue of intense interest to consumers in the white hot South Australian electricity market.

In taking the initial question on notice, I alert the minister to the fact that I am specifically looking for information in relation to the load shedding issues and whether or not there are any changes at all. In relation to load shedding, I want to clarify whether it is clear that there may well be an agreed load shedding procedure in South Australia which might be different to the load shedding procedure in New South Wales. Whilst we might have national bodies and might not have an ESCOSA but a version of an AER at the local level, nevertheless with the new arrangements in this bold new world there will be a capacity for local circumstances to be taken into account—some of those that have evolved over the first few years of the national electricity market in South Australia.

I am not sure how the minister wants to proceed with that. He is taking those issues on notice. Depending on the answers, there may be further questions. I am happy to leave those questions on notice at this stage and come back when we debate it tomorrow and move on to other areas.

The Hon. P. HOLLOWAY: That would be preferable. We would like to cover more ground tonight if we can.

The Hon. R.I. LUCAS: I will leave that whole section. I refer to immunities in part 9: I have a similar general question in relation to immunity for NEMMCO and network service providers. Does this provision of the National Electricity Law again change anything in relation to the current National Electricity Law? It was certainly a very significant issue in the initial drafting of the National Electricity Law. The issue of immunity of NEMMCO was controversial, with strong views being held by different groups and individuals as to how these provisions might be drafted. I am seeking advice from the government on whether those provisions involve any changes from the existing immunity arrangements of the current National Electricity Law.

The Hon. P. HOLLOWAY: We believe they are the same, but the work was done on them by a different jurisdiction, so we will make certain by checking overnight. My advice is that to the best of our knowledge they are the same.

The Hon. R.I. LUCAS: I will leave part 9 on notice and return to it, if need be, when the minister responds tomorrow. I turn now to schedule 1, the subject matter of the National Electricity Rules, pages 65 through to 68. There is a section which refers to the distribution system and revenue and pricing. Will the minister outline what is the effect of these two provisions, given that there has been no decision to hand over the distribution system, the regulation or related pricing issues to the commonwealth at this stage?

The Hon. P. HOLLOWAY: I am advised that the current code retains these provisions and that they are retained in the new rules. Essentially, the status quo has been retained. I am also advised that some jurisdictions, including South Australia, used the distribution pricing rules in the code in the ETSA determination.

The Hon. R.I. LUCAS: The minister says that these two provisions are just replicated from the existing code. They do not mean that the state has handed over the power in relation to distribution system regulation and pricing. They are sort of template guidelines for jurisdictions to use if they want to, whilst, at this stage, the state of South Australia still retains the responsibility for regulation of the distribution sector and pricing issues.

The Hon. P. HOLLOWAY: My advice is that that is correct.

The Hon. R.I. LUCAS: There may well be one or two very minor additional questions. I had not appreciated that we would get through the last 20 pages of the bill this evening. I have raised most of the major issues which I intended raising during the discussion of the first half of the bill. As I said, the two last significant sections were in relation to the safety and security of NEMMCO and the immunity section, depending on the government's answers. As I said, there might be one or two minor issues in relation to the remaining provisions, but there is nothing major. It would be my suggestion, if the minister agrees, that we report progress. I would envisage that, other than returning to those two significant issues, there is not much of significance and we should be able to complete it tomorrow.

Progress reported; committee to sit again.

PARLIAMENTARY COMMITTEES (PUBLIC WORKS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 11 April. Page 1567.)

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I thank members for their contributions. This bill amends the Parliamentary Committees Act 1991. The purpose of the bill is to give effect to a recommendation of the Economic Development Board which focuses on improving government efficiency and effectiveness. This bill, in conjunction with the other recommendations of the board, is designed to improve efficiency, minimise unnecessary delays in government and parliamentary processes and lead to better outcomes for all South Australians. The provisions in the bill are consistent with government policy to improve accountability and will not only streamline processes but considerably broaden the scope of the Public Works Committee to scrutinise government activity.

The spirit of the bill is to balance accountability with efficiency in government decision making. The key amendment of the bill aimed at improving efficiency is in the lifting of the threshold at which projects are mandatorily referred to the committee from $4 million to $10 million. While some members may see this as a significant increase, it has been balanced with major concessions to improve the accountability of government in respect of public works. These concessions are outlined in the bill, so I will not go into the detail now, but, in summary, these concessions include: increasing the scope of public works to include major ICT projects that carry a significant degree of risk; increasing the scope of public works to include PPPs and other related initiatives; and ensuring that the government is required to inform the Public Works Committee about all proposed public works above $1 million.

Should the financial threshold be lifted by only a small amount, say, to $5 million, the balance would be compromised, with government making major concessions of accountability with no real gain in efficiency. In fact, allowing these concessions without lifting the financial threshold to $10 million will seriously diminish the efficiency of the proposed amendment bill. The number of projects brought before the committee mandatorily would barely be reduced, while the number of additional projects brought into scope would increase. Such an outcome would reduce the attractiveness of South Australia as a place to do business with government and send a signal to the commercial sector that South Australia is bound in overly bureaucratic decision making processes. That would be a very poor outcome.

It is the intention of this government to ensure that there is a clear message that South Australia is open for business, and reforms in this bill are a critical component of that message. I commend the bill to the council and ask it to consider these issues seriously, as it passes into the committee stage.

Bill read a second time.

ADJOURNMENT

At 11.18 p.m. the council adjourned until Thursday 14 April at 11 a.m.