LEGISLATIVE COUNCIL

Tuesday 24 May 2005

The PRESIDENT (Hon. R.R. Roberts) took the chair at 2.19 p.m. and read prayers.

PARTNERSHIP (VENTURE CAPITAL FUNDS) AMENDMENT BILL

Her Excellency the Governor, by message, assented to the bill.

PAPERS TABLED

The following papers were laid on the table:

By the Minister for Industry and Trade (Hon. P. Holloway)—

National Transport Commission—Report, 2003-04
Regulation under the following Acts-
Public Corporations Act 1993—Information Industries Development Centre
National Classification Code—Part 6 of the Intergovernmental Agreement on Censorship

By the Minister for Industry and Trade, on behalf of the Minister for Aboriginal Affairs and Reconciliation (Hon. T.G. Roberts)—

Promoting Independence: Disability Action Plans for South Australia—4th Progress Report on Implementation—Report, 2004
Regulations under the following Acts—
Liquor Licensing Act 1997—
Hamilton Secondary College
Long Term Dry Areas—
City of Marion
Goolwa
Prices Act 1948—Unsold Bread
Water Resources Act 1997—Barossa Prescribed Water Resources Area
Rules under Acts—
Industrial and Employee Relations—Industrial Proceedings Rules 1995—Replacing existing Rules 2, 3, 20, 22, 24, 30 and 35 and adding Rules 35A

By the Minister for Emergency Services (Hon. C. Zollo)—

Regulations under the following Acts—
Aquaculture Act 2001—Miscellaneous Fees
Primary Industry Funding Schemes Act 1998—Cattle Industry Fund
Corporation By-laws—
Barossa—
No. 1—Permits and Penalties
No. 2—Moveable Signs
No. 3—Roads
No. 4—Local Government Land
No. 5—Dogs and Cats
No. 6—Nuisances caused by Building Sites
Prosect—
No. 3—Local Government Land.

NATURAL RESOURCES COMMITTEE

The Hon. R.K. SNEATH: I lay on the table the report of the committee on the Lower Murray reclaimed irrigation areas.

Report received.

The Hon. R.K. SNEATH: I also lay on the table the report of the committee on the Meningie and Narrung irrigators.

Report received.

SOCIAL DEVELOPMENT COMMITTEE

The Hon. G.E. GAGO: I lay on the table the report of the committee on its inquiry into the Statutes Amendment (Relationships) Bill.

Report received and ordered to be printed.

ROAD SAFETY

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I lay on the table a ministerial statement on putting road safety first made today by the Minister for Transport.

KAPUNDA ROAD ROYAL COMMISSION

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I lay on the table a ministerial statement on the Kapunda Road Royal Commission made today by the Attorney-General.

QUESTION TIME

ALLENS CONSULTING GROUP

The Hon. R.I. LUCAS (Leader of the Opposition): I seek leave to make a brief explanation before asking the Leader of the Government a question about consultants.

Leave granted.

The Hon. R.I. LUCAS: On 17 May, the Acting Premier issued a public statement that attacked the credibility of the Allens Consulting Group. The press release was headed 'Allens Consulting or Allen's lollies? Victoria's credibility gap'. In the first paragraph, Acting Premier Kevin Foley claims that the document was 'a hopelessly one-sided report by a group called Allens Consulting'. He further states:

> This is a Victorian Government commissioned report to get the answer the Victorian Government wants. It is a bit like the reports that Pravda used to publish in the 1950s about the great economic triumphs of the Soviet Government.'

He concludes, 'This is a report with no credibility.' That is a summary of the Deputy Premier's assessment of Allens Consulting Group and, as I said, it is an attack on its credibility. The inference is clear: it writes reports that only give the answers the Victorian government wants, and it has no credibility at all.

My attention has been drawn to copies of the annual reports of the Department of Trade and Economic Development (the minister's current department) and the Department of Primary Industries and Resources South Australia (the minister's former department) in which a group called Allens Consulting was paid $132 000 by the minister's current department to look at an economic study into the potential impact on South Australia of the proposed Australia-United States free trade agreement. The Department of Primary Industries and Resources (the minister's former department) paid $41 938 to Allens Consulting to provide program management and expert economic advice to the National Gas Pipelines Advisory Council. Without going through all the detail, I summarise by saying that there are very many other references to government departments and other agencies, such as the Essential Services Commission, spending considerable sums of money on Allens Consulting. My questions to the Leader of the Government are:

1. Does he agree with the Deputy Premier's attack on the credibility of Allens Consulting?

2. Does he agree with the Deputy Premier's criticism that the work conducted by Allens Consulting in relation to the Victorian government has no credibility at all?

3. Does he agree with the Deputy Premier's criticism of the approach adopted by Allens Consulting, namely, that it writes reports only as required by, in that case, the Victorian government?

4. Has any representative of Allens Consulting lodged a complaint with the Rann government, or any of its departmental officers, about the statements made by the Deputy Premier about the credibility of the work done by Allens Consulting?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I would have thought that most South Australians would support the efforts of the Rann government to win the air warfare destroyer contract for this state, and we need to do that on the basis that this state has the best case. I fully support the Deputy Premier and the Premier in their putting forward for this state the fact that we have the strongest case to win the air warfare destroyer contract for South Australia. Indeed, earlier today, I attended a conference, along with a number of opposition shadow ministers, including the Leader of the Opposition and the Deputy Leader of the Opposition in the House of Assembly, other members, as well as the Premier and the Deputy Premier and the Minister for Infrastructure, the Minister for Employment, Training and Further Education and a number of key business people, members of the Defence Unit, Peter Vaughan from Business SA and also representatives of trade unions and a number of other groups. They were all there supporting South Australia's case to win the air warfare destroyer contract.

The Hon. R.I. Lucas: You haven't answered the question.

The Hon. P. HOLLOWAY: It is relevant to the question. In trying to discredit the case that has been put forward by Victoria, I would have thought that the facts speak for themselves, that is, I believe this state has a very strong case in relation to winning the air warfare destroyer contract. We know that Victoria is also putting a very strong case in trying to win the air warfare destroyer contract. In relation to Allens Consulting, yes, it is true that it produced the report on the US Free Trade Agreement.

The Hon. R.I. Lucas: Was that a good report?

The Hon. P. HOLLOWAY: I believe it was a good report.

The Hon. R.I. Lucas: Did it have credibility?

The Hon. P. HOLLOWAY: Indeed, it did. That report used the expertise of that particular group. It was not the government seeking consultants to put the best possible gloss on a particular case it is putting forward. One can always find a case for and against most things. I suppose that, if one asked consultants to put the best possible gloss on a case, they would do so. In relation to the US Free Trade Agreement, there was certainly no predetermined outcome in relation to those matters. It predated me, but, as I understand it, the terms of reference were to provide an analysis of what the impact of that agreement was likely to be upon this state, and I think that it was a very useful report in relation to that. In relation to the claims made by the Victorian government and how it might have used reports, I fully support the Deputy Premier's attempts to ensure that South Australia's case is successful in the forthcoming bid for the air warfare destroyer contract.

The Hon. R.I. LUCAS: I have a supplementary question. Does the minister believe that Allens Consulting, as charged by the Deputy Premier, will provide reports, as required by particular governments—in this case, the Victorian government?

The Hon. P. HOLLOWAY: I think the consultants will do what they are requested to do by the persons who hire them. I do not know what terms of reference were provided by the Victorian government. All I can say is that, in the view of this government, the bid put up by the Victorian government—and that is based on whomever it uses—is inferior to the bid being put up by South Australia.

The Hon. R.I. LUCAS: I have a further supplementary question. Will the leader undertake to bring back to the parliament a detailed breakdown of the claims made by the Premier that the total commitment from South Australian taxpayers to this project is now more than $140 million?

The Hon. P. HOLLOWAY: I will seek what information we can in relation to that and bring back a reply.

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 on the subject of motor vehicle theft.

Leave granted.

The Hon. R.D. LAWSON: The latest statistics from the National Motor Vehicle Theft Reduction Council reveal that nationally there has been an 11 per cent drop in the number of motor vehicle thefts across the country. However, South Australia is the only jurisdiction in the commonwealth to register an increase in the number and proportion of motor vehicles stolen this year. The South Australian increase is only 1 per cent, but one can compare that with every other jurisdiction, which are in negative territory, and the national average is down 11 per cent. When compared with Western Australia, a state with a larger population than South Australia, it has achieved a reduction over the past year of 18 per cent. The number of vehicles stolen over the past 12 months in that jurisdiction was 7 891, whereas in South Australia it was 9 720. The council notes in the narrative:

> Although recording a 3 per cent reduction in theft numbers for the quarter, high proportional levels of theft in South Australia are of continuing concern. South Australia only recorded a few hundred fewer quarterly thefts than Queensland and its theft rates are well in excess of national averages.

Last week the Premier, during his magical mystery tour in London, released South Australian Office of Crime statistics exclusively to *The Advertiser*, which wrote:

> Crime rates in South Australia are down as much as 37 per cent over the past two years.

That figure related to the offences of fraud and misappropriation, of which there were some 4 111 reported last year, but that is a tiny drop in the bucket of the total of 280 820 total crimes reported, according to the Office of Crime Statistics. My questions to the Attorney are:

1. Does he accept the accuracy of the latest figures of the National Motor Vehicle Theft Reduction Council?

2. Will he ask the Premier to issue a correction (he can issue it on a non-exclusive basis) to *The Advertiser* to enable the South Australian community to gain the true picture of crime in this state?

3. Will he ask the Premier to apologise to the people of South Australia for not only being selective in which media

outlet these official statistics are released but also for being highly selective in the figures he chooses to release?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): The last question is the real corker, because the deputy leader of the opposition himself picks particular statistics and draws a particular conclusion. It is one of the joys of statistics. There is usually something in it for everybody: if you look through statistics long and hard enough you find something that will suit your taste, and that appears to be the case here. I will refer those questions to the Attorney-General and bring back a reply.

WORKCOVER

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Leader of the Government, representing the minister responsible for WorkCover, a question about WorkCover.

Leave granted.

The Hon. A.J. REDFORD: On 4 May, I asked a series of questions regarding the withdrawal of Vero as claims agent, one of four, and what might happen to Vero's clients. On 12 April this year, I asked a series of questions regarding public sector liability blowout to over $300 million. On 14 February this year, I asked a series of questions regarding WorkCover's engagement of Jardine Lloyd Thompson to assist with claims management, and I asserted that there had been a failure by the government to comply with section 14(4) of the WorkCover Corporation Act. Absolutely none of those questions have been answered to date.

Last week it was revealed that WorkCover had sacked two of its panel lawyers, Gun and Davey, and Donaldson Walsh, leaving the whole of the legal services with Minter Ellison. Further, three weeks ago, the government promulgated regulations pursuant to section 14 of the WorkCover Corporation Act, appointing the Insurance Australia Group as a claims manager. In that respect, Insurance Australia Group is the owner of SGIC, an existing claims manager, and it was suggested that it was merely a change of name.

I must say in that case they did comply with section 14, and obviously the government has heard of that particular provision. The report to the Legislative Review Committee regarding the appointment of IAG and the need for some urgency about the promulgation of the regulation says that the clarification of IAG's position had to be done urgently because 'failure to have appropriate claims' management arrangements in place could impact upon claimants who are also trying to cope with serious medical conditions, asbestosis and mesothelioma.' That sense of urgency does not appear to be the case in relation to Vero clients, who are some 20 per cent of WorkCover's claimants. My questions are:

1. What is happening regarding Vero's clients?

2. When can I expect answers to the questions I have asked, particularly those regarding Vero?

3. Given the failure of the government to come up with a response to Vero's withdrawal from the market in a timely fashion, am I to assume that Vero has no claimants with serious medical conditions such as asbestosis?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I will refer those questions to the minister and bring back a response.

MOTOR VEHICLES, EXPORTS

The Hon. R.K. SNEATH: I seek leave to make a brief explanation before asking the Minister for Industry and Trade a question on vehicle exports.

Leave granted.

The Hon. R.K. SNEATH: The South Australian auto industry represents one of the most significant sections of the South Australian economy, contributing $1.1 billion to our export earnings in the past financial year, and directly employing around 13 000 South Australians. My question to the minister is: what contribution is South Australia's trade union movement making to the success of our motor vehicle export industry?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): The export motor vehicle industry is extremely important, as the honourable member said, and I say that the union movement has recognised that importance and is making a significant contribution, which I will outline in a moment. First, if we look at the importance of the motor vehicle industry, honourable members would be aware that Mitsubishi is committed to South Australia and will be launching its all new platform vehicle in October this year. Mitsubishi has invested approximately $600 million in the design, development and manufacture of the new model. It will continue to export around 2 000 cars a year to New Zealand, but it is also looking at the possibility of recommencing exports to South-East Asia.

Holden currently exports more than 50 000 cars a year. Its largest export market is the Middle East, where South Australian cars are the region's top selling GM models, and there are plans to export to Korea and China later this year. The role of both the stevedoring and transport industries is critical in ensuring that the quality of cars manufactured in South Australia remains 100 per cent throughout the transport chain. The port of Adelaide has world-class facilities and an industrial relations record second to none. The transport sector plays a pivotal role in vehicle exports not only from manufacturer to port but also parts being transported from component suppliers to manufacturers. Companies such as Toll, TNT Logistics and Patrick Autocare make it their business to ensure the quality of the product is maintained and product delivery is reliable. The reliability of supply is all important. The needs of the customer in the global marketplace must be met in an increasingly competitive environment.

Our car makers are delivering cars to markets around the world. Thus, I was very pleased recently to be asked to participate in the signing ceremony for the launch of the Export of Motors Statement of Intent along with John Allan, Federal Secretary of the Transport Workers Union, Rick Newlyn, Assistant National Secretary of the Maritime Union of Australia, and Vincent Tremaine, Chief Executive Officer of Flinders Ports. Apart from a number of other representatives from the stevedoring and transport industries, also present was Sharan Burrow, President of the ACTU.

The statement of intent will mean that South Australian built cars are now exempt from industrial disputation under an agreement by the two major unions, the Maritime Union of Australia and the Transport Workers Union of Australia, which have agreed to apply the exemption throughout the entire transport chain from the loading of cars at Holden's Limited and Mitsubishi Motors through to the loading of cars on to the ships at Port Adelaide, virtually guaranteeing the supply of locally made cars to export markets. As Sharan

Burrow, the ACTU president, pointed out on the day, the Export of Motors Statement of Intent is the first agreement of its type in the world and is a real achievement in cooperation and goodwill. This landmark agreement will strengthen our local car industry as well as build the key role of the port of Adelaide as a world-class port of excellence.

Flinders Ports and the stevedoring and vehicle storage companies—Patrick Stevedores, Australian Amalgamated Terminals, DPI Terminals and P&O Ports—play a key role in the export strategy of South Australia. I also wish to acknowledge the work force. Without them there would not be a competitive and efficient port of Adelaide. The Rann government commends the Maritime Union of Australia and the Transport Workers Union of Australia for recognising the importance of the South Australian car industry to jobs and the economy. The government is committed to working closely with the unions and their industrial partners to ensure that not only are jobs protected but that we strengthen our industries in an increasingly competitive global marketplace.

This positive and constructive initiative is not just in the best interests of around 13 000 car industry workers, together with hundreds of transport and stevedore workers; it is also clearly in the best interests of South Australia. To all parties, I offer my congratulations and thanks, as they have made a significant contribution to the state's future economic wellbeing.

TREES, SIGNIFICANT

The Hon. SANDRA KANCK: I seek leave to make an explanation before asking the Minister for Urban Planning and Development a question concerning significant trees.

Leave granted.

The Hon. SANDRA KANCK: The minister might be aware that yesterday I issued a media release calling on him to declare a moratorium on the cutting down of significant trees. I did so after reading a Messenger Press article and editorial concerning a ruling by the Environment, Resources and Development Court back in March which has changed the level of protection for large trees which had previously been afforded protection under the Development Act. That ruling means that, to be classified as significant, a tree must be two metres in circumference one metre above ground level and:

- make an important contribution to the character or amenity of the local area; or
- be indigenous to the local area and its species listed under the National Parks and Wildlife Act 1972 as a rare or endangered native species; or
- represent an important habitat for native fauna; or
- be part of a wildlife corridor or a remnant area of native vegetation; or
- be important to the maintenance of biodiversity in the local environment; or
- be a notable visual element to the landscape of a local area.

Previously the tree merely had to be of a specified size. According to Salisbury council, the additional qualifications mean that approximately 85 per cent of trees that meet the size qualifications will be unlikely to attract the protection of being classified as significant trees under the Development Act as a result of the ERD court ruling. Under the previous interpretation, the figure was inverse, with just 15 per cent of trees meeting the size qualifications of the act being approved by removal. My questions, and I recognise that the first one will require a little bit of research, are as follows:

1. Across the state, how many applications for trees with a circumference of two metres, one metre above ground level, have been approved since the ERD court ruling? How many such trees were approved in the 12 months prior to the ERD court ruling?

2. Will the minister use his regulatory powers under the Development Act immediately to protect trees previously classified as significant and, if not, why not?

The Hon. P. HOLLOWAY (Minister for Urban Planning and Development): Certainly, it is true that the Messenger newspapers this week have drawn attention to the recent ERD court determination on the decisions that councils' DAPs make on the future of development applications to remove significant trees. I should point out to the council that, under the rules as they have been around now for five years or so (since, I think, the Hon. Diana Laidlaw amended the Development Act to introduce these provisions), significant trees are, of course, defined within the regulations under the Development Act; and; of course, it is up to people who wish to remove those significant trees to seek approval before they can be removed.

It is my advice that the ERD court has determined that the key factors that are to be decided in assessing procedures for significant tree removal are, first, whether a tree is causing damage to a building or other property; secondly, whether a tree is posing an unacceptable potential safety risk to people; thirdly, whether the tree makes an important contribution to the character or amenity of the local area; and, fourthly, whether the tree is a notable visual element to the landscape of the local area.

The court has determined that the term 'local area' means something akin to locality, and therefore it will vary in size depending on the specific situation. As I understand it, there is also further action before the courts. For example, the City of Burnside is currently challenging the ERD court's decision in the Prestige Wholesale Pty Ltd case in the Supreme Court. I am advised that this case is likely to consider whether or not the approach taken by the ERD court has been appropriate. I would point out to the council that the issues raised are policy matters and not legislative ones (as is wrongly stated in the Messenger newspaper), and therefore they should be pursued at a policy level.

The courts are interpreting the words used in the council-wide sections of development plans in determining these decisions. We will have this discussion, no doubt, when we have debate on the sustainable development bill, which is currently before the house. The point needs to be made that, with respect to the legislation that is before this parliament, we set out the processes that are to be followed, but the policy matters are best left to the council. If we are to get protection of heritage areas, for example, within council areas, it is important that councils get their development plans appropriately tight—if I can use that word—to ensure that there is protection of matters such as neighbourhood character (and that comment would apply also to significant trees).

It is important that, when we have the debate on the sustainable development bill, or consider matters such as this, we distinguish carefully between what are essentially policy matters (which the local communities through their councils should establish through their development plans), and the processes which are, of course, enacted within the legislation and which enable the assessment processes to be made. In relation to this application, I am aware of the court case. I indicate that there may well be further development on that. I will keep a close watch on the situation. Essentially, it is

important that councils that wish to take action to protect significant trees in their area ensure that their development plans are specific enough to ensure that that protection can be given when they take such determinations.

The Hon. SANDRA KANCK: As a supplementary question: is the minister therefore opting out of any government action on this question when he says that it is up to the individual councils, which may or may not decide to take action?

The Hon. P. HOLLOWAY: We have a Development Act in this state covering such matters as significant trees. It also covers issues such as heritage and other important issues. A whole debate is occurring at the moment in relation to neighbourhood character. It is important that the local authorities get their development plans correct and that they ensure that those development plans are specific enough to spell out the policies which the council wants to protect in its area. We will be discussing the sustainable development bill (which is currently before the parliament) in the near future. When debating that bill, we can consider how those processes are conducted.

Essentially, if we are to ensure that such things as significant trees or neighbourhood character are protected, I believe the appropriate way of doing that is by ensuring that a council's development plans and the state's overall planning strategy are compatible, which is the policy of the government in relation to these matters. In relation to this particular case, as I said, I am considering the implications, but I will wait until I have a more detailed response from Planning SA in relation to the implications before I jump in. As I say, my initial advice is that other matters are currently before the courts which may change the interpretation.

As I said, I am happy to provide a more detailed response to the honourable member when the analysis of the impact of this decision is available, because, at this stage, effectively we are relying on some second-hand reports about what has been decided.

WORKCOVER

The Hon. A.L. EVANS: I seek leave to make a brief explanation before asking the minister representing the Minister for Industrial Relations a question about the WorkCover Corporation.

Leave granted.

The Hon. A.L. EVANS: The major goal of the WorkCover Corporation is to assist the return of workers who have been injured in a workplace back to the work force. The method of mediation—that is, settlement of disputes using an independent third party with knowledge of the worker's compensation environment—has been shown to produce positive results in a range of claims lodged, especially stress and bullying claims. I understand that, through mediation, the average return to work time is much quicker than when the worker remains away from work while the claim is being determined. On 25 October 2004, WorkCover notified mediation service providers of a decision to withdraw funding, citing concerns over the use and approach of mediation. I have been informed that WorkCover has refused to provide any reasons for the decision. My questions are:

1. Would the minister advise of the various concerns the WorkCover Corporation had in relation to the use of mediation services that were crucial to WorkCover's eventual decision to cease the use of mediation as a stand-alone service? If no, why?

2. Would the minister provide a detailed list of the various professional mediation providers with whom WorkCover consulted in relation to its decision to cease the use of stand-alone mediation services? If no, why?

3. Of the organisations consulted in relation to mediation services, would the minister provide a statement of the advice received from these services? If no, why?

4. In view of the crucial services provided by WorkCover workers and employers, particularly in relation to claims lodged citing stress or bullying, will the minister ensure a review is conducted in 12 months to assess the effectiveness and efficiency of WorkCover's decision to cease the use of stand-alone mediation services? If not, why not?

5. Will the minister make available the report upon which the decision of the WorkCover board was made in relation to stand-alone mediation services? If not, why not?

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

The Hon. J.F. STEFANI: I have a supplementary question. Will the minister advise parliament how many mediation cases were dealt with during the 12 months immediately prior to the cessation of the services?

The Hon. P. HOLLOWAY: I will also refer that question to the minister and bring back a reply.

BURN-OFFS

The Hon. J.M.A. LENSINK: I seek leave to make an explanation before asking the Minister for Emergency Services a question about burn-offs.

Leave granted.

The Hon. J.M.A. LENSINK: I understand that burn-offs are prohibited during both the fire danger season and on total fire ban days. Many honourable members would note that, in recent days, since the ceasing of the extended fire ban on 15 May, there have been a number of incidents, particularly on private property, where fires have escaped containment lines. Of note is a fire yesterday at Knotts Hill at Marble Road, which involved the burning of 15 hectares of scrub and required an observation helicopter and a number of fire-fighters on the ground. In another incident, a fire at Sturt Valley Road in Stirling caused damage totalling $20 000. CFS fire data, as published on 13 May by the *Courier Mail*, show that some 789 fires in the past five years in South Australia were attributed to burn-offs getting out of control.

The Hon. J.S.L. Dawkins: Is that the *Courier Mail*?

The Hon. J.M.A. LENSINK: The Queensland *Courier Mail* reporting on South Australia. The article states:

> Fire authorities fear burn-offs could get out of control and develop into large-scale bushfires because of unusually dry weather across South Australia.

I note that the article was printed two days before the extended fire ban was lifted. We have had one of the hottest and driest autumns on record, so, clearly, the ground and vegetation are more of a fuel load problem than usual. My questions to the minister are:

1. Is she concerned about the number of burn-offs that have been getting out of control?

2. Has the CFS, the MFS, or any authority, made representations to her regarding their concerns?

3. Has she considered extending the fire season in such conditions? If not, why not?

The Hon. CARMEL ZOLLO (Minister for Emergency Services): I thank the honourable member for her question. She is correct in saying that, this year, we have had one of the hottest and driest summers and autumns, and, regrettably, conditions continue to be dry. Despite regular indications from the Bureau of Meteorology predicting shower activity, it has not eventuated. The CFS has attended an above average number of burn-offs out of control for this time of the year. It is reluctant to reintroduce restrictions, as many farmers and land-holders engage in useful and safe precautionary burn-offs at this time, as it is when they have to burn off. I see that the Hon. John Dawkins is nodding his head.

It is a fact that both the DEH and Forestry SA have undertaken a number of successful burn-offs throughout the state. Recently, we have experienced uncharacteristic weather conditions—for example, conditions that have seen the fire index rise to extreme in the Mid North, which is unprecedented for this time of the year. Because of this, the CFS has been extremely busy assisting land-holders to control burn-offs. As I said, it is a good time of the year to do so, but land-holders need to be aware of the day-to-day conditions and not take on more than they can manage. They need to be aware of that fine line. Land-holders should be conducting small burn-offs to containment lines, such as mineral earth control lines.

In view of the weather conditions, the CFS has the option to declare a fire ban for a specific area. The honourable member is correct that, this year, we extended fire bans until 15 May in the Mount Lofty and Kangaroo Island districts. At the time, on the surface the risks seemed to have dropped after that, combined with the fact that we were getting cooler nights and dews. As I have said, during May we have seen some prescribed burn-offs undertaken by DEH, because the surface area is moist at that time of the year.

The CFS is continually assessing the risks, and we would like to think that at this time of the year the risks should continue to reduce. If we happen to get a day when weather conditions are of concern, the risk can be controlled and minimised by the use of individual fire bans. However, we have regrettably seen some near escapes. Perhaps it would be worthwhile to place on the record that, while the CFS is responsible for issuing fire bans, it is not the CFS which either grants or cancels burn-off permits: it is done by local councils. I am advised that fire bans automatically cancel burn-off permits, and that has been the case for many years. However, it is the local council which cancels the permits. Under section 35 of the Country Fires Act 1989, the CFS board has legislative responsibility to fix the dates for the fire ban season for each of the 15 fire ban districts in South Australia. This is originally done in consultation with the CFS regional bushfire prevention committees prior to the commencement of the season in about October each year.

The Hon. T.G. Cameron interjecting:

The Hon. CARMEL ZOLLO: Can I say to the member that I hope it pours on your game on Saturday.

The Hon. T.G. Cameron: Pours on my game?

The Hon. CARMEL ZOLLO: Well, you said there was a football game, didn't you?

The Hon. T.G. Cameron: I just asked what it was going to be like on Saturday for the football. You're not wishing that it pours all over the few South Australians who are going along to the football, are you?

The Hon. CARMEL ZOLLO: A lot of the people on the other side are nodding, so it is not my imagination.

The Hon. T.G. Cameron interjecting:

The Hon. CARMEL ZOLLO: Did I say that? The minister called for rain on Saturday: you have selective hearing.

The Hon. T.G. Cameron interjecting:

The Hon. CARMEL ZOLLO: As it progresses to the end of the season, it is reviewed, based on the day-to-day information received from the regional bushfire prevention committees and the Bureau of Meteorology. In conclusion, we need to be very vigilant in relation to burn-offs. There is a fine balance between ensuring that the landowners—the farmers—can continue with a viable crop for this time of year—and, of course, if they leave it too late, it will no longer be viable—and that our community is safe.

The Hon. J.M.A. LENSINK: I have a supplementary question. Given the unseasonal conditions, what additional measures has the minister undertaken to prevent danger to the community from burn-offs, which are now allowed owing to the conclusion of the fire ban season?

Members interjecting:

The Hon. CARMEL ZOLLO: I think we have had far too many interjections. I thought I had already answered that question. As the minister responsible, when there is a fire the CFS is in contact virtually every hour in order that I am kept informed as to the situation. Essentially, it is an operational matter, and it is a fine balance between doing what is right for agricultural businesses and ensuring the safety of the community.

HINDMARSH SOCCER STADIUM

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the minister representing the Minister for Recreation, Sport and Racing a question about Hindmarsh stadium.

Leave granted.

The Hon. J.F. STEFANI: I refer to the deed of agreement dated 29 March 2001, signed between the Treasurer, the Minister for Recreation, Sport and Racing and the Minister for Government Enterprises as well as the South Australian Soccer Federation Incorporated. On page 15 of the agreement, clause 7.4 provides the following conditions:

7.4 For as long as the government maintains management of the Stadium the Federation reserves for itself the following rights:

7.4.1 For all soccer events conducted at the stadium by the National Soccer League, Soccer Australia Limited and the Federation (other than international soccer matches), the Federation will have the exclusive use of Corporate Box No.11 (otherwise known as the Chairman's Box) and Corporate Box No.12.

7.4.2 For all international soccer matches conducted at the stadium, the Federation will have the exclusive use of Corporate Box No.12.

7.4.3 For all soccer events conducted by the National Soccer League, Soccer Australia Limited and the Federation, the Federation shall have the exclusive use of 250 seats in the middle deck of the Grandstand area in front of the Chairman's Box. The 250 seats are allocated for use by the constituent clubs of the Federation, life and meritorious service members of the Federation or its constituent members and sponsors and guests of the Federation. The seats shall not be offered for sale by the Federation or directly or indirectly by any other person obtaining one or more of the seats from the Federation.

7.4.4 At soccer events conducted by the National Soccer League, Soccer Australia Limited and the Federation, the Federation may display five (5) roller signs owned by the Federation promoting and advertising the sponsors of the Federation.

7.4.5 Exclusive use of the Chairman's Suite and the entitlement to badge the Chairman's Suite as its presence in the Stadium, provided however that the stadium management shall upon reasonable notice be entitled to use the Chairman's Suite during non-soccer events at times when the same is not being used by the Federation.

In view of this agreement, which binds the government to the conditions that I have outlined, my questions are:

1. Will the minister confirm to the parliament that the government will honour the conditions of the agreement signed with the South Australian Soccer Federation?

2. Will the minister provide an assurance that the officers in his department or the Premier, who is known to have a great interest in soccer, will ensure that Adelaide United observes the rights and entitlements which the South Australian Soccer Federation has over the Hindmarsh stadium?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): To the extent that those questions are within the ambit of the responsibility of the Minister for Recreation, Sport and Racing, I will seek a response from him and bring back a reply.

ASYLUM SEEKERS

The Hon. KATE REYNOLDS: I seek leave to make a brief explanation before asking the Minister Assisting in Mental Health a question about asylum seekers in Glenside Psychiatric Hospital.

Leave granted.

The Hon. KATE REYNOLDS: I have previously spoken in this place on many occasions about the mental abuse and trauma suffered by both adult and child detainees at Baxter Immigration Detention Centre. As members would have heard me say, many asylum seekers suffer from post-traumatic stress disorder and severe depression, both as a result of what they experienced before they came to Australia and as a result of their experiences here.

Once again, I would like to ask about the progress of the memorandum of understanding between the South Australian government and DIMIA. This MOU was intended to improve mental health services at the detention centre, and it was supposed to be finalised in the middle of last year—12 months ago now. I understand that relevant staff from the Department of Human Services, as it was at the time, have been invited to participate in its development.

In my last question I asked whether the minister thought the level of services at Baxter and at Glenside were adequate to deal with the serious mental health issues faced by asylum seekers. My office has now learnt that a separate ward has recently been opened at Glenside Psychiatric Hospital for the sole purpose of housing detainees from Baxter. I understand that that ward is now full and, in fact, there is at least one detainee placed in another ward. I understand that this ward is being staffed by employees of our state health system and that it is also, at great cost to taxpayers, heavily guarded by security personnel who are privately contracted by the federal government through ACM. Although the security guards are not allowed on the ward, there are two guards per detainee stationed nearby 24 hours every day.

An honourable member: For each patient?

The Hon. KATE REYNOLDS: For 24 hours a day there are two guards per detainee: that is correct. However, given that a memorandum of understanding is yet to be finalised or ratified, it is unclear as to whether the federal or the state government is accountable for the wellbeing and appropriate treatment of detainees at Baxter or Glenside. Given the seriousness of issues raised by Cornelia Rau's experience, my questions to the minister are:

1. How many Department of Health staff have taken part in the development of the memorandum of understanding?

2. What level of input have they had and what have they recommended?

3. Why has the MOU not yet been finalised or signed?

4. What is its current status and when is it expected to be finalised?

5. What specific training and support have the staff at Glenside received to equip them in managing the specific needs of clients from Baxter?

6. Is the South Australian Mental Health Service now responsible for the welfare of Baxter detainees currently located at Glenside Psychiatric Hospital?

7. Does the South Australian Mental Health Service believe that the mental health needs of asylum seekers from Baxter who are now at Glenside can be met, given that security guards, who are not mental health nurses, are present at all times?

8. Has the state government made a submission to the Palmer inquiry about the treatment of Cornelia Rau?

The Hon. CARMEL ZOLLO (Minister for Emergency Services): I thank the honourable member for her important questions. I am really not able to answer the last question in relation to the Palmer inquiry, but I undertake to find out that information. The state government continues in its negotiations to see the memorandum of understanding signed between itself and the federal government. She is correct in saying that different accommodation has now been provided at Glenside and that there are two guards virtually for every client on the campus. Some of us obviously see it as an over-reaction. I will undertake to get some further information that the honourable member seeks and bring back a response, because at this stage I am really not able to provide any more on the floor of the council.

LOTTERIES COMMISSION

The Hon. NICK XENOPHON: I seek leave to make a brief explanation before asking the Minister for Industry and Trade, representing the Treasurer, questions in relation to the Lotteries Commission's responsible gambling practices.

Leave granted.

The Hon. NICK XENOPHON: On the fifth of this month, I asked a series of questions about the heavily promoted *Star Wars* Lotteries Commission scratchies game, the inappropriateness of a game that is linked to a movie aimed at adolescents and the potential impact on problem gambling behaviour. I note that the Treasurer indicated to the media:

To suggest that *Star Wars* is pitched at kids is wrong. I mean, the market there is for people 25 and above.

This contrasts with statements made by the film's director, George Lucas, that the *Star Wars* films are aimed at adolescents and at a particularly young market.

I noted yesterday the response to a question asked by the Hon. Angus Redford on 11 November 2003, which indicated among other things that the Lotteries Commission segments the market audience to make the most effective use of marketing budgets, that the Independent Gambling Authority is broadly aware of the Lotteries Commission's marketing activities and communications strategies and that it does not direct it at vulnerable gamblers and groups. SA Lotteries, in

answer to question 4 of the Hon. Mr Redford, stated that 'it does not target families nor impulsive or compulsive gamblers'. I further note that, in answer to question 7 of the Hon. Mr Redford, the government advised that 'SA lotteries does not target adrenalin rush gamblers', but in the very next paragraph the answer goes on to say, 'SA Lotteries has identified a segment of consumers who seek to play lotteries games for the thrill and excitement of winning.' My questions are:

1. On what basis does SA Lotteries assert that it does not target families nor impulsive or compulsive gamblers? What research advice, steps or protocols does it rely on to ensure this?

2. Does the minister consider the above assertion, together with the claim that SA Lotteries does not target 'adrenalin rush gamblers', is fundamentally at odds with the statement that SA Lotteries has identified a segment of consumers who seek to play lotteries games for the 'thrill and excitement of winning'? How does SA Lotteries identify the thrill and excitement seekers while at the same time avoiding the adrenalin rush gamblers? Further, what research advice, steps or protocols does it rely on to avoid the adrenalin rush gamblers and also identify the thrill seekers?

3. Given that SA Lotteries has identified a segment of consumers who seek to play lotteries games for the thrill and excitement of winning, what percentage of lotteries revenue is derived from this segment identified by the Lotteries Commission for X-Lotto, PowerBall, Keno and scratchies games?

4. Given the Treasurer's assertion in the media that it is wrong to suggest that *Star Wars* is pitched at kids, that it is for people 25 years and above, is the Treasurer claiming that he has a greater understanding of the *Star Wars* target audience than the film's director, George Lucas?

5. Given that the Independent Gambling Authority is 'broadly aware of SA Lotteries marketing activities and communications and strategies', what is the extent of that awareness, what advice has the Independent Gambling Authority given, what input if any does it have with respect to Lotteries Commission's promotions?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): In relation to the latter question about the age group attracted to *Star Wars*, I note that it has been given an M rating. My colleague the Hon. John Gazzola tells me that the original *Star Wars* movie came out in 1977, and I am sure that most of us in this chamber would have seen *Star Wars* at some time. One has only to see this morning's *Advertiser*, which carries a picture of the international Grand Prix event showing people wearing *Star Wars* outfits, to know that the sort of people who watch *Star Wars* are in that age group. So, I am with the Treasurer and the Lotteries Commission on this one. I think the sort of people who would relate to *Star Wars* are those of us who have been watching the movies since the first one came out in 1977.

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: I will just finish this story. The Hon. John Gazzola told me that he took his 13-year old son to watch the movie on Saturday and he said that he did not come out at the end of the film and say to him, 'Dad, can I please have a scratchie ticket?' That is not the reaction of those who go along to watch the movie.

The Hon. J. Gazzola: He didn't join the Dark Side.

The Hon. P. HOLLOWAY: No, he didn't join the Dark Side in relation to those matters. There was a serious side to the Hon. Nick Xenophon's question about the target audience for these scratchy tickets, and I will refer that to the Treasurer for a response. Certainly, I think that trying to establish some sort of evil connection between this *Star Wars* phenomenon and scratchy tickets is stretching the argument much too far. As I say, in respect of those parts of the question that are related to the target audience of the Lotteries Commission—

Members interjecting:

The Hon. P. HOLLOWAY: Okay; you can have one more question. I will take those questions on notice.

GOVERNMENT LOGO

The Hon. D.W. RIDGWAY: I seek leave to make a brief explanation before asking the Minister for Industry and Trade, as Leader of the Government in this chamber, a question about state government rebranding.

Leave granted.

The Hon. D.W. RIDGWAY: I refer to an article appearing in the *Public Sector Review* in May 2005, the headline of which states 'Government to redesign its branding'. The article states:

> The Public Service Association has called on the state government to reveal the cost of the whole-of-government program to redesign the branding of all agencies, departments and services.

The article further states:

> The rebranding exercise is well advanced, with all government instrumentalities receiving instructions to change their logos and letterheads. PSA General Secretary, Jan McMahon, said the directive had been issued personally by the Premier, Mike Rann. 'PSA members in various agencies have been told that the government of South Australia logo must feature more prominently in any office communication, signage, stationery, marketing, advertising and public relations campaigns', said Ms McMahon. 'This is an enormous exercise which will cost many hundreds of thousands of dollars, if not millions', [she said]. 'Everything from government letterheads to business cards are being redesigned and reprinted. The PSA questions the cost of such an exercise and whether the taxpayer dollars could be better spent in other areas, such as health, education, environment and law and order.'

The Hon. Kate Reynolds: Or child protection.

The Hon. D.W. RIDGWAY: And child protection, according to the Hon. Kate Reynolds. My questions to the minister are:

1. Was this directive personally issued by the Premier, and why would the Premier want to redesign a state logo that has served this state extremely well for many years?

2. How much will this action cost in total to implement over every department?

3. What is the procedure for the phase-out of the current documents, letterheads and other assorted government stationery, or will it simply be shredded and destroyed?

4. Will this process involve the replacement of stationery for all ministers and their staff?

5. How does this action help to achieve the state's Strategic Plan of tripling exports by 2013, doubling public transport use to 10 per cent by 2015 and increasing our population to two million by 2050?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): The Hon. David Ridgway, clearly, does not understand the policy of the government in relation to rebranding. The government is simply trying to ensure that there is one common brand for the state government rather than a multitude of various agencies using their own departmental and other brands. Also, I believe that the comments of the honourable member in relation to the cost are quite incorrect. I will get a full explanation for the honourable member and

bring back a reply. It is clear that the honourable member does not understand what is involved here.

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: It was, because it just reminded me of the famous branding that we had under the previous government about going all the way. Can we remember going all the way? That was the Brown government's effort at branding. As I said, what is involved here is ensuring that the various agencies in government use the one government logo. We have had a situation where a number of government authorities have been using their own brands, but the government believes that there should be one identifiable logo for the government. Therefore, I believe that all the claims about cost are grossly exaggerated. However, I will take the question on notice and obtain a detailed reply for the member.

REPLIES TO QUESTIONS

NATIONAL COMPETITION POLICY

In reply to **Hon. IAN GILFILLAN** (23 February 2004).

The Hon. P. HOLLOWAY: The Attorney-General has received this advice:

1. The Honourable Member did not clarify what he meant by the 'deeming clause'. The Act at present stipulates that liquor can only be sold by a person who is licensed by law to do so and at premises licensed for the purpose. The Act provides a process of application for a licence. For new licences, other than temporary or limited licences, the application must be advertised in the press and notified to adjacent occupiers and the council. Anyone can object. Objection can be on any of various grounds. They include that the grant of a licence would be inconsistent with the objects of the Act, or contrary to the Act, that it would result in undue offence, disturbance or inconvenience to local residents, that it would prejudice the safety of children attending school nearby, or that it would harm the amenity of the locality. Objection can also be made that the applicant is not a fit and proper person to hold a liquor licence, or that the premises are unsuitable.

There is no legal restriction on who can object—everyone has a legal right to do so. This includes local residents, local traders, and incorporated or unincorporated associations. Local councils and the police have a right to intervene in the proceedings. There is thus every opportunity for anyone who is concerned about possible harm from the proposed licence to put his case.

Even if no objection is made, however, the licensing authority must not just grant the application as a matter of course. It must consider the merits of the application. I refer to s. 53 of the Act.

The pending review does not cover any of these matters and the Government has no intention of reducing or taking away any of these rights of objection. That is, the right of local residents to object to new licence applications on any of the grounds I have mentioned, and to have those objections taken into account by the licensing authority, is not in question. Neither is the right of councils and the police to intervene in these cases.

There is, however, another ground of possible objection to a licence that is in question. This is the need test, and it may be what the honourable Member refers to as the 'deeming clause'. The need test applies only to applications for hotel and liquor store licences, not to other licence types such as clubs or entertainment venues. The latter do not have to meet any need test under the present law.

In the case of hotels and liquor stores, there can be an objection on the ground that there is no unmet public need or demand for the new facility. This ground of objection is often used by traders who are already established in the area. They argue that they are already supplying what the public needs and that therefore the new licence should be refused. The present review is looking at whether that ground of objection should remain.

As the courts have interpreted this ground, 'need' does not have its literal meaning of a shortage of liquor or a difficulty in obtaining liquor. In the case of a hotel licence, the courts have held that the test requires the licensing authority to consider the tastes and preferences of the public in the locality. For instance, if there are already several hotels in the area, but there is no Irish pub, the applicant may be able to demonstrate that the public would like to patronise such a pub and in that case may meet the need test. With a liquor store, the test revolves around the absence of some particular product or service from the market in the locality—a gap in the market. If local traders can show that they already sell the products or provide the services proposed by the new applicant, the need test may dictate that the new application be refused. If the applicant can show that she will be providing something new, such as a product range not sold by other liquor stores, the application is likely to succeed.

This test does not deal with questions like the amenity of the area, the risk to minors, the possibility of public drunkenness, or crime, health or safety issues. Rather, it looks at the existing liquor outlets in the area and considers whether there is a gap in the market or a public desire for a new licence.

This is what is under consideration in the review. Does that particular test deliver any public benefit? Does it reduce harm from liquor abuse? Or is it just a means by which established traders fend off competition from new entrants?

The Government has not taken any steps to abolish the need test. Consequently, South Australia has suffered financial penalties in the form of lost competition payments. We are, however, still considering whether a compromise can be made. The answer to the first part of the question is, therefore, that we don't know yet. I can say, however, that whether or not the need test is abolished the Act will continue to provide for public objection to a new hotel or liquor store and will continue to require the authority to have regard to the objects of the Act. Those objects include minimising the harm associated with the consumption of alcohol, ensuring that the liquor industry develops consistently with the needs and aspirations of the public, and ensuring that the sale of liquor contributes to and does not detract from the amenity of community life. There is no question whatever of removing the right of the public to object to an application for a new hotel licence or liquor store. All that is under consideration is whether one of the present grounds of objection—a ground often used by established traders to block entry by new players—should also remain.

So the answer to the second part of the Member's first question is yes, we will retain our rights to decide in each case whether an application for a new liquor store or hotel will succeed. Just as is the case now, the licensing authority will have to consider the merits of each application in the light of any public objection and any submissions by the local council or the police.

2. The Government is bound by the Competition Principles Agreement, entered into by its Liberal predecessor. The honourable Member is quite right when he says that there are financial penalties if a State fails to carry out its obligations under that Agreement. The Government has thus far not taken any action to abolish the need test and has consequently incurred competition-payment penalties. Further, penalties are likely if nothing is done about the need test. The Government is therefore looking for a solution that, on the one hand, ensures that the harm-minimisation measures of the Act are not diminished, but, on the other, also ensures that restrictions of competition that do not deliver any public benefit are not retained to the financial detriment of the South Australian public.

STAMP DUTY

In reply to **Hon. J.F. STEFANI** (7 April).

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

In June of 1999 the then Premier of South Australia, the Hon John Olsen MP, joined his State and Territory Colleagues and the Prime Minister in signing the Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations (IGA).

Among other things, the IGA required that the Commonwealth would cease payment of Financial Assistance Grants from 1 July 2000, and in their place provide all of the revenue from the GST to the States and Territories.

The IGA also required the States and Territories to cease to apply the following taxes and not reintroduce them, or similar taxes, in the future:

- Bed Taxes from 1 July 2000;
- Financial institutions duty and stamp duties on quoted marketable securities from 1 July 2001;
- Debits Tax by 1 July 2005, subject to review by the Ministerial Council.

Furthermore the IGA also required that by 2005 the Ministerial Council would review the need for retention of stamp duties on:

- Non-residential conveyances;
- Leases;

- Mortgages, debentures, bonds and other loan securities;
- Rental, credit and instalment purchase arrangements;
- Cheques, bills of exchange and promissory notes; and
- Unquoted marketable securities.

Consistent with the requirements of the IGA, the South Australian Government on 1 July 2001 abolished financial institutions duty and stamp duty on quoted marketable securities and will, on 1 July 2005, abolish debits tax.

On 1 July 2004 the Government also abolished, ahead of the schedule outlined in the IGA, stamp duties on cheques, leases and mortgages for first home owners.

Furthermore, the Government has now committed to the abolition of almost all of the remaining IGA taxes.

This means that along with the $245 million land tax cuts announced earlier this year, the Government has more than $1 billion of tax cuts in the pipeline.

SCOOTERS, MOTORISED

In reply to **Hon. J.F. STEFANI** (11 October 2004).

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

1. Firstly, I would like to thank the honourable Member for raising this issue.

The law covering these vehicles is found in the Road Traffic and Motor Vehicles Acts and their regulations (including the Australian Road Rules). However, I acknowledge that it would be beneficial for retailers, purchasers and users to have accurate information about their use.

Recently there has been both radio and newspaper coverage in relation to the legal requirements for the use of these vehicles. A detailed article, towards which Transport SA provided information, appeared in the Sunday Mail on 14 November 2004 and the Gawler Road Safety Group held a road safety event for seniors on Thursday, 18 November 2004, at which skills involved with safely learning to use motorised scooters were demonstrated.

2. Retailers are required to operate in accordance with the *Fair Trading Act 1987*, which is administered by the Office of Consumer and Business Affairs (OCBA). If retailers are providing purchasers, or potential purchasers, of motorised scooters with incorrect information this would be a matter for OCBA.

Notwithstanding the above, Transport SA has undertaken to write to dealers, retailers and distributors of motorised scooters in South Australia to advise of the current legal position in relation to the use of these vehicles.

3. The South Australia Police (SAPOL) are well aware of the legal requirements relating to the use of motorised scooters. Transport SA has provided advice to SAPOL on these matters.

In cooperation with SAPOL, information defining the legal requirements for motorised scooters has now been distributed to operational police and Transport SA customer service staff.

SOUTH-EASTERN FREEWAY

In reply to **Hon. J.M.A. LENSINK** (27 October 2004).

In reply to **Hon. D.W. RIDGWAY** (27 October 2004).

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

The Government and the South Australia Police (SAPOL) are committed to ensuring road safety exists across the State which includes the Freeway. By way of example, the Government recently created the Road Safety Advisory Council and its sub groups and has since implemented many of the recommendations from this Council. The Government is also active in terms of road safety marketing campaigns.

A National Road Safety Strategy 2001-10 has been developed and South Australia is a party to this strategy. In addition, South Australia has developed the South Australian Road Safety Strategy 2003-10 and has set targets of achieving less than 1 000 serious injuries sustained as a result of road trauma and, to achieve a 40 per cent reduction in the number of fatalities per 1000 population by 2010.

The Commissioner of Police has advised the Hills-Murray Police Local Service Area (LSA) is primarily responsible for policing the South Eastern Freeway from the Heysen Tunnel to Murray Bridge. The priorities of traffic personnel attached to this LSA are traffic enforcement and traffic management.

Hills-Murray LSA personnel are also supported in terms of traffic management on the Freeway by other SAPOL sections including the Southern Traffic Operations Motorcycle Section, Traffic Operations Unit and Police Security Services Branch for the deployment of speed cameras.

The Hills-Murray LSA has conducted numerous operations targeting traffic offenders including those on the Freeway. One such recent operation entitled Operation Freeway was specifically aimed at tailgating (follow too close), lane behaviour, restraints, road rage and speeding.

In addition to the specific LSA Operation Freeway, a number of State-wide traffic campaigns that include policing on the Freeway have either recently been completed or are in operation. For example, Operation Safe Hills related to driver behaviour in the Adelaide Hills, Operation Figurehead targeted the fatal five and Operation Ontario targeted number plates.

The Government will continue to place a high priority on road safety.

The Minister for Transport has provided the following information:

This Government places a high priority on road safety. The South-Eastern Freeway presents an excellent example of this. Recently there has been a major upgrade completed to the Adelaide to Crafers Section of the South-Eastern Freeway to improve the safety for road users and enable drivers to be better informed about road conditions and the road environment. This has been achieved by the installation of a $1.7 million Advanced Traffic Management System.

The key feature of this system is to provide traffic control by using Variable Message Signs and Variable Speed Limit Signs. The use of Variable Speed Limit Signs is a first for South Australia, with their use being relatively new in Australia.

FIREARMS

In reply to **Hon. IAN GILFILLAN** (24 November 2004).

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

The Commissioner of Police has advised that the theft of firearms to which the honourable member refers occurred at Peterborough on 22 July 1999. To this time the offence has not been cleared up by the apprehension of the offenders and the case remains open. Police intelligence suggests that the stolen firearms were transported to an eastern State shortly after the offence occurred.

Police have identified some fifty firearms identified as probably coming from this offence that have been recovered in possession of persons with criminal convictions or connections in South Australia, New South Wales and Victoria. It is not known if the firearms located interstate have been used in the commission of serious offences.

In a majority of cases, firearms identification numbers have been obliterated making positive identification of individual firearms impossible, hence making the number of alleged stolen firearms recovered inconclusive.

Some thirty of the recovered firearms have been found in possession of motor cycle gang members or their associates, the latest such seizure occurring in South Australia during the first week of December 2004.

In South Australia, persons found in possession of these firearms have in most cases been charged with offences under the Firearms Act 1977. There is no evidence to connect these particular firearms to serious criminal offences in South Australia. The shooting in Adelaide on 17 November 2004 to which the honourable member refers did not involve a firearm stolen from Peterborough in 1999.

JUVENILE JUSTICE

In reply to **Hon. R.D. LAWSON** (24 February 2004).

The Hon. P. HOLLOWAY: The Attorney-General has received this advice:

The Juvenile Justice Advisory Committee was established under Part 7 of the Young Offenders Act 1993. The Government has repealed Part 7, effective from 1 September, 2004, and as a consequence the Juvenile Justice Advisory Committee has been disbanded.

DRUNK'S DEFENCE

In reply to **Hon. R.D. LAWSON** (19 February 2004).

The Hon. P. HOLLOWAY: The Attorney-General has received this advice:

1. The purpose of the Bill was to restore, in general terms, the law on self-induced intoxication as it affects criminal responsibility to the position that was taken to be the law before the decision of the High Court in O'Connor (1979). To that extent, it is true to say, colloquially, that the Bill seeks to abolish the drunk's defence. So far as Mr Gigney is concerned, I understand that the offences with which he was charged were illegal use of a motor vehicle and escaping lawful custody. Illegal use is framed as follows:

A person who, on a road or elsewhere, drives, uses or interferes with a motor vehicle without first obtaining the consent of the owner of the vehicle is guilty of an offence.

The basis on which Mr Gigney may have been acquitted of this offence are obscure. But, for example, if the Bill becomes law, it will prevent Mr Gigney or others in his position from denying that he intended to drive or knew he was driving a motor vehicle on the basis of self-induced intoxication.

The escape offence is framed as follows:

Subject to this section, a person subject to lawful detention who

(a) escapes, or attempts to escape, from custody; or

(b) remains unlawfully at large,

is guilty of an offence.

Again, the basis on which Mr Gigney may have been acquitted of this offence are obscure. But, for example, if the Bill becomes law, it will prevent Mr Gigney or others in his position from denying that he intended to escape or knew that he was escaping.

Whether a person is convicted or acquitted will, of course, depend on the circumstances and the evidence presented. I am advised, however, that a person in Mr. Gigney's position is not likely to be acquitted. The Honourable Member is wrong to assert that "the proposed abolition relates only to a special new offence 'criminal negligence causing grievous bodily harm'.

2. It is true that the Parliamentary Select Committee on Self-Defence commented on some aspects of the matter in 1991, but it did not have the remit to address the question directly nor thoroughly, as its major focus was the law of self-defence.

CONSTITUTIONAL CONVENTION

In reply to **Hon. R.D. LAWSON** (17 September 2003).

In reply to **Hon. A.J. REDFORD** (17 September 2003).

The Hon. P. HOLLOWAY: The Attorney-General has received this advice:

1. A contract was signed between the Government and Issues Deliberation Australia Pty. Ltd. (I.D.A.) to run the Constitutional Convention from 8—10 August, 2003.

Once the Convention process was complete, it was important that the identities of the delegates be recorded and made available for good reasons:

- The identity of the delegates is part of the record of this historical event;
- To recognise and thank the delegates for their participation in the Convention;
- To inform the public of the representative South Australians who deliberated at the Convention of behalf of all South Australians.

The contract dealt with privacy by providing that:

- I.D.A. obtain the written consent of each delegate to disclose publicly any personal information provided by the delegate. The consent shall comply with the Information Privacy Principles.
- I.D.A. provide the names and contact details of the delegates and key attendees to the Government and the Convenor of the Convention within 14 days after the Convention.

The contract ensures the integrity of the Convention results, as the names of delegates were not made available by I.D.A. until after the Convention.

It should be noted that there was no obligation on the part of delegates to keep their identity confidential. Many delegates approached the media to discuss their selection as they were honoured and excited at the prospect of attending this historical event.

2. The then Speaker was entitled to access the delegate details pursuant to the contract. However, this has in no way affected the integrity of the Convention results. All delegate details held by I.D.A. were kept confidential until after the conclusion of the Convention.

It was appropriate for the names of the Delegates to be provided to the then Speaker, in his role as Convenor of the Convention, to allow him to thank the delegates personally for their participation in the event.

Many issues were discussed during the course of the Constitutional Convention. Time constraints meant that not all issues could be discussed in as much detail as the delegates may have wished. As the instigator and Convenor of the Constitutional Convention, it was appropriate for the then Speaker to contact delegates to obtain further details from them about their deliberations. This will better inform the Speaker about the many matters raised by the delegates.

3. The Constitutional Convention Report by I.D.A. was tabled at the Parliamentary Steering Committee meeting on 29 October 2003.

The managing director of I.D.A., and author of the Report, Dr Pamela Ryan, is currently overseas. We delayed tabling the Report to allow Dr Ryan to be present to speak on the Report.

The Government is currently considering the Report and will provide its response in due course.

In the supplementary question of the Hon. A.J. Redford, MLC, he refers to one of a series of questions contained in a questionnaire from the Speaker to Delegates. The then Speaker surveyed delegates about how they obtained information on constitutional and parliamentary reform and how they prepared for the Convention. To this end the questions include a reference to the C.L.I.C. website.

This was one of a set of questions seeking to clarify the type of research conducted by delegates and how informed they were before the Convention. I.D.A. provided delegates with a Briefing Document comprised of the Discussion Paper and the Compact for Good Government. Delegates were also encouraged to look at the Constitutional Convention web site and to research and read about matters before the Convention.

It was appropriate for the then Speaker in his role as Convenor of the Constitutional Convention to inquire about the research undertaken by delegates. Other Members of Parliament may do the same if they wish. The response of the delegates will provide a guide as to how the delegates obtained their information and assist with disseminating any future material for public education about Parliament and the Constitution.

On 12 August, 2002, Cabinet approved a process and $570 000 funds to hold a Constitutional Convention.

In April, 2003, Cabinet approved an additional $140 000.

The Constitutional Convention event was budgeted at $220 000. This amount was for all costs of running the Convention from 8—10 August, 2003 including:

- Cost of Pre and Post Deliberation surveys;
- Newspoll research;
- Welcome dinner for Delegates on 8 August, 2003;
- Catering;
- Lodging for Delegates and Panelists;
- Transport for Delegates and Panelists;
- Payment of Honorarium to Delegates, Facilitators and Group Managers;
- Recruitment and training of volunteers;
- Public relations;
- Printing of survey forms;
- Administrative organisation;
- Preparation of Final Report.

Each Member of the Panel of Experts received an honorarium of $1 500 for their participation in drafting the Constitutional Convention Discussion Paper.

Some Members of the Panel of Experts also participated as Panellists at the Constitutional Convention. Members were not paid a separate fee for this.

SEXUAL ASSAULT

In reply to **Hon. SANDRA KANCK** (25 November 2003).

The Hon. P. HOLLOWAY: The Attorney-General advises:

I draw the Hon. Member's attention to the Legislative Review Committee's inquiry into sexual assault conviction rates. The inquiry will be recommending legislative changes to make it more likely that sexual assault offenders will be convicted. The Committee will also be recommending changes aimed at minimising the trauma of the prosecution and court processes for the victims of sexual assault.

I look forward to examining the Committee's recommendations.

PITJANTJATJARA LAND RIGHTS (REGULATED SUBSTANCES) AMENDMENT BILL

Adjourned debate on motion of Hon. P. Holloway:

That the report of the chairperson of the committee be adopted.

(Continued from 3 May. Page 1740.)

The Hon. R.D. LAWSON: I move:

That amendment No. 1 of the House of Assembly be recommitted to a committee of the whole forthwith.

The Hon. P. HOLLOWAY: I rise on a point of order and seek clarification. As I understand it, the motion before the chamber is that the report of the chairperson of the committee be adopted. Does that question have to be put first?

The PRESIDENT: I am advised that, on the acceptance of the motion for the adoption of the report, it can be.

The council divided on the motion:

AYES (11)

Cameron, T. G.	Dawkins, J. S. L.
Evans, A. L.	Lawson, R. D. (teller)
Lensink, J. M. A.	Lucas, R. I.
Redford, A. J.	Ridgway, D. W.
Schaefer, C. V.	Stefani, J. F.
Xenophon, N.	

NOES (8)

Gago, G. E.	Gazzola, J.
Gilfillan, I.	Holloway, P. (teller)
Kanck, S.M.	Reynolds, K.J.
Sneath, R. K.	Zollo, C.

PAIR(S)

Stephens, T. J.	Roberts, T. G.

Majority of 3 for the ayes.

Motion thus carried.

Bill recommitted.

Amendment No. 1:

The Hon. R.D. LAWSON: I move:

That the House of Assembly's amendment No. 1 be disagreed to.

The committee will recall that this amendment arises out of an amendment, moved by the Hon. Nick Xenophon and accepted by the Legislative Council, to the effect that, in certain circumstances, members of the press would be entitled to go to the APY lands for public purposes. It was disagreed to in another place and, when it returned here on 3 May, the Hon. Mr Xenophon and certain other members were absent. The committee agreed to the Assembly's amendment. I think that was a serious error on the part of the committee.

As a member of the Aboriginal Lands Parliamentary Standing Committee, I visited the lands only 10 days ago, and everywhere I saw a situation that ought be more widely understood. The committee might recall that Professor Lowitja O'Donohue recently resigned, or refused to be reappointed, as an adviser to the government on the APY lands on the ground, which she stated publicly, that the government—in particular, the Premier—had not honoured certain commitments that had been made.

The Premier was confronted with that information whilst he was in Mount Gambier. He made a statement that, in effect, contradicted Professor O'Donohue. He announced, for example—and I think that I am quoting him correctly—'There have been five youth workers already appointed to the lands at various settlements.' On my visit there, when asked about the so-called newly appointed youth workers, the communities said, 'We have heard nothing of them. We haven't seen them. There are no new youth workers here.' Of course, down here the Premier is able to say that there are youth workers, which gets publicity.

The press is in no position to report to the public fully and frankly what is actually happening on the lands. It is for that reason that we have supported all along the amendment proposed by the Hon. Mr Xenophon. I remind the committee that, of course, this amendment is not open slather for members of the media. One would imagine that media representatives would first seek a permit, and there would be exceptional circumstances where that may be refused it. However, if they can show that they want to report on some matter of public interest, they should be entitled to travel to this part of Australia. For too long, it has been hidden behind a curtain and hidden from the public gaze.

The Hon. P. HOLLOWAY: I will not allow the most breathtaking hypocrisy I have heard in this place in 13 years to go by without making some comment. The deputy leader has said that these matters 'ought to be more widely understood'. This is someone who was a minister for Aboriginal affairs in the former government, which did not allow the Aboriginal affairs select committee to sit for eight years. That is the record of the Liberals in relation to the APY lands. Its idea was to make sure that no-one at all went up there—not even members of parliament. That is on the record, and that is the record of that government.

What breathtaking hypocrisy it is from the former government. The deputy leader referred to Lowitja O'Donohue. Tell me, deputy leader, does Lowitja O'Donohue believe we should defy the wishes of the APY by letting the media go on to the lands without their seeking a permit? Is that her view? Obviously the deputy leader does not know. It is my understanding that members of the media can go into the APY lands if they apply for a permit like everyone else. My advice is that members of the media who wish to travel on to the lands would nearly always be issued a permit. But, of course, there may be ceremonies or other events at certain times during which the APY may not wish to have the media present. But, all of this will be overridden if this amendment gets up.

We have had this debate numerous times before. In fact, this bill was accepted the other day by the council. We have had these extraordinary attempts to go over this matter again, but the view of the government has not changed: we believe that this flies against the wishes of the APY people. Under this government, far more attention has been paid to this area than was ever the case under the previous government. It really is totally breathtaking hypocrisy from a party that quite deliberately ensured that the parliamentary select committee did not meet during most of the eight years it was in government.

The Hon. NICK XENOPHON: I will make a very brief contribution. I maintain my position. I think that everyone in this chamber wants to improve the conditions on the APY lands. We have gone backwards in the past 30 years when it comes to the standard of health of the indigenous communities. Their mortality rate continues to be extraordinarily high.

The Hon. J. Gazzola: How would you know?

The Hon. NICK XENOPHON: It is a matter of public record that there has been a deterioration in the health of our indigenous communities, and the mortality rates have continued to rise. We have a situation where the average age of death has declined in the indigenous communities in the past generation, which is an indictment on all governments. By having this level of scrutiny it will ensure that this

important issue can never be ignored by the parliament or the broader community. Let us put this in perspective. This whole debate in terms of the government being prompted to action arose from a series of articles in *The Advertiser*, followed up by the rest of the media, and it was that media scrutiny that prompted the government into action. That is my motivation for this amendment and I stand by it.

The Hon. KATE REYNOLDS: As the Hon. Nick Xenophon is the mover of the amendment, I will ask him a question before I make a few brief remarks. I believe the Hon. Nick Xenophon was not here when we last had a debate on this matter. I am keen to know whether or not he consulted with any Anangu about his proposal and, if so, what sort of feedback he got. I am keen to know whether he intends to seek to have the requirement for permits for other Aboriginal communities not covered by this act revoked.

The Hon. NICK XENOPHON: I acknowledge the question of the Hon. Kate Reynolds. No I did not, and I acknowledge that and I put it on the record. There is a fundamental principle of whether or not you have media access. If my colleagues want to criticise me for that, I stand criticised. I acknowledge what the Hon. Kate Reynolds says. We are only dealing with this legislation. Given the severe problems on the APY lands, I have confidence that these matters will be reported responsibly—

The Hon. R.K. Sneath interjecting:

The Hon. NICK XENOPHON: The Hon. Bob Sneath says, 'Have a look at the way the press have treated Rau'. I presume he is referring to Cornelia and not John. In relation to Cornelia Rau, we know a decision was made and she wanted to speak to the media. That is not the issue. I acknowledge the consistent and persistent approach of the Hon. Kate Reynolds in taking up issues of concern to people on the APY lands and on indigenous issues generally. The Coroner, I think in 2002, handed down a number of recommendations in relation to petrol sniffing deaths. We do not know to what extent they have been implemented.

The Hon. R.D. Lawson interjecting:

The Hon. NICK XENOPHON: I acknowledge what the Hon. Mr Lawson said, but I think it is important to have public pressure to ensure that these fundamental things are done so that the scourge of petrol sniffing can be obliterated in those communities. I understand that the Hon. Kate Reynolds fundamentally disagrees with this amendment, but I believe that this will lead to an improvement with respect to the conditions on the lands.

The Hon. KATE REYNOLDS: In response to those comments, I think it is important that the Hon. Nick Xenophon and other members of this chamber know that the articles that were printed in the past 18 months or so about the dire situations on the lands have not, in fact, prompted the government to take a whole lot of action. They have prompted the government to talk a whole lot more, but if you go and talk with the communities they will tell you that it has made the situation worse, while we white fellas back here in the city are supposed to think that it is all getting better. In fact, it is not. The situation is rapidly getting worse, and I am sure that, when the Aboriginal Lands Parliamentary Standing Committee, of which I am also a member, tables its reports, members will be able to understand that in much greater and very disturbing detail.

I would just like to quickly reinforce that we do not intend to support the amendment proposed by the Hon. Nick Xenophon, and therefore we will be accepting and agreeing with the government's position. We cannot accept that the amendment has a workable or acceptable definition of 'media'. We cannot accept that the amendment has a workable or acceptable definition of 'public interest', and we cannot accept that it is okay to say that the media can go traipsing around any part of the lands at any time they like, doing whatever they like. On my last visit to the lands, which was at the same time as the Hon. Robert Lawson visited as part of the Aboriginal Lands Parliamentary Standing Committee, I made a point of asking as many Anangu as I could for their views about the amendment that had been proposed by the Hon. Nick Xenophon, and I did not find one single person who supported it.

Their collective view was—and I am paraphrasing—that, if the media came on to the lands at any time that they liked, and traipsed anywhere that they liked, not only would there be serious cultural breaches but nobody felt confident that the full story, and both sides of the story, would be told. It was interesting that, when the Hon. Robert Lawson spoke, he said that the situation on the lands needs to be more widely understood. What a number of Anangu said to me was that, if people really wanted to understand where the problems were, they should take television cameras and journalists into the parliament, into the cabinet, and into the bureaucrats' offices, because that is where the problems were. The problems that people were trying to address on the lands were not going to be fixed by having a lot of journalists tramping around, not necessarily being respectful of what was actually being faced up there by those people.

So, in summary, we will be supporting the government's position on this. We will not support any amendment that allows the media to have any access to the lands other than by an open and transparent permit system.

The Hon. R.I. LUCAS: I want to respond briefly to an issue raised by the Leader of the Government when he referred to the operation of the standing committee during the eight years of the Liberal Government. During those eight years, and indeed at any time, members of parliament are entitled, individually or collectively, to travel on to the lands. That might not have occurred in respect of Labor members of parliament, but it was a relatively frequent experience for Liberal members of parliament, in particular the Hon. Peter Dunn, the Hon. Caroline Schaefer and, at various periods prior to that, the member for Eyre or Stuart (depending on the name of the electorate at the time). Indeed, a number of the rest of us, less frequently obviously, also travelled through the lands.

The minister refers to the operations of a particular committee and seems to think that that is game, set and match in relation to openness and attention by members of parliament to the issues that surround the lands. Well, it is not. Members of parliament were entitled to travel to the lands, and that included Labor members, and it would be interesting to know how many Labor members of the Legislative Council during the period of the last Liberal government travelled to the lands, including whether the Leader of the Government did, and whether they saw it as part of their responsibility as members of the Legislative Council. I would be interested to hear that response from the Leader of the Government and other Labor members of the Legislative Council.

So, there were frequent visits from a small number of members of parliament and there were also visits from other members of parliament. I know that, in relation to the education portfolio, I visited the lands on a couple of occasions in relation to issues that directly related to that

portfolio. Prior to having portfolio responsibility, I know that Peter Dunn would, on a number of occasions, get together a group of three or four Legislative Councillors and take us for a trip through the lands. I know that the Hon. Caroline Schaefer has visited the lands much more frequently than probably any of the rest of us in this chamber over a period of time. I just wanted to place on the record a rebuttal of the point made by the Leader of the Government.

The committee divided on the motion:

AYES (10)

Cameron, T. G.	Dawkins, J. S. L.
Lawson, R. D. (teller)	Lensink, J. M. A.
Lucas, R. I.	Redford, A. J.
Ridgway, D. W.	Schaefer, C. V.
Stefani, J. F.	Xenophon, N.

NOES (9)

Evans, A. L.	Gago, G. E.
Gazzola, J.	Gilfillan, I.
Holloway, P. (teller)	Kanck, S. M.
Reynolds, K.	Sneath, R. K.
Zollo, C.	

PAIR

Stephens, T. J.	Roberts, T. G.

Majority of 1 for the ayes.

Motion thus carried.

The following reason for disagreement was adopted:

Because the amendment is not appropriate.

FIRE AND EMERGENCY SERVICES BILL

In committee.

(Continued from 23 May. Page 1849.)

Clause 4.

The Hon. A.J. REDFORD: This clause enables the commission, by notice in the *gazette*, to establish a fire district or fire districts for the purposes of the operation of the South Australian Metropolitan Fire Service (SAMFS). The clause further provides that, by notice, those boundaries can be varied or, indeed, abolished. Subclause (3) provides:

> Those parts of the state that lie outside a fire district will be taken to be the areas of the state that apply for the purposes of operations of the Country Fire Service.

Subclause (4) provides:

> In addition—
> (a) SAMFS may act outside a fire district. . .

And the Country Fire Service can act outside its districts. Subclause (6) provides that, before a notice is published in relation to the areas in which the Metropolitan Fire Service operates, the Chief Officer of the Metropolitan Fire Service and the Chief Officer of the Country Fire Service must be consulted. I understand from my discussions with various CFS officials (and, indeed, from a briefing I received) that there will be some adjustment in the boundaries that currently exist between the Country Fire Service and the Metropolitan Fire Service. Could the minister outline whether or not there are currently any proposals to change the boundaries and, if so, what changes does she have in mind?

The Hon. CARMEL ZOLLO: I am advised that no changes to boundaries are proposed at all. What we have before us reflects what is currently in the legislation. Everything is taken out of the current legislation. It also allows for the first responding brigade to act in case of an emergency. I guess the first person on the scene can act to provide an emergency response.

The Hon. A.J. REDFORD: Am I to understand that there will be no changes to the geographical boundaries within which the Metropolitan Fire Service currently operates, vis-a-vis the Country Fire Service?

The Hon. CARMEL ZOLLO: I advise the honourable member, as I have previously, that nothing is planned at the moment. The emergency resourcing program would be able to look at the best allocation of resources in the state. In the future, they may well recommend changes, but absolutely nothing is planned at this time.

The Hon. A.J. REDFORD: What will be the principles upon which boundaries will be determined in relation to the areas of responsibility between the MFS and the CFS?

The Hon. CARMEL ZOLLO: I advise that we are doing a total risk assessment in every community across the state, which should be able to inform us of the best way of providing emergency services in each of those communities.

The Hon. A.J. REDFORD: I refer the minister to subclause (6), which talks about the commission consulting with the chief officer of the fire service and the chief officer of the Country Fire Service. Can I get an assurance that, if either of those two groups object to boundary changes, they will not proceed?

The Hon. CARMEL ZOLLO: I have to advise that a risk assessment has not been considered yet, because it will be 12 months before it is finished. Therefore, it is very difficult for me to give an assurance at this time.

The Hon. J.S.L. DAWKINS: The minister would be well aware that there is quite a large number of CFS brigades situated within the metropolitan area—

The Hon. A.J. Redford: Burnside.

The Hon. J.S.L. DAWKINS: Burnside for one, but certainly at Salisbury—

The Hon. Carmel Zollo: Peri-urban.

The Hon. J.S.L. DAWKINS: Yes. A significant effort is put in by members of those brigades certainly in fighting fires and also in fire prevention in the areas that the minister mentions as being peri-urban. Will she give a commitment that no attempts will be made to convert those CFS brigades into MFS facilities, as has been mentioned in the past?

The Hon. CARMEL ZOLLO: I advise the honourable member that certainly this has not been considered and there is no intention whatsoever of doing that. There is nothing in the preparation of this legislation that proposes that happening. I should also point out, as the honourable member probably knows as well, that there are 17 retained MFS stations in rural South Australia. There certainly has been no move to take them over or even consider doing so.

The Hon. J.S.L. DAWKINS: I take that point and I appreciate the answer. I have the highest regard for volunteers who serve in the CFS, whether at Burnside or many hundreds of kilometres from Adelaide. The one thing that I would hope the new commission can do is give more publicity and more recognition to the CFS units in metropolitan Adelaide. They are highly regarded in country areas, but I think they are largely unknown in metropolitan areas.

The Hon. CARMEL ZOLLO: I appreciate the comments of the honourable member. In the legislation, it is certainly one of the responsibilities of the board to promote volunteers and volunteering in both the CFS and the SES.

Clause passed.

Clauses 5 and 6 passed.

Clause 7.

The Hon. A.J. REDFORD: Clause 7 provides that the commission is subject to the control and direction of the minister. It also provides that a direction given to the commission by a minister must be in writing and that such direction needs to be tabled or laid before both houses of parliament. We on this side of the chamber are not stupid. We know that, with this government, and with similar legislation, there have been occasions when indications have been given by ministers to agencies. I refer to WorkCover. I know that, from some of the fireside chats he has had with and directions he has given to both the former board and the current board, the minister has largely led to the extraordinary decline in WorkCover.

Mr Chairman, I know that you would be acutely aware that I sought copies of notes made at various meetings between the chair of WorkCover and the minister. Lo and behold, despite the fact that evidence was given to a parliamentary committee, and notes were taken by ministerial staff at these meetings, the notes have gone missing. In fact, they have been destroyed and are nowhere to be seen. One can only assume that these minutes would have shown the minister to be as incompetent as we on this side of the chamber believe him to be. It concerns me that a similar thing might occur in this situation, and I want to ask the minister these questions. Will she ensure that, at any meetings she might have with the commission, notes are taken of those meetings? Unlike the Minister for Industrial Relations, will she give an assurance that notes will be kept?

The Hon. CARMEL ZOLLO: I am able to indicate to the honourable member that I can give that assurance. Given the senior management provided by this legislation, I hardly think that that would be a problem.

The Hon. A.J. REDFORD: I am grateful for that answer, and already this minister ought to be above the pecking order when compared with the Minister for Industrial Relations.

Clause passed.

Clauses 8 to 10 passed.

Clause 11.

The Hon. A.J. REDFORD: I move:

Page 15, lines 31 to 36—Delete paragraphs (e) and (f) and substitute:

(e) 5 members appointed by the Governor of whom—

(i) 2 must be persons appointed on the nomination of the South Australian Volunteer Fire-Brigades Association; and

(ii) 2 must be persons appointed on the nomination of S.A.S.E.S. Volunteers' Association Incorporated; and

(iii) 1 must be a person appointed on the nomination of the LGA.

There was significant and substantial debate in another place. I know that the Hon. Ian Gilfillan is anxious to ensure that this bill proceeds quickly, so I will not go through in any detail the reasons for our position. Suffice to say that they are self-evident to any reader of *Hansard* in another place.

The Hon. IAN GILFILLAN: I indicate Democrat support for the amendment. As I have indicated in private conversations, I believe that the composition of the board is a critical matter for the final effectiveness of this whole enterprise. It may not be the definitive and final word in the way the composition comes through this committee stage, but certainly we are attracted to these amendments and will support them. As a general aside, the shadow minister, in his understandable enthusiasm and exuberance, sometimes talks about 'we on this side of the chamber'. I make the point that, although the Democrats are on this side of the chamber, we are not inevitably locked into the opinions expressed by the shadow minister.

The Hon. A.J. REDFORD: I will respond to that. I always consider 'this side of the chamber' as being this quarter of the chamber, if that makes the honourable member any happier.

The Hon. CARMEL ZOLLO: I need to place on record that we will reject this amendment, as we cannot agree with it. It seeks to remove from the board of governance of Safecom three important positions: a legal professional, who can help the board make decisions that affect the current legislation; a finance professional, who can help the board make decisions that are economically sustainable; and a representative of the advisory board, who is there to convey the views of the advisory board and be part of the process of ensuring that those views are considered and acted upon. This amendment seeks to replace them with members of the advisory board.

The intent of the bill is to create a board of governance, not a board of management, which is what the opposition amendment seeks to achieve. That intent addresses the primary weakness found during the 2002-2003 review of the emergency services sector. The government has sought extensive consultation on this bill with all stakeholders. They agree that the Safecom bill should provide for a board of governance, as opposed to a board of management. They have informed us that they are happy with the current proposed constitution of the board presented in the bill and that the proposed amendment would threaten the success of achieving greater collaboration among all sections of the emergency services sector. As I indicated, we are not able to accept this amendment.

The committee divided on the amendment:

AYES (13)

Cameron, T. G.	Dawkins, J. S. L.
Evans, A. L.	Gilfillan, I.
Kanck, S. M.	Lawson, R. D.
Lensink, J. M. A.	Lucas, R. I.
Redford, A. J. (teller)	Reynolds, K.
Ridgway, D. W.	Schaefer, C. V.
Stefani, J. F.	

NOES (6)

Gago, G. E.	Gazzola, J.
Holloway, P.	Sneath, R. K.
Xenophon, Hon. N.	Zollo, C. (teller)

PAIR

Stephens, T. J.	Roberts, T. G.

Majority of 7 for the ayes.

Amendment thus carried.

The Hon. A.J. REDFORD: I move:

Page 15, lines 37 to 39—Delete subclause (2)

This amendment is probably not technically consequential, but it is consistent with the broad thrust of what was said in relation to the previous clause. I will not trouble the committee by spending any further time on it.

The Hon. IAN GILFILLAN: In essence, this is consequential on the previous amendment, which was successful, and I indicate the Democrats' support.

The Hon. CARMEL ZOLLO: I again indicate that it is consequential to amendment No. 2. However, I indicate that we cannot accept this amendment, as the amended board, if this should go through, would stand between the intended greater collaboration between the agencies and as such would leave the community potentially exposed. I can see that we

do not have the numbers, and it is a consequential amendment, so I will not divide. However, I indicate that the government rejects the amendment.

Amendment carried.

The Hon. A.J. REDFORD: I move:

Page 16, lines 3 to 37—Delete subclauses (4), (5) and (6) and substitute:

(4) The Governor may appoint a suitable person to be the deputy of a member of the board (including an ex officio member of the board) and that person may, in the absence of that member, act as a member of the board.

This amendment is in relation to the appointment of the deputy and is largely consequential upon the previous decisions.

The Hon. IAN GILFILLAN: I again indicate the Democrats' support. I agree that the amendment is following in a consequential form the principle amendment we have previously dealt with.

The Hon. CARMEL ZOLLO: Again, this amendment is consequential to amendment No. 2, and it includes creating powers for the Governor to appoint a deputy member of the board, rather than the intention of the bill. Again, I realise we do not have the numbers, so we will not be dividing. However, we firmly reject this amendment as well.

Amendment carried; clause as amended passed.

Clause 12.

The Hon. A.J. REDFORD: I move:

Page 16, line 39—Delete 'associate' and substitute 'appointed'

Page 17—

Line 1—Delete 'associate member of the board (other than a member under section 11(1)(f))' and substitute 'appointed member of the board'

Lines 5 to 7—Delete subclause (3)

Line 8—Delete 'associate' and substitute 'appointed'

Line 14—Delete 'associate' and substitute 'appointed'

These amendments are consequential upon previous decisions that have been made.

The Hon. IAN GILFILLAN: I indicate Democrat support.

The Hon. CARMEL ZOLLO: These amendments are consequential to amendments Nos 1 and 2. That was the proposed change from a board of governance to a board of management, which would be contradictory to our intention in this bill. The other effect of the amendments would be to replace the member for the advisory board, which was a position created after the government accepted an opposition amendment in the House of Assembly. So, that is extraordinary. The volunteer associations have rejected what the amendment proposes and remain supportive of the board's constitution as described in the bill. We do not have the numbers, so we will not divide.

Amendments carried; clause as amended passed.

Clause 13.

The Hon. A.J. REDFORD: I move:

Page 17—

Line 22—Delete 'associate' and substitute 'appointed'.

Lines 24 to 26—Delete subclause (3).

These amendments are consequential.

The Hon. IAN GILFILLAN: The Democrats support the amendments.

The Hon. CARMEL ZOLLO: Again I place on record that we reject the amendments, but they are consequential and again we do not have the numbers.

Amendments carried; clause as amended passed.

Clause 14.

The Hon. A.J. REDFORD: I move:

Page 17—

Line 29—Delete '(and voting)'.

Line 31—Delete subclause (2) and substitute:

(2) 5 members of the Board constitute a quorum of the Board.

Line 32—Delete '*ex officio*'.

Line 35—Delete subclause (4).

Page 18, line 7—Delete '*ex officio*'.

These amendments are consequential.

The Hon. IAN GILFILLAN: We indicate Democrat support for the amendments.

The Hon. CARMEL ZOLLO: These amendments, which are consequential, will enable non-operational board members to vote on all motions put before the board. The recommendation from the sector strongly supported the view that senior operational executives lead the sectors, but again we do not have the numbers.

Amendments carried; clause as amended passed.

Clauses 15 to 17 passed.

Clause 18.

The Hon. A.J. REDFORD: I move:

Page 20, lines 13 to 23—Delete subclause (3) and substitute:

(3) The Advisory Board consists of the following members appointed by the Minister:

(a) 1 member appointed to be the presiding member of the Advisory Board; and

(b) 2 members appointed on the nomination of the South Australian Volunteers Fire-Brigade Association; and

(c) 2 members appointed on the nomination of SASES Volunteers' Association Incorporated; and

(d) 1 member appointed on the nomination of the LGA.

Whilst this amendment is not directly consequential, the debate in the lower house summed up our position in relation to the make-up of the advisory board and I will not trouble the committee by repeating the arguments put in another place.

The Hon. IAN GILFILLAN: The Democrats will not support this amendment. We are not convinced that it improves the composition and effectiveness of the advisory board. As I said earlier, from our observations of the work of this committee, from the Democrat's view I feel certain there is scope for further conversation and discussion about it. I appreciate that, on the basis of expediency, the Hon. Angus Redford has sacrificed his right to explain this amendment in any detail—and I do not invite him to do that—but it appears to us that it is an overt measure to remove the direct nomination of a UFU representative. We are not convinced that that adds to the quality of the experience and the contribution that can be made by the advisory board. We are not inclined to support this amendment.

The Hon. CARMEL ZOLLO: We firmly reject this amendment. It will have the effect of alienating the retained firefighters and the United Firefighters Union. It threatens the opportunity to readily achieve the benefits of reform the bill offers and reduces the opportunity to improve cost effectiveness for the activities across the sector to enhance community safety. Consultation with volunteers has allowed the government to create legislation that benefits the whole of the community, including volunteers and retained firefighters. We strongly reject the amendment.

The committee divided on the amendment:

AYES (10) AYES t.)

Cameron, T. G.	Dawkins, J. S. L.
Evans, A. L.	Lawson, R. D.
Lensink, J. M. A.	Lucas, R. I.
Redford, A. J. (teller)	Ridgway, D. W.
Schaefer, C. V.	Stefani, J. F.

NOES (9)

Gago, G. E.	Gazzola, J.
Gilfillan, I.	Holloway, P.
Kanck, S. M.	Reynolds, K.
Sneath, R. K.	Xenophon, N.
Zollo, C. (teller)	

PAIR

Stephens, T. J.	Roberts, T. G.

Majority of 1 for the ayes.

Amendment thus carried.

The Hon. A.J. REDFORD: I move:

Page 20, after line 27—Insert:

(ie) At least one member of the Advisory Board must be a woman and at least one member must be a man.

I have no doubt that the government will agree with this.

The Hon. CARMEL ZOLLO: I indicate that the government is supportive of this amendment, in the interests of keeping continuity with other boards within the sector. It is, however, pertinent to note that such an amendment already falls within the government's policy of gender balance. But I indicate our acceptance.

The Hon. IAN GILFILLAN: I indicate Democrat support for the amendment.

Amendment carried.

The Hon. A.J. REDFORD: The final two amendments to clause 18 are consequential upon the earlier vote, and I do not think I need to go through any arguments. I move:

Page 21—

After line 12—Insert:

(9a) Four members of the Advisory Board constitute a quorum of the Board.

Lines 13 and 14—Delete subclause (10).

The Hon. IAN GILFILLAN: Is there a quorum for the Advisory Board specified in the bill itself?

The Hon. CARMEL ZOLLO: No, there is not. I indicate that we do not support the amendment but again I realise that the numbers are not there so we will not be dividing.

The CHAIRMAN: Are you accepting the Hon. Mr Redford's assertion that they are both in the same category? He has moved both of them. Are you disputing them?

The Hon. CARMEL ZOLLO: The other one is consequential to 17, anyway.

Amendments carried; clause as amended passed.

Clauses 19 to 31 passed.

Clause 32.

The Hon. A.J. REDFORD: This clause requires the chief officer to submit once in every year a work force plan for approval by the commission. Is there currently an equivalent to that within the fire service?

The Hon. CARMEL ZOLLO: This will be required of all three services, not just SAMFS. The answer is no, only at budget time when they put in submissions for extra employees, and we believe this to be a better planning tool and something that the board can govern with the numbers.

The Hon. A.J. REDFORD: I thought it was new and I will watch it with some interest. It may well be a positive initiative in relation to manpower, budget planning, and the like.

Clause passed.

Clauses 33 to 44 passed.

Clause 45.

The Hon. A.J. REDFORD: I used to appear before the South Australian Metropolitan Fire Service Disciplinary Committee. My one legal stoush with the current Minister for Transport was in relation to a disciplinary matter. He won at first instance but I ultimately prevailed when I won on appeal. I would be interested to know from the minister, and she may want to take these questions on notice, how many disciplinary matters were taken against fire officers last year and for what were disciplinary matters taken? What penalties were imposed in respect of each disciplinary matter? What has been the cost of the South Australian Metropolitan Fire Service Disciplinary Committee over the last three years and what is the budgeted cost over the next year? Can the minister advise who the current members of the disciplinary committee are?

The Hon. CARMEL ZOLLO: I will have to take those questions on notice and bring back a response.

Clause passed.

Clauses 46 to 54 passed.

Clause 55.

The Hon. A.J. REDFORD: I note that this clause states that the associations comprising UFU are recognised as associations that represent the interests of career firefighters. I take it that that is not exclusive, that if another organisation seeks to represent the interests of firefighters it will not be precluded from so doing by this clause.

The Hon. CARMEL ZOLLO: My understanding is that clause 55 is simply an explanation of what we mean by UFU. It is seeking consistency with the other two sections of the act in which we explain the two other volunteer associations.

The Hon. A.J. REDFORD: That does not directly answer my question. Bearing in mind that, as a matter of principle, the Industrial Relations Act enshrines freedom of association, if a group of firefighters want to form their own association, or join the AWU or some other association, this provision will not be used or could not be used to prevent their so doing.

The Hon. IAN GILFILLAN: My interpretation of the wording in the bill is not prescriptive. I do not read it in any way as prohibiting another organisation. As I read the English, as it appears in the bill, it describes the composition of the UFU without giving rise to the fears articulated by the Hon. Angus Redford.

The Hon. CARMEL ZOLLO: I agree with the Hon. Ian Gilfillan. Certainly, it is not the intent to prescribe what the Hon. Angus Redford is thinking. It is simply a description.

The Hon. A.J. Redford interjecting:

The Hon. CARMEL ZOLLO: Certainly, it is not the intent.

The Hon. A.J. Redford interjecting:

The Hon. CARMEL ZOLLO: Okay. Certainly, it is not the intent to do so; and, as I read it, I would say that that is not the intent.

The Hon. A.J. REDFORD: I want to clear it up, and I want this question answered not by the Hon. Ian Gilfillan but by the government. I am entitled to ask questions of the minister and the government. If a group of workers seek to join the AWU (because of the Hon. Bob Sneath's magnificent leadership) or some other union, or they seek to form their own association because they are unhappy with the UFU, can this provision be used to prevent their so doing?

The Hon. CARMEL ZOLLO: The answer is no. This clause would not preclude them from doing so, as I read it.

Clause passed.

Clause 56.

The Hon. A.J. REDFORD: I ask these questions of the minister, and I indicate that they can be taken on notice. Could the minister, for the past three years, provide me with

information concerning prosecutions that have taken place pursuant not to this provision but its precursor regarding failure to comply with notices for fire prevention, and the like; and an indication of how much revenue has been raised as a consequence?

The Hon. CARMEL ZOLLO: This clause is taken from the current act. I am unable to provide the statistics sought by the honourable member. I undertake to bring back a response.

Clause passed.

Clauses 57 to 70 passed.

Clause 71.

The Hon. A.J. REDFORD: I move:

Page 46, line 9—
After 'local government' include:
, at least one being a suitable person to represent rural councils,

The Hon. IAN GILFILLAN: The Democrats are not persuaded as to the value of this amendment, and we oppose it.

The Hon. CARMEL ZOLLO: The government will accept the amendment.

Amendment carried.

The Hon. A.J. REDFORD: I move:

Page 46, after line 15—
Insert:

(va) a nominee of the minister, being a person who is a practising pastoralist and who resides outside local government boundaries;

Obviously, the government omitted this by accident. I am confident that I will receive its support.

The Hon. IAN GILFILLAN: I indicate Democrat support for the amendment.

The Hon. CARMEL ZOLLO: The government also supports the amendment. The government feels that natural justice would have prevailed in this situation. However, it is prepared formally to include it in the bill to ensure its outcome.

Amendment carried; clause as amended passed.

Clauses 72 to 77 passed.

Clause 78.

The Hon. A.J. REDFORD: Interestingly enough, I received a telephone call from a journalist yesterday in relation to the fire danger season. We could go back to about 1967-68, in my memory, to recall the last time we had a season that failed to break as late as this one. We are living in very unusual and difficult times. The question put to me by the journalist was: 'Do you agree with a proposal that the government or someone was considering to extend the fire danger season?' I indicated that the government was in a better position than I to make those judgments and, provided it did it on a considered basis and based on evidence, it would not be hearing any complaint from me.

I pointed out that, notwithstanding that, there were still common law responsibilities on landowners to ensure that they did not burn off in a situation that might cause damage to their neighbours. I thumbed my way carefully through *The Advertiser* this morning to see whether my name appeared in lights—I must have missed it. In any event, I would be interested to know what the current state of play is in relation to these currently extraordinarily dry conditions and the fire danger and what the government proposes to do; and what conditions might cause the government to act in relation to extending the fire danger season.

The Hon. CARMEL ZOLLO: I again indicate that the provision is lifted straight out of the current CFS Act. The honourable member is correct; we are at the moment facing some very unusual weather patterns—an extended summer going into autumn. I indicate that, on a regular basis, the CFS is in contact with the appropriate regional bushfire prevention committees—and that is why we recently extended the bushfire season to 15 May. What exactly was the honourable member asking?

The Hon. A.J. Redford: Basically I asked for a run-down on your current thinking.

The Hon. CARMEL ZOLLO: The current thinking is that we do need to be very vigilant. Everyone from local government, to the bureau, to the regional bushfire prevention committee is cooperating and collaborating with the CFS to ensure that we are doing the right thing by our community in relation to keeping our community safe.

Clause passed.

Clauses 79 to 83 passed.

Clause 84.

The Hon. A.J. REDFORD: I move:

Page 56, after line 9—
Insert:

(3) If, in the opinion of the chief officer, a rural council has failed to comply with subsection (1), the chief officer may refer the matter to the minister to whom the administration of the Local Government Act 1999 has been committed (with a view to that minister taking action in relation to the council under that act).

Clause 84 provides that a rural council that has care, control and management of land in the country must take reasonable steps to protect property on the land from fire and to prevent or inhibit the outbreak of fire. This amendment goes on to say that, if the chief officer is of the opinion that a rural council has failed to comply with its obligations, the chief officer may refer the matter to the Minister for Local Government with a view to that minister's taking action. This just provides a further assurance that the appropriate authorities are complying with their obligations.

The Hon. IAN GILFILLAN: I indicate Democrat support for the amendment.

The Hon. CARMEL ZOLLO: I indicate that the government will support the amendment in the interests of community safety.

Amendment carried; clause as amended passed.

Clause 85.

The Hon. A.J. REDFORD: I move:

Page 56, after line 19—
Insert:

(4) If, in the opinion of the chief officer, a minister, agency or instrumentality of the Crown has failed to comply with a preceding subsection, the chief officer may refer the matter to the minister.

(5) If a matter is referred to the minister under subsection (4), the minister must ensure that a written response, setting out the action that the minister has taken or proposes to take, is provided to the chief officer within 28 days after the referral of the matter to the minister.

(6) The minister must—

(a) at the same time as the minister provides a response under subsection (5)—provide a copy of the initial correspondence from the chief officer, and of the minister's response to the chief officer, to any member of the House of Assembly whose electoral district includes any part of the land in question; and

(b) within three sitting days after the minister provides a response under subsection (5)—cause a report on the matter to be provided to both houses of parliament.

This is a similar provision, except it relates to crown land. However, it does have some extra provisions, which, ultimately, would lead to a report by the minister to parliament should the government fail to comply with its obligation

to ensure that crown land is properly managed so as to protect property on land from fire and prevent and inhibit the outbreak of fire on land or the spread of fire through the land.

The Hon. IAN GILFILLAN: I indicate Democrat support for this amendment.

The Hon. CARMEL ZOLLO: I indicate at this stage that the government will not be supporting this amendment. We really have not had the opportunity to consider it. It involves other agencies and other ministries besides my own and we would like to have further consultation.

The Hon. CAROLINE SCHAEFER: I must say that I am very disappointed in the minister's attitude to this, given that, prior to the Hon. Angus Redford's becoming the shadow minister, I placed these amendments on file several weeks ago. I would have thought that the minister had ample time to consult with whomever was necessary. This amendment seeks to put no more onus—in fact less onus—on the Crown than there is on a private land-holder or local government. Obviously the bill does not have any recourse to the Crown. What it requires is that the Crown (in the person of the minister) be accountable to the parliament if it is not complying with the normal fire prevention expectations of the community. As I say, they are the very same expectations that are placed on the general public, private land-holders and the Local Government Association. I express my disappointment that the minister has not consulted the relevant agencies and thinks that the Crown should have less responsibility than the rest of society.

Amendment carried; clause as amended passed.

Clauses 86 to 99 passed.

New clause 99A.

The Hon. A.J. REDFORD: I move:

Page 63, after line 29—Insert:

99A—Fire control measures by owners of land in certain circumstances.

(1) Subject to this section, an owner of land may, if he or she believes on reasonable grounds that it is necessary or appropriate to do so in order to fight a fire that is on, or immediately threatening, the land—
  (a) light another fire (despite any other provision of this Act);
  (b) clear any vegetation (despite any provisions of another Act).

(2) A person may only act under subsection (1)—
  (a) if he or she is acting with the concurrence of an officer of SACFS; or
  (b) if no officer of SACFS is present or in the immediate vicinity and he or she is acting with the concurrence of a member of SACFS; or
  (c) if no member of SACFS is present or in the immediate vicinity.

(3) No liability will attach to a member of SACFS, or to the Crown—
  (a) with respect to a decision to concur, or not to concur, with the taking of any action under this section; or
  (b) with respect to the taking of any action by an owner of land under this section.

I know that some members would have a clear recollections of what happened on Ash Wednesday so many years ago, when so many of our land-holders were confronted with a serious attack on their life and property. On such occasions, people have to take drastic action. This provision enables an owner of land, if he or she believes on reasonable grounds that it is necessary to do so in order to fight the fire that is on or immediately threatening the land, to light another fire (which is a firebreak), or to clear any vegetation. Mr Chairman, if you have been involved in a fire, you would understand that when you are under threat, and you have large equipment, you need to move quickly. You do not have time to go through bureaucratic chains of command or think through these things carefully. You need people who have confidence that they can act to protect their life and property. This new clause will assist those people to act in their defence in those tragic circumstances.

The Hon. IAN GILFILLAN: The Democrats will not support this amendment. We do not believe that it is appropriate that dealing with these matters in such detail should be part of the enshrined act. They should be matters dealt with either by regulation or by CFS procedure manuals, or whatever body has responsibility for this. There are other problems with this amendment. I believe that it has not been properly thought through. The indication is that no liability will be attached to a member of the SACFS or to the Crown with respect to a decision to concur, or not to concur, with the taking of any action under this section, or with respect to the taking of any action by an owner of land under this section. It does not deal with the complication of two landowners, one of whom may be a member of the CFS and who, therefore, can take any action and be absolved of legal liability, and one who is not for various reasons, such as age, and is not accepted as an endorsed member of the CFS.

The Democrats oppose this amendment because, first, we believe that it is getting into very important minutiae, but the context of fighting fires has become much more sophisticated and structured than it was in the dramatic fires decades ago. The scenario in which fires are fought has changed. Secondly, if the amendment is passed in its current form, it will encourage a land-holder to make a decision on the spur of the moment that may not have properly thought through. I believe that the amendment should be opposed. It is dangerous, it has not been properly thought through, and it is inappropriate that it be dealt with in the legislation.

The Hon. CARMEL ZOLLO: Whilst I appreciate that, if applied conscientiously and in genuine cases of potential loss from a fire threat, these measures would be advantageous, the potential for the misuse of power is high. Major vegetation is not protected under the amendment. In the absence of the CFS, or other firefighting services, the potential for a fire to escape and to threaten or destroy private or Crown land is high. The government believes that it is a very dangerous amendment, and I indicate that we will divide.

The Hon. CAROLINE SCHAEFER: I do not wish to prolong this debate indefinitely, but I feel personally very passionate about this amendment. Given some of the replies, I want to place my view on the record. In reply to the Hon. Ian Gilfillan, the minutiae and the method of fighting fires in an emergency has, sadly, not changed as much as we would like. When I had briefings on this bill, I spoke with people, and they said that I should not refer to the recent Eyre Peninsula bushfires, because they were an exception. However, I will introduce you, sir, and the minister to at least five farmers in that vicinity who believe that, had they had the confidence and the permission (given that much of the communication was out at the time or unobtainable, for want of a better word) to burn back a couple of stubble paddocks, a number of people may now be alive who are not. Had they been able to clear some native vegetation, the same applies. As everyone in this place knows, my background is having lived some 45 kilometres from the nearest town and some 13 kilometres from the nearest CFS unit, like most of the volunteers who manned the CFS unit.

In rural South Australia, there are many times when decisions have to be made and, under the current uncertainty,

land-holders are not sure whether or not they have rights. This amendment is an attempt to bring some commonsense into firefighting. It allows for the relevant authority, if it is there, to take precedence. This amendment is about allowing landowners to apply some commonsense in a time of emergency. Sadly, I think that in many cases commonsense is absent, particularly in times of emergency. I ask the Hon. Ian Gilfillan and, indeed, everyone else to consider their vote on this amendment. It is quite important to reassure people who are at the coalface at the beginning of an emergency that they have the commonsense to be able to save not only their own property but, in many cases, the lives of innocent volunteer firefighters.

The Hon. IAN GILFILLAN: I am sorry to get to my feet again at this stage, but I was expecting the government to contribute to the debate on this amendment. The Hon. Caroline Schaefer has given some of her details. I indicate that I spent a lot of my farming life 25 kilometres away from both a town and a CFS centre and that I am probably more responsible for having lit fires and calling upon the CFS than certainly most people in this building. I also know how a spur of the moment decision in the balance and in retrospect can be shown to have not been the right decision. If this amendment is going to encourage those of us who, on the spur of the moment, feel that it is essential to light up a certain area without having reference to the CFS or having the approval of a CFS authority, I do not believe the goal of saving lives and property—which the Hon. Caroline Schaefer says is the intention of this amendment—will necessarily be achieved. In fact, it may well be the reverse.

The Hon. A.L. EVANS: I appreciate everything the Hon. Caroline Schaefer has said, but I am concerned about some of the clauses that are not clear about liability and so on. Because they are not clear to me, I will not support the amendment.

The Hon. A.J. REDFORD: I will attempt to help the Hon. Andrew Evans in relation to this clause, because it is important. The main work in this clause is contained in subclause (1). It requires a number of things before a person can go off and act precipitously. First, the person must be an owner of land—it cannot be just anyone; it has to be an owner. Secondly, that person has to have a belief, on reasonable grounds—not a stupid belief; not something fanciful—that it is necessary or appropriate to light a fire. Another fire must already be in existence—they would not be starting a fire all by themselves. Thirdly, it must be immediately threatening the land of that particular owner. So, it is a very defined set of circumstances, where the owner is in a position where they can make a decision pursuant to this fire. The owner must have reasonable grounds that it is necessary to fight a fire that is threatening that land, and he can then light another fire, or he can clear vegetation. That is a fairly narrow set of circumstances.

The Hon. Caroline Schaefer interjecting:

The Hon. A.J. REDFORD: The Hon. Caroline Schaefer interjects and says, 'Probably too narrow.' That is a fairly narrow set of circumstances, and one must consider what they would do if they were in that position. I suspect that most landowners would probably act in that fashion, irrespective of this piece of legislation. However, if they have it in the back of their head that they might be sued, or they might get into trouble or they might be prosecuted, they might hesitate and, on many occasions in emergency situations, he who hesitates is lost. It is hard enough in those emergency situations to find oneself with a clear enough mind to make decisions on reasonable grounds.

All we are trying to do here is to provide that narrow group in that narrow set of circumstances with some degree of comfort in acting to protect their own property and the lives of their families and not have these people worrying about whether or not they will be prosecuted, or whether or not their insurance will be voided, because this could potentially affect their insurance, or worried about whether or not they might be sued. I have been in a fire situation in the country, and I am sure the Hon. Bob Sneath has as well, where it is dark and smoky and you are scared and worried about your family, and really what you need to do is make some decisions.

The Hon. G.E. Gago interjecting:

The Hon. A.J. REDFORD: The Hon. Gail Gago interjects. I know she has extensive and considerable knowledge about the fighting of fires.

The Hon. G.E. Gago: I have. How would you know?

The Hon. A.J. REDFORD: She interjects that she has, and I am looking forward to her first book on the subject. In any event, I can only urge honourable members to put themselves in the position of a landowner whose property and all he has worked for all his life is under threat from another fire. All I am saying is: give those landowners and families the chance to survive and let us not pussyfoot around on whether it ought to be the subject of a regulation. Now is the time to stand shoulder to shoulder with those people, look after them and protect them so they can protect their families and their property.

The Hon. R.K. SNEATH: I was not going to make a contribution but it is important that I do, as I have been to a number of fires. I am glad the Hon. Angus Redford mentions standing shoulder to shoulder, because that is what most farmers do when there is a fire that threatens their neighbour or the person 20 miles down the road. If it threatens their place, they make sure their family is safe and their stock is out of danger.

The Hon. A.J. Redford: Sometimes they are not home.

The Hon. R.K. SNEATH: That is right, so they cannot start the fires you are talking about if they are not home. I am sure many of you who have gone to fires would agree that when you get there one of the biggest problems with fires is that, if there is nobody from the CFS or the fire brigade to take charge, you have about 35 chiefs and about five indians. Everyone thinks they know how to fight the fire, everybody is barking instructions and many of them are different and there is a lot of panic. It would be interesting to see the figures of some of the fires in South Australia in the past 100 years that started because farmers or land-holders did not know what they were doing.

The Hon. A.J. Redford interjecting:

The Hon. R.K. SNEATH: They thought they would burn the stump of a tree or some stubble and all of a sudden they have burnt out their neighbours. There are enough chiefs if you let the CFS do it. The farmers have a responsibility and they have always proved that they defend their neighbour's country and look after their families in that sense. If you give them permission to go off and start fires, back burn and go on, they will be doing all sorts of strange things because nobody will be in charge of that. When the fire gets out of control that they have started to protect their own farm, they will call for resources and suddenly they will want everybody to drop everything else and rush from the major fire to save their place. You will have firefighters spread out everywhere

and no large body of firefighters protecting the major front. It is very dangerous and should not be included in the bill.

The Hon. A.J. REDFORD: I was a bit slow because I was waiting for the Hon. Gail Gago to regale us with her considerable experience in this area. To respond to the Hon. Bob Sneath, the person in charge in these circumstances, according to this provision, is the owner. No-one else is given any responsibility and anybody else who behaves as a chief when they should be an indian will not get the protection of this provision. This provision appoints the chief. The chief is the owner.

The Hon. R.K. Sneath: What happens if there are several owners on the same property?

The Hon. A.J. REDFORD: Well, they are all protected. The honourable member alluded to the starting of a fire. There has to be a fire that is on the property or immediately threatening it. We are not talking of unilateral burn offs but, as the clause provides, '. . . in order to fight a fire that is on or immediately threatening the land'. We are not talking about a fire burn off some distance away from the main fire. We are not talking about—

The Hon. Ian Gilfillan: It depends how fast the fire is going.

The Hon. A.J. REDFORD: That is right. However, to get the protection of this provision, it must be immediately threatening the land. It is quite clear. It is a narrow set of circumstances. I do not know that I can explain it any more than that. I acknowledge the Hon. Bob Sneath's contribution, but it would be helpful if there was a close reading of the words contained within this section.

The Hon. A.L. EVANS: The liability aspect excludes certain people. It is of concern to me and I therefore oppose the amendment.

The Hon. CARMEL ZOLLO: As I placed on record before, I understand the sentiments behind this amendment, but the government feels that allowing land-holders absolute freedom to light fires under any weather conditions could put the greater community at too great a risk and, therefore, we cannot in good conscience support this amendment.

The Hon. J.M.A. LENSINK: I had not intended to speak on this clause, but I was quite astounded at some of the comments of the Hon. Bob Sneath. In my view, people who are land-holders have a great deal of experience, often over many decades, in husbandry of the land and the best ways of managing it. I place on the record my outrage at some of the comments of the Hon. Bob Sneath in opposing this amendment because, when you peel away what the Labor Party really stands for, it likes to engage in farmer bashing. He articulated what it really thinks quite well.

The Hon. P. HOLLOWAY: That grossly offensive contribution needs to be rebutted. It is so offensive that it scarcely needs answer. I want to put a perspective on this issue.

The Hon. A.J. Redford: Have you read the clause?

The Hon. P. HOLLOWAY: Yes, I have. This amendment seeks to allow farmers without fear of liability, if a fire is coming on to their property, to burn off. Where I think the CFS will have greater knowledge than the local farmer, regardless of how many years they might have been there, will be about metrological conditions.

Members interjecting:

The Hon. P. HOLLOWAY: You might have a fire front coming towards your property and it might apparently make sense to burn off, but what if the CFS knows that there is a wind change due at any moment? It will have that information and, in fact, all you are doing by lighting a fire is possibly extending the fire front, so the place might ultimately not actually be threatened because of the wind shift but you could end up greatly extending the fire front. That is why it is absolutely important that those decisions are made by those who have the information available to them, as well as the firefighting experience.

Why that comment is so offensive is that, in most cases, the farmers will be members of the CFS. Some of them are and some of them are not, but a lot of them will be. A lot of the senior officers will be farmers who do have that experience in fires, and they will have that information available to them. We are not talking here about 'them versus us'. It is a question about expertise and liability and who is in the best position at the time to make the decision, and that is why I share the views of my colleague the Minister for Emergency Services.

The Hon. R.K. SNEATH: I just have to answer that dropkick version that came from the other side, out of the mouth of the Hon. Ms Lensink, because I for one would not like my son-in-law lighting a fire on his property, which extends from about Port Augusta to Whyalla, without making sure that my grandchildren were evacuated and safe, and my daughter was evacuated and safe. I would rather his not bothering to light fires, because I have seen his efforts with fires, and I have seen a lot of other farmers' efforts with fires and, as far as not having any respect for farmers, I have a lot of respect for farmers. So next time I say: you should do a little bit of research and engage thy brain before you put thy mouth into gear.

The Hon. A.J. REDFORD: I have to say that, having listened to the Leader of the Government, who made some claim that he had actually read this particular clause, and then proceeded to misrepresent it, it left me somewhat bemused. Indeed, he then went on and provided us with a description, at which I saw his colleagues all nodding vigorously and guffawing away, which reminded me of an episode of *Dad's Army* or the Keystone Cops. Can I just correct the Leader of the Government, if he has not already read the clause, that this only enables a person to act in the absence of an officer from the CFS. If an officer of the CFS is there—and I see the Hon. Paul Holloway is now reading it and he is now getting it—then the officer of the CFS is in charge. When you read *Hansard* tomorrow, do it privately, because you will be embarrassed.

The Hon. P. HOLLOWAY: No, I will not be embarrassed. You are the one who should be embarrassed.

The Hon. A.J. REDFORD: Send your staff out of your office and read it to yourself because you will be embarrassed because you made an idiot of yourself. So, in order to correct the Leader of the Government, albeit current Leader of the Government in this place, can I say that the CFS is in charge if it happens to be present.

The Hon. P. HOLLOWAY: Yes; what if they are not present though?

The Hon. A.J. REDFORD: That is exactly right. What if they are not present? He is smiling. The light is on. Suddenly lit up. It is like he has put his finger in the socket because, having lit up, he now understands; what do you do if there is no-one from the CFS there? What we say is the owner ought to be permitted to burn off. The Hon. Paul Holloway says that what the owner has to do is stand back and watch his house and his land and all that he has worked hard for, and his fences and his stock, burn. I can read the numbers. We will divide on this and I am sure that the Hon.

Caroline Schaefer will get a press release up, and we will have her out there on a monthly basis telling owners that this government is saying 'You're not allowed to protect your property.' That is what this government is saying. You have to wait.

Members interjecting:

The Hon. A.J. REDFORD: What are you supposed to do? Ring up the CFS, and then the honourable member might understand that the phones actually drop out during fires. Sometimes your radio networks do not even work. Sometimes owners of land have to make a decision, and what this government wants to do is say 'No, if there is a fire that is on or immediately threatening the land you're not allowed to do anything about it. You're not allowed to do anything about it.'

The Hon. P. Holloway interjecting:

The Hon. A.J. REDFORD: I am sorry. We do not agree with that. We will divide on this and we will attack this government incessantly over its lack of understanding and its lack of practicality when it comes to fighting fires. I would urge the Leader of the Government to actually carefully read the section because it is so narrow, but what it does is it gives owners the opportunity to defend their property, and I know the Hon. Paul Holloway might think, 'Well, they're rich,' because he said that when talking about land tax earlier this year, 'and it does not matter all that much.' We on this side want to empower people to protect and preserve their own property and their own land and their own families when there is a fire on or immediately threatening the land. That is basic commonsense, something which seems to be sadly lacking in members opposite.

The Hon. P. HOLLOWAY: It appears that the Liberal Party is only able to argue these things through personal abuse rather than the logic of the matter. I know what the amendment was and, in spite of the attempts of the Hon. Angus Redford to distort what I said, he will not get away with it. Of course, land-holders can defend their properties. In fact, I think they are even required to take precautions. Land-holders are supposed to take precautions around their property. Lighting fires is a decision that requires expertise. Burn backs are—

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: Look, there are plenty of examples, as I am sure the experts in the CFS would know. I have not had a lot of experience in fighting fires—I have had some—but I have been a member of the CFS for some time and I do live in the Hills. Burning back has not always been a great success. There are cases where burn backs have not worked. In the circumstances of a dangerous fire, officers have to take those decisions. It is better that it is done by someone with as much expertise and experience as possible. There is always the risk that, if you do those burn backs, they may extend the front, particularly if there is a change in wind conditions.

There is some imprecision in relation to this matter. The amendment states:

> . . . if he or she believes on reasonable grounds that it is necessary or appropriate to do so in order to fight a fire that is on, or immediately threatening, the land—

It could be huge. What if there are 10 000 hectares or something, a huge property, and it is over in one corner? At what point under this provision could you take that action? The important thing is that those decisions should be taken by those in possession of as many facts as are available at the time. That is how the risk will be minimised.

The Hon. J.F. Stefani: What if they don't arrive on time?

The Hon. P. HOLLOWAY: They may not arrive on time, but does that mean you should put other people at risk? That is the core of it. It provides:

> No liability will attach to a member of SACFS, or to the Crown. . . with respect to a decision to concur, or not to concur, with the taking of any action under this section or with respect to the taking of any action by an owner of land under this section;

If someone makes a bad error of judgment and if this clause were passed, it would cover them. That is the worrying thing. We know that officers in our emergency services have to take those decisions and they rightfully should be protected.

The Hon. A.J. Redford: What about the owner? He has the most to lose.

The Hon. P. HOLLOWAY: The Hon. Angus Redford seems incapable of understanding. We are worried about extending the threat. If that person makes a bad error of judgment and, as result, extends the front, burns down other properties as a consequence of his action, and if it turns out the risk was not there because there was a sudden wind shift, or something, all this damage could be done and he would be immune from it.

The Hon. Caroline Schaefer: You don't think farmers have a look at the weather forecast?

The Hon. P. HOLLOWAY: Some of them don't. The thing is that some of them may not. Some of them will but some of them will not. This amendment has been grossly misrepresented by the Hon. Angus Redford, but he will not get away with it. No-one is saying that people should not protect their property. Indeed, by law they are required to take reasonable steps to protect their property. What we should not allow is a situation where other people could be put at risk by bad errors of judgment. That is what this amendment could allow.

The Hon. CAROLINE SCHAEFER: This amendment was an attempt, as I said, to bring some commonsense into fighting fires in isolated areas. I do not have personal knowledge of the South-East fires, which killed so many people and wiped out so many properties, but I understand that too there, too, people would like to have been able to take some decisions. However, I do have experience of the fire that wiped out most of Hambidge Reserve a few years ago, killing multiple native species and a vast area of native vegetation. On that occasion, there were landowners who begged to be able to bring in heavy equipment and clear a decent-sized break. It took hours and we lost a valuable piece of our ecology before they got permission to do so. Similarly, a fire in the native vegetation between Kimba and Cowell a few years ago threatened life before landowners were allowed to use heavy equipment to clear native vegetation to protect their property. Similarly, the decisions which were taken at Tulka took way, way longer than they should have. Similarly, farmers at Wangarry pleaded to be able to burn a stubble paddock.

The government seems to think that the only people who have any knowledge about fighting fires or burning back are authorised CFS officers. This amendment allows for the authorised CFS officer to take charge when and if they are there, or a member of the CFS when and if they are there, or if they can be contacted. We are asking for people on their own properties to be allowed to take action in an extreme event and to apply commonsense. All I can say is that we keep talking about not letting the same mistakes happen again. I have just listed five different occasions when, if commonsense and local knowledge could have been applied,

the end result might have been very different from what it is today. All we are asking is for commonsense to be able to be applied by landowners in extreme circumstances. If the government persists in opposing that, be it on its head.

The Hon. R.K. SNEATH: I am all for commonsense, too, and I have heard ministers say on numerous occasions before every summer, 'Clean-up.' They tell people in the Adelaide Hills, in other parts of the country and in the city to clean-up. There are a number of things farmers can do and some of them do it very well, and some of them are right on when it comes to protecting their property by ploughing firebreaks and, in the off season, some of them burn between those firebreaks. Some even plough wide enough to burn between them. They have plenty of water. They have dams handy. They have irrigation and lucerne around the house. They have their chemicals stored properly, their sheds are well away from the house and, if they do not have them irrigated, their house paddocks are pretty clean. Drive around the country just before the summer starts and see how many farmers have done that, yet we intend to tell them that, when a fire starts to threaten their place, they can start lighting fires. They must be responsible enough to clean up, plough their firebreaks and grow a bit of lucerne around the house to protect their family.

This government stands for saving lives. You can replace property and the ground will recover—the grass will grow again. It is all about saving lives. Their number one priority should be to get their family and stock safe and to help fight the fire, and they all do that pretty well. We cannot have them starting fires. If there are six neighbours to the property on fire, we could have seven fires—not one. How ridiculous!

The Hon. CARMEL ZOLLO: I thank my colleagues on this side of the committee for their contribution. Governments must be about looking at the greater risk in any community. In good conscience, as a government, we cannot support this amendment.

The committee divided on the new clause:

AYES (9)

Dawkins, J. S. L.	Lawson, R. D.
Lensink, J. M. A.	Lucas, R. I.
Redford, A. J. (teller)	Ridgway, D. W.
Schaefer, C. V.	Stefani, J. F.
Xenophon, N.	

NOES (8)

Evans, A. L.	Gago, G. E.
Gazzola, J.	Holloway, P.
Kanck, S. M.	Reynolds, K.
Sneath, R. K.	Zollo, C. (teller)

PAIR(S)

Cameron, T. G.	cont.) Gilfillan, I.
Stephens, T. J.	Roberts, T. G.

Majority of 1 for the ayes.

New clause thus inserted.

Remaining clauses (100 to 149) and schedules 1 to 5 passed.

Schedule 6.

The Hon. CARMEL ZOLLO: I move:

Page 94, after line 37—
Insert new clause as follows:

17A—Presiding member of Commission

(1) Despite section 11(1)(a) of this act, the person first appointed to be the presiding member of the board of the South Australian Fire and Emergency Services Commission need not hold the position of Chief Executive of the Commission.

(2) The following provisions will apply if a person is appointed pursuant to subclause (1):
(a) the person will be appointed on conditions determined by the Governor and for a term specified in the instrument of appointment;
(b) the person will be taken to be an ex officio member of the board for the purposes of the other provisions of this act.

This amendment relates to the presiding member of the board of the Fire and Emergency Services Commission. The purpose of this amendment is to allow the first person appointed to be the presiding member of the board of the South Australian Fire and Emergency Services Commission (SAFECOM) not to be required also to hold the position of chief executive of the commission. This amendment would therefore allow smooth transition into the effective implementation of the SAFECOM board and SAFECOM as a legal entity in its own right.

A chief executive has not yet been appointed by the government for SAFECOM. However, it is anticipated that there will be an extended workload on whoever is appointed to this position with the enactment of this legislation and the creation of SAFECOM as a legal entity. I therefore recommend this amendment for the committee's consideration.

The Hon. A.J. REDFORD: The opposition supports this amendment.

Amendment carried; schedule as amended passed.

Title passed.

Bill reported with amendments; committee's report adopted.

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

That this bill be now read a third time.

This is an historic occasion. I had hoped that it would even be a better historic occasion because, after 20 years of attempts to reform our emergency services, we should have had a piece of legislation which enhanced public safety. The bill (as presented) was about true partnership across a range of functions and collaboration across the entire stakeholders to set strategic goals to improve cost effectiveness of service delivery, to share resources and facilities and to work more closely together. The government sought to establish a management and governance structure which enabled that strategy and management to flourish.

Via its amendments, I believe that the opposition and others in this place have thwarted that intent, and clearly they have not listened to the volunteers and their associations. I am disappointed with the outcome and the amendments that have been moved. It is clearly not the outcome that we and, indeed, all the stakeholders had hoped to celebrate. So many people worked in good faith and with enthusiasm to see the bill arrive in the form presented to parliament, and I place on record my thanks for their commitment and appreciation for their work: Mr Vince Monterola, the interim chair and Chief Executive of the South Australian Fire and Emergency Services Commission; Euan Ferguson, Chief Officer, South Australian Country Fire Service; Mr Grant Lupton, Chief Fire Officer and CEO of the South Australian Metropolitan Fire Service; Mr David Place, the Chief Officer, South Australian State Emergency Services; Mrs Wendy Shirley, the Executive Officer of the South Australian Volunteer Fire Brigade Association; Mr Darren Halliday, Executive Officer of the South Australian State Emergency Services Volunteer Association; Mr Phil Harrison and Bill Jamieson of the

United Firefighters Union and the Public Service Association; the very many other people (too numerous to mention) who worked hard to see the legislation come to fruition; and again, of course, our volunteers, who were asked to give an incredible amount of time in relation to this legislation. Whatever the outcome of this now amended legislation in the other place, I place on record this government's appreciation to all those people.

The Hon. A.J. REDFORD: One might have thought that the minister, who had all her amendments passed, might have shown a bit of grace in that response. It is disappointing. The opposition is very pleased with the hard work put in by all members in this place and, given that every amendment was carried, we commend the bill.

Bill read a third time and passed.

[Sitting suspended from 6 to 7.49 p.m.]

STATUTES AMENDMENT (SENTENCING OF SEX OFFENDERS) BILL

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

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

That this bill be now read a second time.

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

Leave granted.

This Government is tough on convicted paedophiles and pederasts. We make no apology for that. Our policies are clear. Target 2.8 of the State Strategic Plan says:

> "Reduce crime rates to the lowest in Australia within 10 years.
>
> **Priority action:** "Legislate to ensure that the penalty fits the crime, by introducing a new category of heinous crime; and increasing penalties for crimes of violence – especially violence against the young, the elderly and the disabled."

As a Government, we are doing all we can to encourage victims of paedophilia to come forward, tell their stories and receive justice, so that we can lock up the paedophiles. We have established a police Paedophile Task Force; abolished the 1982 statute of limitations so that victims can seek justice against paedophile activity before that date; and we have set up a Commission of Inquiry into sexual abuse of wards of the State. We are also changing parole legislation to end the automatic parole of sex offenders. This Bill is yet another step in our crackdown on pederasts and child abusers. It will establish deterrence as a "primary policy of the criminal law" for the purpose of sentencing child sex offenders; apply higher maximum penalties for sex offences committed against children aged 12 or 13; enable a court to declare a child sex offender to be a "serious repeat offender" after two (rather than three) convictions for sexual offences against a person under 14 years; subject a sex offender to indefinite detention if a court finds he is "unwilling" to control his sexual instincts; and reverse the effect of the recent decision of the Court of Criminal Appeal in *R v Kench* [2005] SASC 85.

Primary Policy of the Criminal Law

Section 10 of the *Criminal Law (Sentencing) Act 1988* is headed "Matters to which a sentencing court should have regard". In addition to matters to be taken into account in determining sentence in every case, section 10 also provides two primary policies of the criminal law:

> (2) A primary policy of the criminal law is to protect the security of the lawful occupants of the home from intruders.
>
> (3) A primary policy of the criminal law in relation to arson or causing a bushfire is—
>
> (a) to bring home to the offender the extreme gravity of the offence; and
>
> (b) to exact reparation from the offender, to the maximum extent possible under the criminal justice system, for harm done to the community.

This Bill will insert an additional subsection, to be added to section 10, inserting another "primary policy of the criminal law" for the sentencing of sexual predators. That primary policy will read:

> A primary policy of the criminal law is to protect children from sexual predators by ensuring that, in any sentence for an offence involving sexual exploitation of a child, paramount consideration is given to the need for deterrence.

Higher Maximums For Children Aged 12 and 13

Some sexual offences attract penalties that are more severe when the victim is below the age of 12. These offences are:

> section 49—unlawful sexual intercourse
>
> section 56—indecent assault;
>
> section 66—sexual servitude;
>
> section 67—deceptive recruiting for commercial sex services;
>
> section 68—using, or asking, or profiting from a child in commercial sex services

The Bill will ensure that the higher penalties will be available to a sentencing court for these offences when the victim is aged under 14, rather than when the victim is aged under 12. This would permit penalties for offences against children aged 12 and 13 to be as high as the penalties for offences against younger children.

Other offences, such as child pornography, attract higher penalties when a victim is aged under 16. For these offences, the law views offences against 14 and 15-year-olds as seriously as offences against younger children. There is no need at present to alter the structure of these penalties.

Serious Repeat Offenders

The *Criminal Law (Sentencing) (Serious Repeat Offenders) Amendment Act 2003* inserted new sections 20A and 20B into the *Criminal Law (Sentencing) Act 1988*. Sections 20A and 20B enable a court to set a longer non-parole period for a crime committed by a person declared to be a "serious repeat offender", expressed as a fixed proportion of the head sentence. A court may declare a person to be a "serious repeat offender" if the person has been convicted of three serious offences (committed on at least three separate occasions). When a person is declared to be a "serious repeat offender", the court is not bound to ensure that the sentence it imposes for the offence is proportional to the offence and any non-parole period fixed for the sentence must be at least four-fifths the length of the sentence. At the time, the Government was concerned to address reform of the law about sentencing for violent crime. It reserved options for sexual crime. The Government has now decided that the scheme should extend to sexual offences. The Bill provides the option to declare an offender a "serious repeat offender" to be available to the court if the offender is convicted of two child sex offences (rather than three). For this purpose, consistently with what has gone before, a child will be defined as a person under the age of 14 years. What is a serious sexual offence for this purpose is listed—but there are no surprises there. The usual candidates of rape, unlawful sexual intercourse, indecent assault and so on are included.

Preventive Detention

Section 23 of the *Criminal Law (Sentencing) Act 1988* permits the Supreme Court to order a convicted sex offender to be detained indefinitely, if two or more medical practitioners independently form the opinion and report to the Court that the person is "incapable of controlling his or her sexual instincts." Section 24 provides for conditional release on licence, after a sentence of indeterminate duration under section 23.

In one form or another, a provision similar to section 23 has been in existence for more than 60 years. During that period, case law appears to suggest that orders of this type have been sought against few persons. For two of those defendants, the orders sought by the Crown ran into difficulty because, at the relevant times, two psychiatrists were unable to say that the defendants were "incapable of controlling" their sexual instincts, although society would be forgiven for opining that the offenders in questions were sufficiently dangerous to warrant detention for the protection of society.

In one case (*R v Kiltie*, 1986) a psychiatrist opined that the defendant had the capacity, but was unwilling, to control his sexual instincts. In another case (*R v England*, 2003) a defendant refused to be interviewed by psychiatrists. In this case, one of the two court-appointed psychiatrists was not able to reach any opinion about the offender's capacities, although this psychiatrist later changed his mind (*R v England (No 2)*, 2004) when questioned in court. Eventu-

ally, the order was made against Mr England and upheld after two appeals. The Bill proposes to deal with these situations explicitly. It is proposed that section 23 be amended so that a term of indefinite detention may be ordered by the court if each of two psychiatrists form an opinion that a convicted offender is either incapable of controlling, or unwilling to control, his sexual instincts, and deals explicitly with the case in which the offender refuses to co-operate with the assessment required by the court.

In addition, the Bill amends the provisions so that an order may be sought on application by the Attorney-General for the indefinite detention of an offender under these provisions at any time while the person remains in prison serving a sentence of imprisonment. Put another way, the application and order need not be made at sentence but may be made at any time during the actual incarceration of the offender. Such a provision reflects current law in Queensland upheld as constitutional by the High Court in *Fardon v Attorney-General for the State of Queensland* [2004] HCA 46 (2004) 78 ALJR 1519.

The Reversal of Kench

On 15 March 2005, the Court of Criminal Appeal handed down its decision in the case of *R v Kench* [2005] SASC 85. The appellant was found guilty by a jury of five counts of unlawful sexual intercourse and two counts of indecent assault upon a boy. The offences were committed on two occasions. One count of indecent assault and four counts of unlawful sexual intercourse were committed at the appellant's home in a country town between December 1991 and April 1992. The other count of indecent assault and the remaining count of unlawful sexual intercourse were committed at a different town, where the victim lived, in 1993. The victim was 13 years old at the time of the first group of offences, and about 15 years old at the time of the second group. The appellant was about 35 years of age on the first occasion, and about 38 years of age when sentenced. The appellant was an adult scout leader. The victim was a boy scout. The sentencing Judge said that, in arriving at an appropriate sentence, he was guided by the decision of the Court of Criminal Appeal in *R v D* (1997) 69 SASR 413. Exercising the power conferred by s18A of the *Criminal Law (Sentencing) Act 1988*, he sentenced the appellant to imprisonment for 10 years, and fixed a non parole period of six years. On appeal, the Court of Criminal Appeal held that an error had been made. The sentencing judge could not rely on the sentencing standard in *R v D* because, it was said, the general rise in penalties to be imposed authorised by that decision was not retrospective. Therefore, the sentence to be imposed on Kench was reduced to a head sentence of eight years with a non-parole period of five years.

The Government is of the opinion that this decision should not be allowed to stand. This Bill therefore contains a proposal to reverse the effect of *Kench*. The proposal, in general terms, is that the sentencing standard set in the decision in *R v D* (1997) 69 SASR 413 should be potentially applicable whether the offences in question were committed before or after that decision was handed down. The key word is "potentially" there—for it is not intended that the sentencing standard set in the decision in *R v D* should be applied in cases in which it is, on its own terms, inapplicable. Put another way, this proposal presumes that in any given case to which this standard applies, there will be an accumulation of offences proved and standing for sentence which will render the principles set out in *R v D* applicable.

For that to be understood, it is necessary to set out in more detail what *R v D* is about. In *R v D*, Doyle CJ reviewed past sentencing standards for sexual offenders committed against a child and decided that the "tariff"—or, as the court prefers to call it, sentencing standard—should be raised. He said:

> This review of the decisions of this court leads me to think that in future the sentences imposed for cases like this should be increased for persons who commit such offences in the future. By this I mean cases involving a course of conduct including unlawful sexual intercourse with a child, and committed by a person in a position of trust and authority. … In my opinion offences involving unlawful sexual intercourse with children under twelve years of age, when there are multiple offences committed over a period of time, should attract as a starting point a head sentence of about 12 years' imprisonment. In saying that I refer to a sentence imposed under s74(7) of the Act and to a single sentence imposed under s18A of the *Criminal Law (Sentencing) Act*. That starting point would be subject to reduction on account of a plea of guilty, co-operation with the police, genuine contrition and so on. It is impossible to be precise in these matters, and I do not wish to be taken as suggesting a precise figure. In an appropriate case the starting point might be higher or lower. When the child in question is over 12 years of age, in my opinion the starting point in such cases should be a head sentence of about 10 years' imprisonment.

This is commendable and to be applauded. But in *Kench*, the Court decided that this standard should not be applied to suitable offences committed before *R v D* was decided. The Government does not agree. Therefore it wants this standard to apply to suitable offences committed before *R v D* was decided. The Bill plainly proposes this course of action.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Criminal Law (Sentencing) Act 1988*

4—Amendment of section 10—Matters to which a sentencing court should have regard

Section 10 provides for the matters to which a court should have regard in determining a sentence for an offence. The proposed amendment will provide that a court, in determining sentence for a sexual offence committed against a child, needs to give effect to the policy of the criminal law to protect children from sexual predators. Thus, in any sentence for an offence involving sexual exploitation of a child, paramount consideration is to be given to the need for deterrence.

5—Amendment of section 20A—Interpretation

Section 20A contains definitions of terms used in Division 2A (Serious repeat offenders). It is proposed to insert a definition of serious sexual offence for the purposes of being able to make a declaration under section 20B about a serious (sexual) repeat offender.

6—Amendment of section 20B—Declaration that person is serious repeat offender

The proposed amendment to section 20B will expand the current situation in relation to who may be declared to be a serious repeat offender. Currently, a person who has on at least 3 separate occasions committed an offence to which section 20B applies and been convicted of those offences may be declared a serious repeat offender. The amendment will mean that such a declaration may also be made in respect of a person who has, on at least 2 separate occasions, committed a serious sexual offence against a child under the age of 14 years and been convicted of those offences.

7—Amendment of section 23—Offenders incapable of controlling, or unwilling to control, sexual instincts

Currently, a defendant who has been convicted of an offence to which section 23 applies may, at the time of sentencing, be declared by the Supreme Court to be declared to be incapable of controlling his or her sexual instincts. The consequence of such a declaration being made in respect of a defendant is that the defendant will be detained in custody for an indeterminate period (and a declaration may be made instead of or in addition to a sentence of imprisonment). The effect of the proposed amendments to this section will be—

- to expand the class of persons in respect of whom a declaration resulting in imprisonment for an indeterminate period may be made to include not only persons who are incapable of controlling their sexual instincts but also persons who are unwilling to control their sexual instincts; and

A person will, for the purposes of this section, be regarded as unwilling to control his or her sexual instincts if there is a significant risk that the person would fail to exercise such control if opportunity to commit a sexual offence presented.

The expanded class of persons to whom section 23 will apply will include persons who are already serving a sentence for a relevant offence (as defined) The Attorney-General is to be given the standing to apply to the Supreme Court for an order that the person be declared to be incapable of controlling, or unwilling to control, his

or her sexual instincts. The effect of the granting of such an order would be that the person would remain in prison for an indeterminate period after serving his or her sentence.

8—Insertion of new Division

New Division 5 (Offences involving paedophilia) is proposed to be inserted after section 29C. This Division will comprise section 29D (Sentencing standards for offences involving paedophilia). The new section begins with a declaration by Parliament that, in the decision of *R v D* (1997) 69 SASR 413, the Supreme Court enunciated a change in sentencing standards in relation to offences involving paedophilia that reflected an emerging recognition by the judiciary and community generally, of the inherent seriousness of such offences, and that the reformed standards should be applied to the sentencing of such offences, whether they were committed before or after the enunciation of the reformed standards. Thus, following the passage of this measure, a court must apply the reformed standards when imposing a sentence for an offence involving paedophilia, regardless of when the offence was committed.

The term ***offences involving paedophilia*** is defined to mean all offences to which the 1997 amendment of sentencing standards is applicable, whether individual sentences for the offences have been, or are to be, imposed or a global sentence covering a series of offences (see section 18A of the Act) or a course of conduct involving a number of criminal acts (see section 74 of the *Criminal Law Consolidation Act 1935*).

9—Transitional provision

An amendment made by this measure to the *Criminal Law (Sentencing) Act 1988* applies whether the relevant offence occurred before or after the commencement of the amendment.

Part 3—Amendment of *Criminal Law Consolidation Act 1935*

10—Amendment of section 5AA—Aggravated offences

Section 5AA sets out the circumstances that cause an offence to be upgraded to an aggravated offence (hence attracting a higher penalty). One of the currently listed aggravating circumstances is where the offender commits an offence knowing that, at the time of the offence, the victim is a child under the age of 12 years. In keeping with later amendments, it is proposed that, for offences against Part 3 Division 11A (Child pornography and related offences) of the *Criminal Law Consolidation Act 1935*, the age of a victim should be raised to 14 years.

11—Amendment of section 49—Unlawful sexual intercourse

12—Amendment of section 56—Indecent assault

The amendments proposed to sections 49 and 56 raise the age of a child victim, for the purposes of offences committed against either of these sections, from 12 years to 14 years.

13—Amendment of section 63—Production or dissemination of child pornography

It is proposed to substitute a penalty provision that is split for aggravated and basic offences. The penalty for a basic offence against this provision will be imprisonment for 10 years and, for an aggravated offence (ie, where the victim is a child under the age of 14 years), imprisonment for 12 years.

14—Amendment of section 63A—Possession of child pornography

The proposed substituted penalty provision is split into first and subsequent offences and basic and aggravated offences as follows:

(a) for a first offence—

(i) if it is a basic offence—imprisonment for 5 years;

(ii) if it is an aggravated offence—imprisonment for 7 years;

(b) for a subsequent offence—

(i) if it is a basic offence—imprisonment for 7 years;

(ii) if it is an aggravated offence—imprisonment for 10 years.

15—Amendment of section 63B—Procuring child to commit indecent act etc

The substitute penalty for offences against subsection (1) and (2) will be split between basic and aggravated offences. For a basic offence, the proposed penalty is imprisonment for 10 years and for an aggravated offence, the proposed penalty is imprisonment for 12 years.

16—Amendment of section 66—Sexual servitude and related offences

17—Amendment of section 68—Use of children in commercial sexual services

The amendments proposed to sections 66 and 68 raise the age of a child, for the purposes of offence committed against either of these sections, from 12 years to 14 years.

18—Amendment of section 74—Persistent sexual abuse of child

This amendment is consequential on amendments effected by 52/2004, section 4.

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

STATUTES AMENDMENT (LIQUOR, GAMBLING AND SECURITY INDUSTRY) BILL

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

STATUTES AMENDMENT (LOCAL GOVERNMENT ELECTIONS) BILL

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

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 second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

The aim of the this Bill is to improve the effectiveness of the system of Local Government representation, following review of the provisions introduced in 1998 for the City of Adelaide, and in 1999 for Local Government generally.

During 2004, the Local Government Association [LGA], at the request of the Government, led a review of Local Government election and representation provisions, and provided us with the collective Local Government view on desirable legislative reforms, based on submissions from councils. The LGA also provided an independent report on the outcomes of the community consultation conducted as part of the review, and took this into account.

The review was in keeping with a commitment that the framework for Local Government elections would be reviewed after two election cycles, and it drew on the Electoral Commissioner's report on the 2003 Local Government elections. A practical impetus for the review was the need to deal with the close proximity of State and Local Government elections every 12 years, following the introduction of set 4 year term elections for the South Australian Parliament. Unless legislation is revised, in 2006 the processes for State elections in March and Local Government elections in May will overlap.

The Government considered the outcomes of the LGA-led review and conducted consultation on a draft Bill earlier this year. The draft Bill was widely distributed and 62 submissions were received, including 30 from councils and 15 from various resident and ratepayer groups. These groups, societies with an interest in electoral reform, and interested individuals took provided thoughtful and valuable feedback on the proposals.

The main change proposed in the Bill is to increase the term of office for council members from 3 years to 4 years from the 2006 Local Government elections, in conjunction with altering the date for periodic Local Government elections from the first business day after the second Saturday of May to the last business day before the second Saturday of November. Four year terms for Local Government have been adopted by most other States and have the potential to increase the capacity of South Australian councils and their strategic focus. The proposed shift to a Spring election date will give

newly-elected members more opportunity to be involved in council budget and rating decisions for the following financial year, and will also solve the clash between State and Local elections that would otherwise occur in 2006. The current term of office for existing council members is to be extended from May to November 2006.

The main concern expressed about a 4 year term is that potential candidates will be discouraged from nominating, particularly younger people and those with work and/or family commitments. It is a reasonable concern, but the fact is this problem already exists and retaining 3 year terms will not solve it. The aging profile of council members is well-documented, most recently in Prof Dean Jaensch's November 2004 survey of elected members for the LGA. The LGA is aware that new and sustained initiatives are required to attract and retain younger council members. A revised scheme for council members' allowances and other benefits, and more council support for member training and development, may be part of the solution and the Bill contains proposals that provide a framework for them.

As a consequence of 4 year terms, the requirement for councils to conduct reviews of their representative structure every 6 years will change to every 8 years. The process of examination and consultation at the outset of a council representation review will be improved under the proposed requirement for a representation options paper to be prepared by a person qualified to address the issues involved. The options a council and its community will need to consider include (if the council has more than 12 members) whether the number of council members should be reduced, and (if the council is divided into wards) whether the division of the area into wards should be abolished.

This Bill does not include the amendment contained in the consultation draft Bill that would have prevented a council from using any title other than "chairperson" as the title for a principal member chosen by council members. The Local Government Association confirmed its support for that amendment but councils were divided on the issue, and those councils currently using or considering a different title such as "chairman" or even "mayor" were strongly opposed. The current provisions will remain so that councils and communities make decisions about whether their principal member should be elected at large or chosen by council members on the basis of the implications for representation and governance, and not on the basis of the status attached to the title.

The draft Bill reduces the number, and consequently the cost to communities, of supplementary elections needed to fill casual vacancies during the term by—

extending the period before a periodic election within which casual vacancies are not filled from 5 months to just over 10 months – the period commences on 1 January of the periodic election year, which is also the date by which changes to a council's representative structure as a result of review must be Gazetted to be effective for the periodic election

providing that a sitting member who is an unsuccessful candidate in a supplementary election for the office of mayor retains their original office, rather than losing it at the conclusion of the supplementary election, avoiding the need for a further supplementary election

dealing with the death of a successful candidate between the close of voting and the first council meeting in a similar way to the death of a candidate between the close of nominations and the close of voting, by redistributing votes for the deceased candidate to the candidate next in the order of the voter's preference – this only applies in the case of an election that was conducted to fill more than one vacancy.

A range of minor and technical amendments to the Local Government election process recommended by the Electoral Commissioner are included to overcome practical difficulties, formalise current practice, and ensure consistency. These include changes to the timeframes for particular stages in the election process, including the nomination period, the close of voting, and the period for conducting a recount.

It is proposed that the Electoral Commissioner, as Returning Officer, determine the forms needed for elections and their format, rather than prescribing them in regulations. This will allow the forms to be enhanced in response to feedback without the need to vary regulations. Amendments are also included that support the Electoral Commissioner's role in investigating and taking action on breaches of the electoral provisions.

Preparations for Local Government elections commence 12 months in advance. Members of Parliament have shown cooperation in the past in dealing with Local Government Bills quickly where it is necessary to avoid administrative disruption, and we are sure they will do so again so that the Bill can be dealt with by mid-year leaving adequate time for preparation for the 2006 Local Government elections.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

The measure will be brought into operation by proclamation.

3—Amendment provisions

This clause is formal.

Part 2—Amendment of *City of Adelaide Act 1998*

4—Amendment of section 4—Interpretation

The definition of ***relevant day*** is no longer required for the purposes of the Act.

5—Amendment of section 20—Constitution of Council

The main purpose of these amendments is to alter the relevant period that applies with respect to the operation of Chapter 3 of the *Local Government Act 1999* under section 20 of the Act so that it will now conclude at the time of the conclusion of the periodic election to determine the membership of the Council to be held in 2006.

6—Amendment of section 23—Code of conduct

This clause removes material that is now redundant.

7—Amendment of section 24—Allowances

An amendment under this clause will allow the regulations that apply with respect to the operation of section 24 of the Act to *fix* the rates that are to apply under this section. A consequential amendment must be made in relation to subsection (9).

8—Repeal of section 39

This amendment removes a section that is now redundant.

9—Amendment of Schedule 1

These amendments remove material that is now to be wholly dealt with under the *Local Government (Elections) Act 1999*.

Part 3—Amendment of *Local Government Act 1999*

10—Amendment of section 4—Interpretation

Subclause (1) is a consequential amendment.

Subclause (2) makes it clear that the relevant provisions under the Act with respect to acting in a particular position operate subject to any other section of the Act that makes express provision for another person to act in the relevant office (and, in this regard, see especially proposed new section 54(8)).

11—Amendment of section 12—Composition and wards

The period within which a council must complete a comprehensive review under section 12 of the Act is to be altered from 6 years to 8 years. A council will be required to initiate the preparation of a ***representation options paper*** for the purposes of the review. The paper will include an examination of the advantages and disadvantages of the various options that are available to the council with respect to the matters under review. The council will then, by public notice and by notice in a newspaper circulating within its area, inform the public of the preparation of the paper and invite submissions (for a period of at least 6 weeks). The council will then, at the conclusion of the public consultation period, proceed to the preparation of a council report relating to the issues that have been raised, its responses and proposals, and the reasons for not proceeding with any change that has been under consideration.

12—Amendment of section 28—Public initiated submissions

This amendment will allow an alteration to a part of a council's boundary on the basis of an elector-initiated submission even if the council has, within the previous 2 years, been amalgamated, or been otherwise subject to change through a structural reform proposal.

13—Amendment of section 51—Principal member of council

The amendments made by this clause are consequential.

14—Amendment of section 54—Casual vacancies

Subclause (1) relates to casual vacancies. The effect of the amendment will be that the provision of the Act that provides that the office of a member becomes vacant if he or she stands for election to another office will not apply if the member is standing for election to a casual vacancy in the

office of mayor (and is then unsuccessful), or if the member is standing for election to a casual vacancy and the conclusion of the relevant election falls on or after 1 January in an election year, or within 7 months before polling day for a general election (not being a periodic election).

15—Amendment of section 56—General election to be held in special case

This amendment is consistent with other provisions relating to casual vacancies.

16—Amendment of section 63—Code of conduct

New subsection (3a) will provide that the code of conduct to be observed by members of a council must be consistent with any principle or requirement prescribed by the regulations and include any mandatory provision prescribed by the regulations. Such a provision already appears as section 23(4) of the *City of Adelaide Act 1998*.

17—Amendment of section 76—Allowances

An amendment under this clause will allow the regulations that apply with respect to the operation of section 76 of the Act to *fix* the rates that are to apply under this section. A consequential amendment must be made in relation to subsection (10).

18—Insertion of new Part

A council will be required to prepare and adopt a training and development policy for its members. By virtue of the transitional provisions, a council will not be required to have such a policy until 1 July 2006.

19—Amendment of section 226—Moveable signs

This amendment will allow the provisions for State and Commonwealth electoral signs to apply also for signs that relate to a local government election.

20—Amendment of Schedule 2

This is a consequential amendment.

21—Amendment of Schedule 4

A council will be required to include in its annual report information about the training and development activities for members of the council during the relevant financial year.

22—Amendment of Schedule 5

This is a consequential amendment.

Part 4—Amendment of *Local Government (Elections) Act 1999*

23—Amendment of section 4—Preliminary

The amendment to the definition of ***voting material*** will ensure that all forms of voting papers are included within the ambit of the definition. This will then allow the Electoral Commissioner to determine the form of any kind of voting paper under proposed new section 92A.

24—Substitution of section 5

It is proposed that the term for council members will be 4 years. The periodic elections to determine the membership of councils will be held so as to close voting on the last business day before the second Saturday of November in every 4 years, beginning in November 2006. Voting will close at 5p.m. on the relevant day.

25—Amendment of section 6—Supplementary elections

The period before a periodic election in which casual vacancies are not to be filled is to now begin on 1 January of the year of the election, and that period for a general election (not being a periodic election) is to be 7 months.

26—Amendment of section 7—Failure of election in certain cases

The amendment in subclause (1) relates to the situation where a candidate withdraws his or her nomination on the ground of serious illness, or ceases to be qualified for election, after the close of voting but before the conclusion of the relevant election. In such a case, the election will not fail if the returning officer is satisfied that the candidate would not have been elected in any event on the basis of the votes cast.

The amendments in subclauses (2) and (3) relate to situations where a candidate dies while the electoral process is still underway. It is appropriate that the provisions that result in the election failing relate to the period that concludes at the close of voting. (Proposed new section 55A is relevant in a case involving the death of a candidate after the close of voting (and before the first meeting of the council) where the relevant election was fill 2 or more vacancies.)

27—Amendment of section 9—Council may hold polls

This is a consequential amendment.

28—Amendment of section 14—Qualifications for enrolment

An occupier of rateable land recorded in the council's assessment record is not to be enrolled on that basis if that occupation is for the purposes of residence. Rather, it is intended that the occupier should enrol under paragraph (a)(i) or (ii) as a resident.

29—Amendment of section 15—The voters roll

The closing date for a voters roll is to be fixed by the returning officer in accordance with the requirements of proposed new section 25(9).

30—Amendment of section 16—Entitlement to vote

The requirement that the person who may vote for a body corporate or group that has nominated a candidate must be the candidate himself or herself is to be removed. New subsection (4) of section 16 will require that a person voting on behalf of a body corporate or group must be a person of or above the age of majority.

31—Amendment of section 17—Entitlement to stand for election

This amendment will ensure that a person nominated by a body corporate or group as a candidate for election is a person who has attained the age of majority.

32—Substitution of section 18

The time for calling for nominations for an election must not be later than 14 days before the day on which nominations close.

33—Amendment of section 19—Manner in which nominations are made

The forms required for the purposes of an election will now be determined by the Electoral Commissioner under proposed new section 92A. New section 19(7) will require the returning officer to reject a nomination if it appears to the returning officer that the nominated candidate has already been nominated for another vacancy and that earlier nomination has not been withdrawn.

34—Amendment of section 22—Ability to withdraw a nomination

The forms required for the purposes of an election will now be determined by the Electoral Commissioner under proposed new section 92A.

35—Amendment of section 23—Close of nominations

Nominations for a periodic election will now close at 12 noon on the sixth Tuesday after the closing day fixed under section 15(7)(a).

36—Amendment of section 26—Notices

The period for giving notice of the nominations that have been made is to be extended by 2 days.

37—Amendment of section 29—Ballot papers

This amendment relates to the drawing of lots to determine the order on a ballot paper. This will now occur as soon as is reasonable practicable (rather than "immediately") after the close of nomination in the presence of 2 persons (rather than 2 "electors") as official witnesses. The 2 persons who act as the official witnesses must be of or above the age of majority.

38—Amendment of section 39—Issue of postal voting papers

A person who claims to be entitled to vote at an election although his or her name does not appear on the voters roll will be able to make an application for voting papers by post until 5p.m. on the second day (rather than the fourth day) before polling day or personally until the close of voting (rather than 10a.m.) on polling day.

39—Amendment of section 40—Procedures to be followed for voting

This amendment will clarify that the reference to an electoral officer under section 40(1)(d) is a reference to an electoral officer for the relevant council.

40—Amendment of section 41—Voter may be assisted in certain circumstances

A person who acts as an assistant under section 41 of the Act will need to be a person who has been approved by the returning officer. It will be possible for the returning officer to give an approval in such manner as the returning officer thinks fit, and subject to such conditions as the returning officer thinks fit.

41—Amendment of section 42—Signature to electoral material

It will be necessary for the making of a mark instead of the provision of a signature to be witnessed by a person who provides his or her signature to verify the mark.

42—Amendment of section 43—Issue of fresh postal voting papers

This amendment provides relevant time-periods when a person is seeking to obtain fresh voting papers under section 43.

43—Amendment of section 47—Arranging postal papers

The scrutiny of votes will now begin on the day immediately following polling day (at a time determined by the returning officer) where polling is to close at 5p.m., rather than as soon as practicable after the close of voting. The current arrangements will continue to apply if polling closes at 12 noon.

44—Amendment of section 48—Method of counting and provisional declarations

This is a technical amendment to clarify the operation of section 48(4).

45—Amendment of section 49—Recounts

The period for a recount in an election is to be 72 hours (rather than 48 hours) after the making of the provisional declaration.

46—Amendment of section 51—Collation of certain information

The information that a returning officer incorporates into a return after the election will now need to be in the form of a return within 1 month after the conclusion of the election (rather than 10 days).

47—Amendment of section 53—Recounts

These are consequential amendments.

48—Insertion of section 55A

New section 55A applies to a situation where a successful candidate has died after the close of voting, but before the first meeting of the council, in an election to fill 2 or more vacancies. In such a case, the returning officer will determine who would have been the candidate to be elected assuming all votes cast for the person who has died were distributed to the candidate next in order of the voter's preference (and with the numbers indicating subsequent preferences being altered as well). The returning officer will then ascertain whether the person who becomes a successful candidate under this process is still willing to be elected (and is still eligible to be elected). If the person indicates that he or she is so willing (and the person is still eligible to be elected), the returning officer will declare this person to be the successful candidate.

49—Amendment of section 92—Electoral Commissioner may conduct investigations etc

Subclause (1) will make specific provision for the Electoral Commissioner to issue a formal reprimand to a person who, in the opinion of the Electoral Commissioner, has been guilty of a breach of the Act.

Subclause (2) sets out a scheme under which the Electoral Commissioner may seize anything that the Electoral Commissioner reasonably suspects has been used in, or may constitute evidence of, a contravention of the Act.

50—Insertion of section 92A

It is proposed that the Electoral Commissioner be authorised to determine the form of any voting material under the Act, and to make other determinations as to the forms to be used for the purposes of this Act.

51—Repeal of Schedule

The scheme under the Schedule to the Act is no longer to apply.

Schedule 1—Transitional provisions

This Schedule sets out the transitional provisions associated with the enactment of this measure.

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

PHYSIOTHERAPISTS PRACTICE BILL

Adjourned debate on second reading.

(Continued from 4 April. Page 1426.)

The Hon. J.M.A. LENSINK: It gives me great pleasure to speak on the second reading. At the outset, I declare an interest, as I am a registered physiotherapist, even though I no longer practise. This is one of a tranche of bills in response to national competition policy and the fulfilment of agreements. I understand that it has been under review for some time. In following the debate in the other place, and particularly the reports from the government that accompany it, I am beginning to find the parroting of particular phrases a little tedious, as the government keeps stating that it is about more transparent mechanisms and the protection of the public, almost in some way implying that consumers need to have very strong measures to protect them from professionals.

As I stated in my speech in respect of the podiatrists bill, it is hammered into all students from day one that, when they lay their hands on and provide treatment to clients, they need to be very cautious about what they do and that they need to bear that in mind at all times. I want to put that point on the record, because the professional schools at the universities do a very good job of informing all students of their responsibilities. Indeed, I believe that all professions, bar a few recalcitrants, also bear that in mind at all times, and they provide a great service to the people of this state.

I will not go through all the provisions, because they are all pretty much identical. However, I make the point that I do not believe that it is necessarily a good thing that bills relating to professionals are identical in almost every way. Indeed, the government got itself into quite a bit of hot water a couple of years ago when it proposed that all the professions should be rolled into the same act. As I said at that time, as a physiotherapist I would not know what a podiatrist does on a day-to-day basis, and I am sure that the reverse would be true in that a podiatrist would not know what a physiotherapist does on a day-to-day basis. Therefore, they would not be in a position to judge whether or not their practice was appropriate.

I have been in email contact with both the chair of the Physiotherapist Registration Board, Emeritus Professor Ruth Grant, and the President of the Physiotherapy Association, Ms Jo Bills, and I am very grateful for the advice and information they have provided to me in my coming to a landing on different aspects of the bill.

A number of outstanding issues have been referred to in the debate, and in particular by the Hon. Dean Brown, our shadow health spokesperson, which I will run through. First and foremost, the amendment which was lost in the Assembly would have increased the representation on the board to provide physiotherapists with a majority. I filed those amendments this afternoon. I checked whether the government had similar amendments on file, as I had been advised that the government intended to do so, but I could not find them in my folder. It remains to be seen whether the government has identical amendments on file.

In response to my email in relation to this issue, the chair of the board, Professor Ruth Grant, said:

> It has been a cause of real concern to the Board, and if not addressed will mean that this will be the only Physiotherapists Board in Australia not to have a majority of physiotherapists on it. The Board has been informed that it is now the Government's intention to put an amendment to the Legislative Council to right this matter.

The APA (Australian Physiotherapists Association) had an identical view. There is also an outstanding issue about mutual recognition. I would have thought that that would be a natural thing to be examined in a bill which is triggered by the competition rules in that physios who, for instance, travel with teams into South Australia but are not registered here but are registered in their own jurisdiction should be allowed to practise without having to go through the onerous task of re-

registering in South Australia—that may apply to sporting teams, dance groups and so forth. Can the government advise the opposition of what action it is taking in that direction? It has been suggested that this issue will be addressed in the regulations. The groups with whom I have spoken accept that it may well be addressed in the regulations, but they would in some ways prefer it to be addressed in the act. So, I would like some clear indication from the government as to exactly where that situation is at, otherwise I will move the opposition's amendment in relation to that issue.

A related issue about which the board and the association did not take the same position was that the association believes that the word 'education' should be included within the definition of physiotherapy. In fact, the board stated:

> The Board considers this to be adequately covered by the interpretation/definition of physiotherapy in the Bill. The Board has always seen physiotherapy as encompassing practice, teaching and learning, research and management, with careers in each of these or a combination of them sitting within the definition.

The physio association takes a slightly different view in that it is concerned that, for instance, someone who is involved in education (that is, the teaching of other physio students or physio graduates) may be disadvantaged in relation to the understanding of whether they have actually practised and will be forced to requalify after five years if they do not perform what we call 'hands on' work. Again, I ask the government whether it could examine that issue for us and provide a commitment that physios who might be involved in teaching but do not have their own clients will not be disadvantaged because of some sort of misunderstanding that these issues are not inextricably linked.

Further, the question was raised about visiting lecturers and whether, if they come to South Australia to provide workshops and so on, which may include a clinical component, they will be covered under the government's draft. I understand that this is to go into the regulations.

The issue of registration of students is well understood as being a standard part of the need to protect clients. Another issue raised was in relation to section 36 in respect of limited practice. The profession has good reason to be concerned that this may be misused in situations of work force shortages. In all health professions we are facing work force shortages. Presently a lot of students do not practice in South Australia, which has changed from when I graduated, because the vast majority stayed in South Australia and then may have travelled overseas after a couple of years experience but then came back. I understand now that more than 50 per cent leave South Australia on graduation.

We have a problem in this state of which we need to be mindful. It has been suggested that this clause may be put to use only in cases such as on the Pitjantjatjara lands where, if there is no physiotherapy practising, a physio trains someone else. The profession is very concerned and would like an assurance, which I now seek from the government, that this clause will only ever be activated under extenuating circumstances. The physio association wrote to the government on 1 September last year, as follows:

> The removal of restrictions on practice raises concerns about the opportunity for unqualified persons to provide therapy or services that might present a danger to consumers. For example, in the interest of public safety the use of electromedical equipment should be restricted to properly trained and qualified registered health professionals bound by at least a code of conduct and preferably by an act of parliament. The Australian Physiotherapy Association has found it necessary to approve formal guidelines for 'the clinical use of electrophysical agents' to guide physiotherapists in their effective use and to ensure the safety of consumers'.

There is a further issue of concern that the profession would like to clarify, which again comes under the protection of clients. Some people may have had cause to have physiotherapy treatment at some stage, and it is part of our practice and part of the undergraduate training in South Australia to perform spinal manipulations. We were warned that there is a one in a million chance (or similar odds) of actually killing somebody by rupturing their vertebral artery, and in our early days it was something that we performed very gingerly. In these days of litigation and insurance problems, the profession has suggested that perhaps some form of declaration might be required so that, if a practitioner's insurance does not cover cerebral vertebral manipulation, it would at least send a flag to the board to alert it to the fact that it might be an issue. I would like a comment from the government in that regard. If, as it says, this is there to protect clients from any untoward practice that may take place, that is a very important issue.

We have seen in the legislation in relation to insurance claims that have come out that they are looking at professional guidelines and so forth, and this may well become quite an important issue in the future. I am not aware of any claims, but it is wise to look at this before the horse bolts, so to speak. With those comments I will seek some response from the government in committee. If I do not see those amendments to the board composition, I will certainly move for that to occur and will also consider moving an amendment that addresses the issue of mutual recognition for interstate teams and so forth unless I receive an assurance that it is being addressed.

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

SUPERANNUATION FUNDS MANAGEMENT CORPORATION OF SOUTH AUSTRALIA (MISCELLANEOUS) AMENDMENT BILL

In committee.

Clauses 1 to 3 passed.

Clause 4.

The Hon. R.I. LUCAS: I thank the government's advisers for answers to some questions I asked in the second reading debate. I just want to clarify the answer in a couple of areas. During the second reading debate, I asked who specifically made the decisions, assuming for example that WorkCover became a prescribed public authority, along with Funds SA. If one looks at the answers from the government, I think it is fair to say that, whilst there needs to be consultation, essentially the government's position and answer is that ultimately the decision is taken by Funds SA rather than by WorkCover in the example that I am talking about.

Specifically, I want to clarify the issue in relation to the spread of assets across asset classes, if I can use that as an example. I refer to the decision about what percentage of assets might be in growth and what might be conservatively invested, and so on. As I understand the government's answer, that decision will be taken by the Funds SA board and management.

The Hon. P. HOLLOWAY: It is essentially true that ultimately Funds SA has the right suggested by the Leader of the Opposition. However, I point out that new section 20A(5) (clause 10 of the bill) provides:

However, if the approved authority requests an amendment to the plan, the corporation must amend the plan in accordance with the request unless the corporation considers after consulting with the approved authority that the amendment should not be made.

In other words, this clause provides that there is a strong emphasis on the corporation taking into account the views of the authority but, ultimately, the Leader of the Opposition is correct.

The Hon. R.I. LUCAS: I thank the leader for that and, in referring to clause 10, subclause (5) as he has, it is clear that the corporation can amend the plan unless it considers that the amendment should not be made. If, for example, the WorkCover Board was to say to the Funds SA Board that it wants the asset classes to be different, subclause (5) is saying that in essence it can consider it but, in the end, if it believes it should not be made, it does not. As I understand the government's position and what the bill has constructed, the end game for WorkCover in this case is that, ultimately, if it wants to withdraw its money, it can, which is an all or nothing strategy, but again I understand the government's position. I am seeking to clarify it and have on the record what the government's position is in relation to that.

Similarly, I want to clarify the issue in relation to decisions in terms of the investment strategy—I am not sure of the exact terminology. For example, Funds SA might look at the likelihood of losses over a five-year period, six-year period or seven-year period as part of its investment strategy. It would take advice on that, etc. My understanding again is that that is another example of a decision where Funds SA has to consult, has to listen, but the position as outlined in this bill is that that sort of decision ultimately rests with the Funds SA Board and management and not with the WorkCover Board in the example that I have given. I seek clarification from the minister on that point.

The Hon. P. HOLLOWAY: The leader is correct. Ultimately the authority is there but, again, in the case he gives, that authority would be aware of its particular risk profile, and the requirement under the legislation, if it is passed, would be that the corporation—in other words, Funds SA—would have to take into consideration all those matters that it is required to consider under the provisions of the bill. The ultimate responsibility does rest with Funds SA.

The Hon. R.I. LUCAS: Is the minister prepared to take on notice the arrangements in relation to the current membership of the Funds SA Board and the current length of the existing terms and when those terms expire? Also, for the staff, particularly the two or three key officers at the top of Funds SA, what is the position in relation to the incumbents and the contractual arrangements the government has with them?

The Hon. P. HOLLOWAY: I am not sure what information we can provide in relation to the details in the contracts, but certainly without breaching whatever requirements might be in those contracts we will endeavour to provide as much of that information as we can.

The Hon. R.I. LUCAS: I am happy to accept that. Can the minister indicate at this stage, assuming passage of the legislation, which public authorities are currently intended by the government to be prescribed to take up the new options that will be available under this piece of legislation?

The Hon. P. HOLLOWAY: My advice is that there is no provision for an authority to be prescribed as the Leader of the Opposition was suggesting. It is simply required that any authority may approach the Treasurer in relation to that matter. It is a matter of the authority approaching the Treasurer in relation to that.

The Hon. R.I. LUCAS: Perhaps if I rephrase my question. Under the current structure of the bill, can the minister indicate whether there are existing public authorities that are likely to take up the option available in the legislation? Secondly, in particular as it relates to the Treasurer, does the Treasurer have an intention for any authorities that he is responsible for to have their funds invested by Funds SA using the provisions of the legislation that is before the committee?

The Hon. P. HOLLOWAY: My advice is that at this stage the only authority that has had discussions, and they are very informal at this stage, has been SAICORP.

The Hon. R.I. LUCAS: This bill has been around for quite some time. I have an undated letter from the Treasurer which I received after the original briefing I had on this bill, which must have been almost two years ago. I asked questions in relation to WorkCover, and the advice I was given is as follows:

Based on this advice, it would appear that WorkCover meets the definition of a public authority, thereby enabling Funds SA to invest funds on the corporation's behalf. Notwithstanding this fact, it is not the government's intention at this time to have Funds SA manage the WorkCover portfolio.

This letter is undated, but I think that it is almost two years old. It does refer to 'at this time'. Is it still the government's intention at this time (2005) that Funds SA not manage the WorkCover portfolio?

The Hon. P. HOLLOWAY: My advice is that there is no power for the Treasurer to take over that responsibility without an approach from that authority.

The Hon. R.I. LUCAS: I point out to the minister that WorkCover is a body corporate under the WorkCover Corporation Act, and it is subject to the general control and direction of its minister. It is possible for the Rann government to take a decision and for the minister for WorkCover to direct the WorkCover board to adopt that course of action. There is power under the WorkCover legislation for the minister for WorkCover to direct the WorkCover board to take up this issue. I understand what the minister is saying, but I think that, if he looks at the WorkCover legislation, it is possible.

The question I asked two years ago was: what is the government's policy in relation to WorkCover? I quote exactly the response, as follows:

Notwithstanding this fact, it is not the government's intention at this time to have Funds SA manage the WorkCover portfolio.

That letter is signed by the Treasurer (Hon. Kevin Foley). As I said, this is not an original of the letter, but it is undated. I think that it is about two years old. As we debate it now in 2005, is the Treasurer's letter to me of almost two years ago still a statement of the government's policy?

The Hon. P. HOLLOWAY: Yes, that is my advice.

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

Page 3, after line 17—
Insert:
prescribed public authority means a public authority that has been declared by regulation to be a prescribed public authority for the purposes of this definition;
Note—
A regulation made for the purposes of this definition cannot come into operation until the time for disallowance of the regulation has passed—see subsection (60).

My amendments on this page are all consequential on each other. I will address the major issue in the first debate. If my

first amendment is successful, my suggestion to the committee is that the other two amendments be treated as consequential. Similarly, if the first amendment is unsuccessful, I indicate to the committee that I do not intend to move the remaining two amendments. I do not need to go into great length in explaining this amendment. It is relatively clear from the second reading debate.

The amendments seek to allow parliament to have some say through the disallowance provisions for regulations if an authority is prescribed to be able to invest through Funds SA. In the example about which I have just been talking, if, for example, this government's position on WorkCover was to change (that is, the government decided that WorkCover should get rid of its investment management capacities and have its funds invested by Funds SA), it has the capacity under other legislation to direct, for example, the WorkCover board through the minister for WorkCover to use this legislation.

My amendment seeks not to prevent that necessarily but to say that, if that is the case, the government would have to do that through the normal regulation-making process; and that the parliament, through its disallowance capacities, would have the opportunity either to agree or disagree with that. As I indicated in my second reading contribution, if I can speak on behalf of the now opposition, this would be something that we would approach responsibly. We understand that the investment management decisions that must be taken by Funds SA and other bodies and authorities are critical, whether it be for superannuation, WorkCover, SACORP (as the minister has indicated) or whatever it might happen to be.

Speaking on behalf of the opposition, I indicate that we do not have a fundamental problem with what is being proposed here. However, we may well have some concerns if the government (through other legislation) and the minister were able to direct an authority against the views of the board to follow this path, and if that board, for example, could convince the alternative government or a majority in the parliament that it was not in the best interests of the clients—those associated with WorkCover, or whatever other public authority we were talking about.

The opposition does not have—and we are supporting the legislation—a fundamental problem with the principal that is being adopted. We think, however, that it is a useful protection to allow the parliament to have a say just in case a government, of whatever persuasion, at some stage was to move down a path which was being strongly opposed by those associated with an authority and which was potentially going to be prescribed. It is clear. As I said, these amendments are all related. I will take the first amendment as a test vote in relation to the other two provisions. Put simply, we believe that this is a useful protection to allow the parliament a say, if it wants it.

As members know, we are not asked to vote on the vast majority of regulations; they are just processed in the normal way. There are the occasional regulations where the parliament decides that it wants to have a say, and there is a very small group of regulations which, ultimately, a majority in the parliament oppose. It has the capacity to do so.

The Hon. P. HOLLOWAY: The government does not support the amendment. The Leader of the Opposition is proposing an additional definition in section 3 of the act. The proposal is to insert a definition of a prescribed public authority. The concept that the leader is advancing is that only a prescribed public authority may make an application to the minister for investing with Funds SA. The government believes that this is completely unnecessary and simply adds an additional piece of red tape to the process and steps that will need to be taken by a public authority to have its moneys invested by the specialists at Funds SA.

The government believes that the proposed additional requirement adds nothing to the normal prudential management processes that will be in place. I would have thought that it would be an extraordinarily dangerous step for any government. Certainly, I can assure this committee that, if I was a member of cabinet, I would be strenuously opposing any direction given by a minister to any government authority to direct investment. It is hard to think of any government that would be silly enough to try to direct investment in relation to this sort of matter. However, in any case, within those acts, as I understand them—I have not checked the WorkCover Act—I would have thought that, if there was direction by the minister, then there are all sorts of accountability mechanisms that apply within those acts whereby they have to be notified and published in some form or another, anyway.

The Hon. R.I. Lucas: They still have the power, though.

The Hon. P. HOLLOWAY: They do, but they are last resort powers in these acts. They apply if all else fails. It is similar to the DPP Act. I think members would say that I had the misfortune of being the Attorney-General during that issue with the DPP. They are powers of last resort when all else fails. There are accountability mechanisms as part of the act whereby, if those powers are used in those situations, they are made publicly accountable by the various mechanisms, whether it is gazettal or whatever. The government believes that this does not add anything to the normal prudential management processes that will be in place. The danger of it is that it does add delay. If an agency did want to move its fund across, then this process would add unnecessary delays in relation to that issue.

The Hon. R.I. Lucas: We have only one at the moment.

The Hon. P. HOLLOWAY: That is right. The fact is that it might, if this takes two or three months, or whatever, depending on the time of the political cycle—

The Hon. R.I. Lucas: The bill has taken two years.

The Hon. P. HOLLOWAY: It has, but that is not an argument for saying that it is not likely to happen. As I have already just answered in response to other questions, these authorities would approach the government. Most of them have strong boards. I would have thought that it would be very dangerous for a government to direct it for a number of reasons. One of those dangers would be that the boards of most of these organisations would not appreciate a direction in that area. I really think that they are probably the greatest protections against any misuse of this area. However, adding another layer of bureaucracy does not add anything to it.

The Hon. IAN GILFILLAN: The Democrats are supportive of this amendment. We believe that scrutiny by regulation quite properly gives the parliament the opportunity to review. A government which is confident that it is doing the right thing in embracing some authority into the operation will not feel particularly threatened by this measure. We will support this amendment.

The Hon. P. HOLLOWAY: Obviously, the government does not have the numbers. I am disappointed because, as I said, it adds delay and that could be costly. I again put on record that the government is disappointed, but clearly we do not have the numbers, so I will not call for a division on the matter.

Amendment carried.

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

Page 3, after line 30—
Insert:
(7) Section 3—after subsection (5) insert:
(6) A regulation made under this act declaring a public authority to be a prescribed public authority for the purposes of the definition of that term cannot come into operation until the time for disallowance of the regulation has passed.

This amendment is consequential.

Amendment carried; clause as amended passed.

Clause 5 passed.

Clause 6.

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

Page 4, line 4—
Delete 'public authority' and substitute:
prescribed public authority

This amendment is consequential.

The Hon. P. HOLLOWAY: The government accepts that it is consequential.

Amendment carried; clause as amended passed.

Clause 7 passed.

Clause 8.

The Hon. R.I. LUCAS: I do not have a question but I oppose clause 8. This is an issue the Hon. Mr Gilfillan and I addressed in our second reading contributions—

The Hon. Ian Gilfillan interjecting:

The Hon. R.I. LUCAS: Exactly; a formidable combination. I indicated in the two second reading debates that we have had on this legislation over the past two years that it is the predisposition of the Liberal Party to oppose this provision. However, I did issue two invitations to the government during those two second reading contributions to say that, if the government had specific examples or evidence as to why it needed this additional power in relation to the termination provisions for a director of Funds SA, the opposition was prepared to listen to the government's arguments for the need for it and further review its position.

The opposition was prepared to have that either formally in the chamber or, if it was of a sensitive nature, to have an off-the-record or confidential discussion. I place on the record that, having issued those two invitations, I have received no evidence or information from the government that justifies the attempt at an additional termination power for directors in this way. Unless the minister tonight flops on the table significant new information (which I doubt), the position of the Liberal Party is that it will oppose clause 8 for the reasons I have explained in two separate second reading debates. I do not propose to repeat them at the committee stage.

The Hon. IAN GILFILLAN: I indicate Democrat opposition to the whole of clause 8. In our second reading contribution, we spelled out the specific reasons for that objection. I repeat this paragraph:

I have expressed concerns about the government having the power to arbitrarily remove senior public servants and statutory authority heads without reference to parliament.

This is a particular case in point, and I think it really sharpens the focus. As the Hon. Robert Lucas says, if we hear persuasive and reliable argument from the government that we are wrong, as we are open-minded we would be prepared to look at it afresh. Unless something quite dramatic emerges, I do not intend even to consider reversing opposition to the clause. It is not seminal to the bill. Removing the arbitrary power of the minister to, at a whim, dismiss a member of the board will not affect the competence and structure of the operation of the bill.

Across the chamber, and off the record, I might have asked the Leader of the Opposition whether, in fact, the opposition would be as enthusiastic about these measures were it in government. I do not doubt the integrity of his answer, but, over the period I have been in parliament, I have found that certain tendencies in opposition are not necessarily endorsed in reality once that party is in power. However, that is an aside, and it does not diminish the fact that we believe that the opposition is correct in opposing the clause in its entirety.

The Hon. P. HOLLOWAY: The reason for the clause is that the minister might appoint a person to the board who appears to have the right sort of qualifications but simply does not perform adequately when they are on the board; sometimes ministers can make mistakes. The honourable member talks about the power to arbitrarily remove them, but the minister arbitrarily appoints them in the first place, and sometimes they can make a mistake.

The Hon. Ian Gilfillan: Cabinet appoints them.

The Hon. P. HOLLOWAY: Well, cabinet does, but it would normally be reliant upon the recommendation of the minister who does the work. Other members of cabinet may have a view on a particular individual. It is also possible that, although a person might be performing and, at the time of their appointment, appear to be a suitable person, for various reasons that might change. Do we really want people who may become incapable of performing those functions still handling over $6½ billion?

The Hon. R.I. Lucas: You've got the power under paragraph (b).

The Hon. P. HOLLOWAY: That is all very well when you cross the threshold, but what if somebody is starting to move towards that threshold but has not yet quite crossed it?

The Hon. R.I. LUCAS: They are either satisfactory or they are not. Under paragraph (b) you can get rid of them if they do not perform their duties satisfactorily.

The Hon. P. HOLLOWAY: I point out that these directors were originally nominated by the minister. The government believes that he should have this power, because the board of directors is responsible not only for investing the superannuation of government employees. The largest proportion of moneys placed in Funds SA is the government's money invested to meet future employees' superannuation liabilities. Suppose a new appointee within the government is eminently more suitable? Should the government not have the capacity to appoint the best possible person? It may be that someone who comes into Treasury in a senior position has a particularly good record. Should the government not have the capacity to use the best people available to oversee the $6½ billion of assets, of which the majority is money provided by the government?

The honourable member talks about arbitrarily removing them, but these people are, after all, appointed at the direction of the government. Given what is at stake, people expect the government to be responsible for the profit management of these funds and to carry the can. The government would be held responsible if something went wrong. It might have doubts about a person who may have appeared to be very suitable, but that person may not be removed under the other threshold because they may not have reached it. However, do we really want to take that risk when so much money is involved?

We all know what has happened in the past in relation to the management of funds. People will expect the government to be responsible and that the government will ultimately carry the can. Therefore, I would have thought that it is only right that, if the minister has doubts about someone's performance, they should have the right to remove that person. After all, I am sure that members of this parliament would be the first ones to kick the minister responsible if something goes wrong.

The Hon. R.I. LUCAS: I point out to the Leader of the Government that section 10(6) provides:

> The Governor may remove a director from office—
> (a) for misconduct—

That is obviously quite specific. However, the appropriate subsections are:

> (b) for failure or incapacity to carry out the duties of his or her office satisfactorily; or
> (c) without limiting paragraph (b)—for non-compliance by the director with a duty imposed by this act.

If one looks at subsection (6)(b), there is an extraordinarily wide capacity already for the government to remove a director for failure to carry out his or her duties satisfactorily; that is, in the circumstances originally outlined by the minister, until I interjected that he already had the power—the minister already has the power. The Hon. Ian Gilfillan asked whether our position is the same now as when we were in government. The answer is yes. We believed the powers provided in the legislation were more than sufficient and that, in the circumstances where a director was not carrying out their tasks satisfactorily, we had the power to remove that director from the board of Funds SA. Therefore, we did not believe we needed this absolutely unrestricted power being sought by the current Treasurer. With the greatest respect to the current Treasurer—

An honourable member: That would be a change.

The Hon. R.I. LUCAS: Well, my tongue was in my cheek—I do not believe that his judgment about the funds performance of Funds SA really ought to be the ultimate determinant of the success or otherwise of the board and the management, in particular, of Funds SA. That advice is more likely to come through Treasury. The Under Treasurer is actually on the board of Funds SA; that certainly was previously the case. That is why I asked the question earlier in relation to the current board membership of Funds SA. In itself, it raises some interesting questions in relation to the inevitable conflicts between a board member and a senior public servant reporting to a minister. That certainly existed when I was treasurer, and I am sure the same conflicts are potentially there for the Under Treasurer in relation to his current role.

I am not suggesting that there is anything different in that regard, but there is absolutely the capacity in the existing legislation to dismiss someone who is not satisfactorily performing their duties. It is not a significantly high bar to jump: it is a judgment that a director has failed to carry out his or her duties satisfactorily. If the government makes that judgment, it has that power already. As I have said, that is why the opposition has on two occasions invited the government to provide evidence as to why this additional power is needed.

I suspect the Hon. Mr Ian Gilfillan was speaking only half jokingly earlier, but there is obviously concern amongst senior public servants and, in this case, board members as to why this particular power is being sought. It is true that this body is directing the investment of billions of dollars of not only government money but also employees' money. If, for example, a treasurer had a view that he wanted the board to invest funds in a particular project or in a particular way and, whilst that is specifically excluded in other provisions, if the Treasurer has the capacity to sack board members without any reason at all, he can keep sacking board members until mysteriously he gets some board members who are prepared to invest in the way he wants—he does not have to issue any directions at all. But, he can keep sacking board members, even though they are performing their tasks satisfactorily—that is, they might be meeting all the performance measures—

The Hon. P. Holloway: Well, they turn up to so many meetings—

The Hon. R.I. LUCAS: Let us say that you have a board which is meeting all the performance measures in terms of earnings compared with industry averages, and all those sort of things—so, it is performing more than satisfactorily—but a government and a minister of the day has a view that the board ought to be investing in certain projects that might be a pet to a particular treasurer or government. The minister is not able to specifically direct, but he has the power to sack three, four or five, or whatever the number happens to be, board members until he finds people who mysteriously happen to share his view, without the need to issue any directive. That leads to a very dangerous set of circumstances.

There are certainly a number of people within Labor administrations in this state and elsewhere who have views in relation to how superannuation funds ought to be invested—such as they ought to be targeted to infrastructure projects and proposals—and it may well be that the board does not agree.

The Hon. Ian Gilfillan: How many members of the board are there?

The Hon. R.I. LUCAS: Between five and seven. The act says that there is between—

The Hon. Ian Gilfillan interjecting:

The Hon. R.I. LUCAS: Hopefully, you would not have one dud and, if you did, you would have the power under the act to remove the dud.

The Hon. P. Holloway: But you don't. The point is that, in reality, you don't effectively—

The Hon. R.I. LUCAS: I repeat that subsection 10(6) provides:

> The Governor may remove a director from office. . . for failure or incapacity to carry out the duties of his or her office satisfactorily.

The Hon. R.I. LUCAS: It is not a question of turning up.

The Hon. P. Holloway: It is. Effectively that is what the case will be.

The Hon. R.I. LUCAS: That may be the leader's view, but it is certainly not my view. If you have legislation that says the government may remove a director for failure to carry out the duties of his or her office satisfactorily, and the minister is saying that all that means is that a board member has to turn up and sleep through the whole meeting, not read his or her papers, and that that is performing the duties of the office satisfactorily, I would like to see the crown law advice in relation to that. I do not accept that argument, and it certainly would not be the construction of those similar provisions in many other pieces of legislation that this and other parliaments have addressed.

The Hon. P. HOLLOWAY: I remind members of a famous episode in our history involving a famous board: the State Bank Board. That board was clearly misled by the chief executive of that organisation but, if we had these sorts of

measures, how could you show the failure or incapacity to carry out the duties of their office satisfactorily? They were turning out—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: So did John Hewson when he was leader of the opposition at that time. That is a classic case of where a board may be complying with the act in terms of carrying out the duties of the office satisfactorily, but there has to be some sort of objective measure. If a person is attending a requisite number of meetings and appears to have read the documents, does that mean they are performing satisfactorily or to the best level that may be required of the board? If you are to use that clause to dismiss somebody, clearly it could be embarrassing for that person in terms of—

The Hon. R.I. Lucas: Why wouldn't it be embarrassing under your clause?

The Hon. P. HOLLOWAY: Because it does not have to provide this reason of failure or incapacity. The person could say that they did not fail, attended all the board meetings and contributed but that they were sacked for failure or incapacity to carry it out. They will ask what was the failure. Effectively you will not dismiss people and you will have a State Bank type situation. I want the committee to understand the point I am making: you can have people who are turning up and by some sort of objective measure are carrying out the duties of the office satisfactorily. It may be difficult to prove that they are not carrying out the duties of their office satisfactorily, but it may be apparent that they are not contributing adequately. It puts a practical impediment on removing people from the board who, in the best interests of this state and the $6.5 billion in funds, should be removed.

I would have thought that this parliament would have learnt from the Legislative Council amendment back in the 1980s that restrained what could be done with the State Bank. Let us not make that mistake again.

The Hon. IAN GILFILLAN: As I recall it, a Labor government was in power and trenchantly supported the board and the decisions of the State Bank right up to disaster day, in spite of some incisive criticism in this chamber from the Democrats. Had I been the Leader of the Government, I would not have introduced the State Bank as an example of how this measure of the government, which has the arbitrary right to sack people in these circumstances, is a shining success, because it was a shining disaster. We do not want it repeated.

To give another example, the minister at the time— Frank Blevins—wanted to direct the WorkCover funds, when we were engineering that legislation, to the benefit of South Australia, overriding the benefit of the fund. We successfully opposed that.

The Hon. J.F. Stefani: Fortunately.

The Hon. IAN GILFILLAN: Yes, fortunately. The danger of a government having this arbitrary power is that it will use it to manipulate the decisions made by these boards to the advantage of the spin of the government of the day. So, they appoint the best people. The best people make the best decisions, which may be out of favour with the government of the day, so the minister has the right to dismiss people for such reason as the minister thinks fit. You then dump the board. I would say to the leader: stop wasting the time of this chamber by grasping for some sort of logical reason to defend this measure and just ride with the fact that it is good sense to knock out clause 8 and get on with the business.

The Hon. P. HOLLOWAY: It was the Democrats who supported the original amendments in this place in relation to the State Bank. It is all very well for the Hon. Ian Gilfillan to get up now and try to absolve himself. It can come to the attention of any minister at any time that a person who might have been appointed two or three years ago has, for various reasons—declining health or all sorts of reasons—raised concerns. Those concerns may not be sufficient, necessarily, to use section 10(6)(b) but still enough to be concerned that that person is not the best person to have in charge of $6.5 billion of funds.

The Hon. Ian Gilfillan talks about wasting time, but I would have thought that there are few clauses more important than this when we are talking about who is going to oversee $6.5 billion of taxpayer funds. So, I will waste as much time of this committee as I can. If the Hon. Ian Gilfillan wants to defeat this, I understand that, but he will have to wear the consequences. It can happen from time to time that people will come up with concerns. Those concerns may be enough to create great unease, but they may be insufficient to activate the current clause in relation to section 10 (6)(b).

However, for the good of the state and the good of the $6.5 billion funds that are invested, the minister should have the capacity to do it because, after all, when it goes wrong it will not be the Hon. Ian Gilfillan standing up in this parliament saying, 'I voted for this one. I voted to keep that person there. I insisted on that person remaining.' He will not be standing up and doing that. Nor will the Leader of the Opposition or anybody else. They will be blaming the Treasurer for appointing the person in the first place. People are appointed for three years and, after a period of time, the person, who was appointed in good faith, might think that they were the right person for the job, but that may not turn out to be the case. Unfortunately, that sometimes happens, and it can happen with governments. I am sure that it happens all over the place.

The Hon. D.W. Ridgway: It can certainly happen with some ministers.

The Hon. P. HOLLOWAY: Yes, it can even happen with some ministers. I agree. We all make mistakes, but there is the capacity within political parties to deal with that. However, we do not have the capacity to deal effectively with somebody on a board who is overseeing billions of dollars of taxpayers' funds. So, I implore the committee to support this measure in its current form.

The Hon. J.F. STEFANI: With great reluctance, I join the debate on this matter. I am reminded of the time when ETSA's board, which included I believe a very competent person in John Lesses, was at odds with then minister Klunder. They locked horns, with the board telling the minister what he did not want to hear. At the time, if I recall correctly, there was some very strong conflict. Having said that, I am also reminded that just yesterday we passed legislation to provide the Premier with overriding power over ministers. So, not only have we had the minister directing the conduct of a board but the Premier can step in and have his little dabble in the board.

The Hon. P. HOLLOWAY: That is nothing to do with boards. What we were talking about yesterday was chief executives and, in particular, whole-of-government objectives. The boards are important, but the boards are appointed by the government of the day and, ultimately, the public will hold the government accountable. As a government, we are not frightened of that, but what should be a natural corollary of that is that the government should have a capacity like this in those situations where there are suspicions or some evidence that a person may not be performing as well as was

expected. There should be the chance to do that without causing unnecessary embarrassment to that person by having to go through all the procedures of section 10(6)(b) which, in other respects, might be destabilising to the board.

I would suggest that good prudential management should allow for such a provision. I would have thought that, in the history of this state, we in the Labor Party have paid a huge price for what happened in the past. We do not want to see it happen again.

The Hon. IAN GILFILLAN: If the minister sees that one of the particular number of either five or seven on the board is not performing up to the standard that he or she believes is appropriate, there is still a majority on the board which will override the particular person I described earlier as a dud, which is probably a little bit harsh because, if they have been appointed by the government, one would assume there would have been some sort of assessment of them prior to that, so I would not expect their contribution to be without any value at all. I think that the minister is, in very worthy style, battling hard for a lost cause. I do not see any logic in the argument and so I indicate that we believe that, for the good of the management and the independence of the management of the fund, this clause should be defeated.

The Hon. NICK XENOPHON: I cannot support this clause because I am concerned that the powers given by the minister appear to be quite unfettered. I have listened to the debate.

The Hon. P. Holloway: The minister appoints the person in the first place.

The Hon. NICK XENOPHON: The minister appoints them in the first place, but in terms of—

The Hon. P. Holloway: The state should not pay the price for a mistake.

The Hon. NICK XENOPHON: I have heard the argument and, if the minister has already dealt with this, I apologise for asking it again. What do other similar funds in other states and in the commonwealth do in terms of a minister's discretion to remove someone? Does the same power exist or is this particularly unique? I appreciate if it is something that needs to be taken on notice. It is just something that intrigues me in terms of what the level of power is in other jurisdictions.

The Hon. P. HOLLOWAY: My advice is that some do it and some do not. We would have to research it. The argument goes both ways.

The committee divided on the clause:

AYES (5) AYES t.)

Gago, G. E.	Gazzola, J.
Holloway, P. (teller)	Sneath, R. K.
Zollo, C.	

NOES (13)

Dawkins, J. S. L.	Evans, A. L.
Gilfillan, I.	Kanck, S. M.
Lawson, R. D.	Lensink, J. M. A.
Lucas, R. I. (teller)	Redford, A. J.
Reynolds, K.	Ridgway, D. W.
Schaefer, C. V.	Stefani, J. F.
Xenophon, N.	

PAIR

Roberts, T. G.	Stephens, T. J.

Majority of 8 for the noes.

Clause thus negatived.

Remaining clauses (9 to 17) and title passed.

Bill reported with amendments; committee's report adopted.

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

That this bill be now read a third time.

I must say how disappointed I am that one of the key parts of this bill has been gutted by a combination of the Liberal Party, the Democrats and the Independents. One of the key parts of this bill was to ensure that there was a greater capacity for the government to be able to deal with the performance of board members, people who are handling $6.5 billion worth of taxpayers' money. I find it absolutely extraordinary, given the history of this state, that the opposition should repeat what it did 25 years ago when the State Bank bill was being discussed and inhibit the capacity of the government of the day to take action.

The Hon. R.D. Lawson interjecting:

The Hon. P. HOLLOWAY: And it has done it again. Everyone was here, including the Hon. Julian Stefani. Their names are recorded. Why they would do it again is just beyond me.

The Hon. R.I. LUCAS (Leader of the Opposition): The Leader of the Government is ungracious and churlish, if I can use those two words to describe his position. The Leader of the Government, by way of interjection and comment, is suggesting and stating that he believes that it is the Liberal Party's position to keep duds on boards. Knowing the people on the Funds SA board as I understand them to be, on their behalf I take exception to that criticism made by the Leader of the Government. A number of those people would take offence at a Leader of the Government describing them as 'duds on boards'. I think that the leader ought to apologise.

The leader ought to be man enough to stand up in this chamber and apologise to those board members for making those gratuitous and insulting references to their hard work and their capacity on behalf of the people of South Australia to invest those funds on behalf of the employees they represent, and also on behalf of the governments they have represented.

The Hon. IAN GILFILLAN: On a point of order, Mr President, would you please protect the Leader of the Opposition from the savage interjections of the Leader of the Government.

The PRESIDENT: Standing order—

The Hon. P. Holloway interjecting:

The PRESIDENT: The minister will come to order. Standing order 193 is very specific that interjections are out of order when an honourable member is orderly debating the issue. We might have some discussion about whether both sides are guilty in this case, so I have allowed it to run. The standing order is quite clear: interjections are out of order. The Hon. Mr Lucas has the call. I am sure that, in future, he will not provoke anyone.

The Hon. R.K. Sneath: Old Wal, the dobber.

The PRESIDENT: Order!

The Hon. R.K. Sneath interjecting:

The PRESIDENT: Order! The Hon. Mr Sneath should note the ruling.

The Hon. R.I. LUCAS: The Leader of the Government indicates that he believes that the Liberal Party supports duds on boards. I suggest to the Leader of the Government that the

Labor Party supports duds on its backbench and duds on its frontbench in relation to these issues.

The Hon. R.K. Sneath interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: It was not the intention of the opposition even to speak to the third reading of the bill other than to respond now to what I believe to be a gratuitous and insulting summary of the debate in this council. The minister ought to be ashamed of the interjections he has put on the record. A supposedly senior minister in this government to be making those sorts of shameful and insulting—

The Hon. P. HOLLOWAY: I rise on a point of order, Mr President. The Leader of the Opposition is claiming that I said things which I have not said. I would suggest that in a third reading contribution—

An honourable member interjecting:

The Hon. P. HOLLOWAY: He is talking about what is supposed to have been said by way of interjection. He has taken it totally out of context. I suggest that he is completely out of order making those sorts of attacks in a third reading speech.

The PRESIDENT: There is no point of order. Dissent is not a point of order, and it never has been..

The Hon. R.I. LUCAS: The interjections were repeated by the Leader of the Government not only in committee but also in the third reading. He cannot now hide from the fact that he was saying, quite clearly, that the Liberal Party policy is to support duds on boards, and we are talking about the Funds SA board in this whole debate tonight. As I said, I am aware of the background, the hard work and the capacity of many of the current members of the Funds SA board and also members of the Funds SA boards in recent years—

The Hon. IAN GILFILLAN: I rise on a point of order, Mr President. The Leader of the Opposition is guilty of prolixity in this debate.

The PRESIDENT: And probably tedious repetition, but there has been provocation from the other side of the council, which is never helpful. I remind members on my right of their responsibilities under standing order 181. I was incorrect when I previously said 'standing order 193'. I think that, if we all abide by standing order 181 and allow the honourable member who has control of the floor to put his point, it will be over quicker and the pain will be much less.

The Hon. R.I. LUCAS: I am trying to conclude my contribution to the third reading, and I thank you, Mr President, for your protection. That is the Liberal Party's position in relation to this issue. We reject, as I said, the gratuitous and insulting references the Leader of the Government has made in relation to our position on the legislation. We have adopted a principled position, and one which we supported when in government in relation to this legislation. We were in government for eight years and, in relation to the Funds SA board, we did not seek this additional power.

We believe that the power that exists within the parent legislation is more than sufficient for any government. If it believes that a board member of Funds SA is not performing satisfactorily, the government of the day has the power to remove that member from the board. We do not believe that to be currently the case. Certainly, in recent times, the performance of the Funds SA board has not been as strong as it was under the former Liberal government, but that may well be in relation to general industry performance as opposed to particular decisions that have been taken by the Funds SA board.

It ought to be judged, as it has been in the past, in terms of how it performs against various industry sector indices in terms of measuring the performance of investment bodies. Certainly, no evidence has been provided to the opposition of either a failure to act generically by the current board or, indeed, of individual members. We made that invitation to the government to provide us with evidence as to where there was an incapacity of the government to act in relation to the termination provisions of the act.

As the Hon. Mr Gilfillan has indicated (and so, too, did I), we were never provided with any evidence prior to this debate tonight. The minister provided no evidence at all tonight as to why he needed this additional arbitrary power of the government to sack board members without any reason at all.

Bill read a third time and passed.

FUNDS SA

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I seek leave to make a personal explanation.

Leave granted.

The Hon. P. HOLLOWAY: The Leader of the Opposition claimed that I reflected upon the current members of the Funds SA board. That is completely incorrect. I did not make any reflection whatsoever against any member of the Funds SA board. The context of my remarks previously was in relation to the Liberal Party's position in refusing the power of the minister to remove people from the board, even if those people may not be performing adequately. That was the context in which I was suggesting that the Liberal Party was keeping duds on boards, but I certainly at no time—nor would I—made a reflection on current members of the Funds SA board.

CRIMINAL ASSETS CONFISCATION BILL

Adjourned debate on second reading.

(Continued from 14 April. Page 1710.)

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I conclude by thanking all members for their contribution to this bill and their indications of support.

Bill read a second time.

The Hon. R.I. LUCAS: Mr President, I draw your attention to the state of the council.

A quorum having been formed:

In committee.

Clause 1.

The Hon. R.D. LAWSON: I direct a question to the minister. I notice in the second reading explanation that, in relation to the Labor Party's promise at the last election, the minister said:

> At the last election, the Labor Party promised new laws to allow seizure of assets gained using the proceeds of crime.

The Rann government's strategic plan, under objective 2, improving wellbeing, priority action, states:

> . . . legislate to target organised crime and outlaw motorcycle gangs and to extend the powers to strip convicted criminals of their criminal profits and assets. . .

My question to the minister is: given this promise to 'strip convicted criminals of their criminal profits and assets', how does he reconcile that with the fact that this bill will strip not

only convicted criminals of their criminal profits and assets but also those who are not convicted?

The Hon. P. HOLLOWAY: The government is certainly extending the power, as is suggested by the deputy leader of the opposition, but it is doing so on the model enacted by the commonwealth in 2002. I understand that most Australian states, if not all, have similar measures. I guess that experience has taught those governments that that is what is necessary to give effect to the principles behind this measure.

The Hon. R.D. LAWSON: I have another general question on clause 1, although it is dealt with in specific clauses, and it deals with the subject of literary proceeds orders. I thought that I would ask the minister to assist the committee at the outset. In the second reading explanation, on the subject of literary proceeds orders, it is said:

> . . . literary proceeds orders are not new to South Australia. What is new about the proposals in the Bill is the comprehensive treatment of these orders and, of course, the transformation from criminal to civil onus for establishing the foundation offence. Literary proceeds orders are designed to confiscate the proceeds of the commercial exploitation of a person's notoriety obtained by the commission of a serious offence. These orders have not proved controversial in South Australia, but there was recent controversy in NSW. . .

Will the minister indicate whether there have been any cases in which literary proceeds orders have been obtained under existing South Australian legislation, or any cases in which, although proceeds orders were not obtained, there was some impediment under the existing law to obtain such an order?

The Hon. P. HOLLOWAY: My advice is that we are not aware of any cases. However, we will take that question on notice and, if we discover any, we will get back to the honourable member.

The Hon. R.D. LAWSON: Will the minister indicate what was intended to be conveyed by the statement in his second reading explanation that 'these orders have not proved controversial in South Australia'? If there have not been any orders, how can it be said that they have not proved controversial?

Clause passed.

Clause 2 passed.

Clause 3.

The Hon. P. HOLLOWAY: I move:

Page 14, line 18—Delete ', 33(2)'

This amendment deletes the reference to section 33(2) of the Summary Offences Act as a serious offence for the purposes of the confiscation regime. When the bill was drafted, section 33(2) was the principal child pornography offence. It therefore made sense to include it as a serious offence. The main child pornography offences are now to be found in division 11A of the Criminal Law Consolidation Act as a result of the Criminal Law Consolidation (Child Pornography) Amendment Bill 2004, which is now enacted, and therefore they are serious offences in their own right. The cross-reference is thus no longer necessary, and it is proposed to delete it.

The Hon. R.D. LAWSON: I ask the minister whether notice of this amendment was given to the Law Society and whether it has provided a comment on this or any other amendment or, indeed, whether it has provided any comment at all on this bill.

The Hon. P. HOLLOWAY: The short answer is yes. The letter, dated 3 May 2005, from the Law Society to the Attorney, states:

> Dear Mr Attorney
> Criminal Assets Confiscation Bill 2004
>
> I refer to a letter from Mr Andrew Lamb, Chief of Staff (22 November 2004), inviting the Society to consider the above Bill. The Bill was referred to the Society's Criminal Law Committee. The Society is grateful to have been given the opportunity to review the Bill, however advise that on this occasion we do not wish to provide a response.
>
> Yours sincerely
> Jan Martin
> Executive Director.

The Hon. R.D. LAWSON: I thank the minister for indicating the fact that the Law Society, first, apparently received notice in November, at the time of the introduction of this bill, and I note that, notwithstanding some of the wide-ranging criticism that has appeared concerning this bill, the Criminal Law Committee of the Law Society does not propose making any submission. I am always grateful to the society for the submissions and comments it makes on legislation, and I am ever mindful that those contributions are made on an entirely voluntary basis. I am not at all critical of the Law Society for not making a submission in relation to this bill, but I think it is worth placing on the record that none was made on the bill itself, which, of course, has wide-ranging provisions. I note that the society has made no submission on this amendment. I indicate that the opposition will not oppose the amendment.

Amendment carried.

The Hon. P. HOLLOWAY: In response to the comments made by the deputy leader, I indicate that the government also appreciates receiving advice from the Law Society in relation to these bills. Likewise, the government appreciates why the Law Society chose not to comment on this bill. It is a particularly lengthy bill of some 111 pages.

Clause as amended passed.

Clauses 4 to 33 passed.

Clause 34.

The Hon. P. HOLLOWAY: I move:

Page 30, line 3—Delete 'section 24' and substitute 'section 24(1)(a) or (b)'

I will move three amendments to this clause, and I will speak to them all together. This clause is about excluding property from restraining orders. It refers to section 24, because section 24 is the provision which authorises the imposition of restraining orders. Restraining orders can turn into forfeiture orders, therefore there are cross-references between the sections. In all three cases, the cross-references are incorrect: the first is too general; and the second and third are too specific. The amendments correct these errors.

In the case of the first amendment, it makes no sense to permit the court to exclude property from a restraining order on the basis mentioned in section 34(1)(b), if there are reasonable grounds to suspect that the property resulted from the proceeds of crime. An instrument of crime will literally proceed to sections 24(1)(c) and 24(1)(d). Therefore, the exclusion power is limited to the cases specified in sections 24(1)(a) and 24(1)(b). In the case of the second amendment, it makes no sense to limit the power to exclude the cases specified in sections 24(1)(a) and 24(1)(b) if section 24 does not apply in any sense. In the case of the third amendment, it makes no sense to demand the court not exclude the property. However, it is restrained under section 24 if it is satisfied that an instrument substitution order could be made in relation to it.

The Hon. R.D. LAWSON: The opposition will not oppose the amendment.

Amendment caried.

The Hon. P. HOLLOWAY: I move:

Page 30—

Lines 14 and 15—Delete 'to which section 24(a)(a) or (b) applies'

Lines 20 and 21—Delete 'to which section 24(1)(a) applies'

All the amendments are related.

Amendments carried; clause as amended passed.

Clauses 35 to 130 passed.

Clause 131.

The Hon. R.D. LAWSON: This clause and the following clauses deal with the examination orders relating to restraining orders. Clause 131 provides that, if an application for a restraining order has been made, a relevant court may, on the application of the DPP, make an examination order, and other examination orders are referred to. Clause 133 provides that an examination notice may be given by the DPP, and clause 135 deals with the time and place of the conducting of an examination pursuant to a notice. The provisions of this bill require that the person attend before the Director of Public Prosecutions, who presides, in effect, over the examination.

Clause 137 provides that the DPP may give direction as to who may be present during an examination but that the examination is to take place in private. The examinee's legal practitioner has certain rights (pretty limited rights, I might say), and, under clause 140, the DPP determines questions of law and the like. Under clause 142, the DPP has protection or immunity from suit in the performance of these duties. Other legislation of a similar nature provides that some official, usually called an examiner, is the person before whom such examinations take place. Usually the authorised examiner is a retired judge or the like. It seems to us to be anomalous that in this legislation it is the DPP who applies for an order, who gives the notice and before whom the examination takes place.

The opposition was attracted to the notion that we should in South Australia adopt the commonwealth model of an independent examiner to give a greater degree of impartiality in the process of examination. In the end we decided not to move for the establishment of the examiner methodology because we were not convinced that this current model would give rise to real difficulties. But I indicate to the committee and to the government that, should the examination process prove to operate unfairly, we would certainly be in favour of amendments to the legislation to create an independent examiner to participate in these examinations. Did the government give consideration to the inclusion of independent examiners and, if so, why did the government choose not to adopt that model in this bill?

The Hon. P. HOLLOWAY: My advice is that these matters were discussed during the preparation of the bill, but it was concluded that, while the deputy leader is correct in the processes he outlined, it is believed that the existing substance and procedure that exists within the legislation is such that no extra protection would be conferred merely by having an independent examiner such as, for example, a retired judge being there. The mere fact of having that retired judge or whoever might be chosen to be an independent examiner does not confer any additional protection because the procedures are substantive and procedural protections are set out in the act in any case.

The Hon. R.D. LAWSON: I thank the minister for that explanation and understand it. However, notwithstanding the explanation, I have some reservations about it because not only must justice be done but it must be seen to be done and, when you have an officer of the DPP examining a person under this act and the DPP himself or herself (or the delegate of the DPP) presiding over that examination, it seems that there will be a strong appearance that, notwithstanding the fact that the powers of the examiner are strictly controlled by the legislation, this is a star chamber-like process. Whilst we will not oppose these clauses on this occasion, we place on record our reservations about them and give notice of the fact that we will examine the operation of these provisions closely.

The Hon. P. HOLLOWAY: I believe what the deputy leader says is true, but it is the same for the Australian Crime Commission, which is the model this legislation follows.

The Hon. R.D. LAWSON: I was thinking rather more of the commonwealth legislation dealing with the terrorism provisions recently enacted. I know, for example, that at least one retired South Australian judge fulfils an examiner's role in that capacity, and that model is one we may well have to examine in future.

Clause passed.

Remaining clauses (132 to 230) passed.

Schedule 1.

The Hon. R.D. LAWSON: Just a question, which probably is relevant to the schedule. Can the minister indicate whether it is proposed that there will be any regulations made under this act and, if so, what might be their subject and when is it likely they will come into operation, if indeed there are any regulations envisaged?

The Hon. P. HOLLOWAY: Clause 230 of the bill provides for such regulations that are contemplated as necessary or expedient for the purposes of this act. I am advised that the commonwealth act has regulations, and the government will be examining those regulations to see whether they have relevance to this act in the state jurisdiction, or to see whether similar regulations are warranted in the state jurisdiction.

The Hon. R.D. LAWSON: Can the minister indicate when it is envisaged that this act will be proclaimed to come into operation?

The Hon. P. HOLLOWAY: I am advised there will need to be substantial consultation with the DPP and the South Australia Police, and the need to shift resources to give effect to this legislation, so we cannot at this stage indicate when the bill might be proclaimed, because obviously those discussions have to take place first.

Schedule passed.

Title passed.

Bill reported with amendments; committee's report adopted.

Bill read a third time and passed.

NARACOORTE TOWN SQUARE BILL

In committee.

Clause 1.

The Hon. CARMEL ZOLLO: I report that a select committee was set up in relation to the bill, which is to give the Naracoorte Lucindale Council limited powers to carry out certain works on the Naracoorte town square, which is held by the council and subject to trusts. I indicate that the select committee met on two occasions and received one submission. The submission was received from Mr Hovenden, the CEO of the Naracoorte Lucindale Council, who expressed agreement with the legislation. I wish to thank all those honourable members who served on the select committee. I also thank Ms Noeleen Ryan, our secretary, for her support. I also thank members for their indulgence, as we now see a

bill before us that has an amendment which I understand everybody has agreed to, and we will go through the explanation in due course.

Clause passed.

Clauses 2 and 3 passed.

Clause 4.

The Hon. CARMEL ZOLLO: I move:

Page 3, after line 23—Insert:

(3) The Minister may, in connection with the operation of subsections (1) and (2)—

(a) determine that particular classes of public works within the ambit of subsection (1) need not be subject to the operation of subsection (2);

(b) determine that particular public works within the ambit of subsection (1)(d) may not be undertaken.

(and any such determination will have effect according to its terms).

The effect of this amendment is to ensure that minor works need not come to the minister if he or she considers that it is unnecessary to do so. It also clarifies that the minister may determine that certain works within the ambit of subclause (1)(d) may not be undertaken if that should be the case.

The Hon. Ian Gilfillan: What does that mean, minister?

The Hon. CARMEL ZOLLO: I will refer to the bill. I understand that subclause (1)(d) states that the council may undertake works. This clause provides that, despite an 1871 indenture and the resulting trusts that apply to the land to which the bill relates—the Naracoorte Town Square—the Naracoorte Lucindale Council can, during the period of five years from the commencement of the act, undertake any more or one of the following works on the land, and paragraph (d) states 'other public works for the benefit of the community'. This is a technical clause, a tidying up clause, a further explanatory clause, which would allow the work that is intended to actually happen.

The Hon. D.W. RIDGWAY: I am a little bit alarmed that this amendment has come before us. If members recall, two weeks ago when the House of Assembly was sitting in Mount Gambier, we were asked to process this quickly, and we decided as a Legislative Council that we would adopt the proper process and have it before a select committee, of which all members met twice, sometimes at very short notice. That select committee was at some expense. We advertised in *The Advertiser* and in *The Naracoorte Herald* and the members received their usual payment of $12.50 a meeting. Now we have this 11th hour amendment (or 10th hour, given the time), yet it is dated 10 May 2005, so it was drafted some 14 days ago. I am alarmed that we are only seeing it only tonight.

While it is not a contentious issue, I am just concerned that the Legislative Council is being taken for granted, that our authority is being undermined, that we are being laughed at by the House of Assembly, or, as the Minister for Industry and Trade said in an earlier debate, maybe there is a dud somewhere who has not done their work. I would like the minister to explain why this amendment was drafted on 10 May and we only seeing it only tonight.

The Hon. Ian Gilfillan: Not parliamentary counsel.

The Hon. D.W. RIDGWAY: No, not parliamentary counsel.

The Hon. CARMEL ZOLLO: My understanding is that the honourable member is correct. The House of Assembly was sitting in Mount Gambier at the time and there was a lack of communication and, for logistical reasons as well, it was not perhaps brought to the right minister's attention. I am not certain exactly what happened. I suppose we could have gone ahead without this amendment but it really is simply a technical amendment. We certainly did not mean to take advantage of anybody or make us a laughing-stock. I can assure the honourable member that that was not the case; it was simply an oversight. These things do happen occasionally and I think it is appropriate that we do the tidying up.

The Hon. Caroline Schaefer: Was it discussed in the select committee?

The Hon. D.W. RIDGWAY: In response to my colleague's interjection, no, it was not. We have only received it tonight, after the select committee recommended that the report be adopted at its final meeting this morning. That is the reason for my concern. This misunderstanding is a classic example of why, if the government is to indulge itself in regional sittings of parliament in the future, it needs to make sure that the lines of communication are clearer and less clogged and that we get this information through. I acknowledge that this is a minor technicality but I would not want to be dealing with a bill of significance in this manner.

On behalf of the Liberal Party, I advise that we support this amendment. My understanding is that it also relates to the cross of sacrifice that is in a different part of the Naracoorte town centre, and the local RSL would like that to be shifted into the memorial gardens or the central gardens. I think that some of the parliamentary staff have had some contact from Naracoorte residents regarding this issue. The Liberal Party certainly supports that. Allowing the minister to approve minor works such as paving or changing the shape of garden beds makes sense. It would be crazy for such minor works in the park to come back to the parliament. The Liberal Party supports the amendment.

The Hon. CARMEL ZOLLO: I place on record that the members of the committee have seen fit to accommodate the wishes of the RSL and I thank them for their indulgence.

Amendment carried; clause as amended passed.

Clause 5 and title passed.

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

Bill read a third time and passed.

STATUTE AMENDMENT (UNIVERSITIES) BILL

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

ADJOURNMENT

At 10.10 p.m. the council adjourned until Wednesday 25 May at 2.15 p.m.