# LEGISLATIVE COUNCIL

**Thursday 20 October 2005**

**The PRESIDENT (Hon. R.R. Roberts)** took the chair at 11 a.m. and read prayers.

## STATUTES AMENDMENT AND REPEAL (AGGRAVATED OFFENCES) BILL

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

That the sitting of the council be not suspended during the continuation of the conference on the bill.

Motion carried.

## STANDING ORDERS SUSPENSION

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

That standing orders be so far suspended to enable petitions, the tabling of papers, question time, orders of the day and private business to be taken into consideration at 2.15 p.m.

Motion carried.

## STATUTES AMENDMENT (RELATIONSHIPS) BILL

In committee.

(Continued from 19 October. Page 2795.)

New clause 68A.

**The Hon. R.I. LUCAS:** We have just been advised—and I assume the government has also—that the Hon. Mr Cameron is sick today and will not be attending. Certainly, my view is the same as the Hon. Andrew Evans took last night in respect of moving to report progress. I supported that motion and, indeed, the majority of members supported it on the basis that the Hon. Mr Cameron was unwell last evening. Certainly, my position is the same at the moment in relation to this issue. I indicate personally—and this is obviously an issue on our side for individual members—that, if we became aware that this was to be a long-term issue in respect of when the parliament reconvenes, I think that individually and collectively we would need to come to an arrangement with the Hon. Mr Cameron to enable at least the majority view of this chamber to progress the debate on the legislation.

I flag my personal view that, if there was to be a long-term inability to attend the parliament for the remaining three weeks, I would need to reconsider my position in terms of whether or not we could find some way of resolving the issue. On the basis that we have, as I understand it from our viewpoint, a willingness to progress about 10 pieces of government legislation today, the opposition is certainly prepared to more than halve the waiting list—if I can put it that way—in terms of government bills. There is certainly much that we can do to productively use our time, and I indicate that we should report progress.

Progress reported; committee to sit again.

## DEFAMATION BILL

In committee.

Clause 1.

**The Hon. R.D. LAWSON:** Has the government had any advice as to the likely effect of this bill on defamation actions in South Australia and, in particular, whether, if this bill had been in force for the past five years, any of the defamation cases decided in South Australia would have been decided differently under this legislation compared to the way in which they were decided under the existing law?

**The Hon. P. HOLLOWAY:** There has been no analysis about what would have happened in past cases. There are transitional provisions in the bill, which mean that this bill is prospective in its outlook.

**The Hon. R.D. LAWSON:** Given that the government has undertaken no analysis of that kind, is it aware of any particular decisions, notwithstanding the absence of detailed analysis, which would have been decided differently under this new bill than the way in which it was decided under the old law?

**The Hon. P. HOLLOWAY:** We are not aware of any in South Australia, but there are several interstate that could have been handled differently or that would have had a different outcome if this legislation had applied in those jurisdictions.

**The Hon. R.D. LAWSON:** Is the minister able to give the committee details of those cases or a general description of the effect of those cases?

**The Hon. P. HOLLOWAY:** I am advised that that would apply in cases where the defence of justification was pleaded and where the defendant was required to prove both that the statement was true and that it was in the public interest to publish.

**The Hon. R.D. LAWSON:** Will the minister indicate when it is proposed that this bill will come into operation, given the fact that previously it has been suggested that the uniform scheme would come into operation on 1 January 2006? Specifically, has that timetable been adhered to, and on the same subject will the minister indicate the state of play in other jurisdictions: namely, has any state yet passed this legislation and is it anticipated that all will have passed it in sufficient time to enable the act to commence on 1 January 2006?

**The Hon. P. HOLLOWAY:** If the council passes this bill, under clause 2 it will come into operation on 1 January 2006. In relation to other states, I am advised that the bill was passed through both houses without amendment in New South Wales and that it passed the second house on 18 October, a couple of days ago. In Western Australia and Victoria the bill has been introduced and passed without amendment by the Legislative Assembly in those states and is now with the Legislative Council. Further debate on the bill was expected this week in Victoria, but we have no date for that. That is the information we have at the moment.

**The Hon. R.D. LAWSON:** In relation to other states, is the minister able to indicate whether the scheme of national uniformity has been maintained? Leaving aside the question of jury trials in South Australia, which means that we will not be uniform with other states, have there been any other changes to the uniform scheme in the legislation adopted in other states?

**The Hon. P. HOLLOWAY:** I am advised that the substance is the same. The only difference of which we are aware is in relation to jury provisions. I am advised that the ACT (which does not have juries at present) is unlikely to change that status. The only other changes to the legislation are purely technical ones reflecting amendments to other acts in respect of evidence and so on. So, they are purely of a

technical nature. Cause of action, defence and defamation definitions, all of those key provisions, are the same throughout the jurisdictions.

Clause passed.

Clauses 2 to 8 passed.

Clause 9.

**The Hon. R.D. LAWSON:** The Liberal opposition opposes this clause. We believe that the right of corporations to sue for defamation, which they have enjoyed for many years, ought not be restricted or abolished. Members may recall that this bill when originally introduced in South Australia contained a blanket prohibition against any corporation suing for defamation. However, as a result of a deal done between the New South Wales Attorney-General and the federal Attorney-General, the Labor states have agreed to allow small companies—namely those which employ fewer than 10 persons—to retain the right to sue for defamation.

Defamation is an action designed to protect a reputation. It is not simply an action designed to protect the feelings, sensitivities and pride of individuals; it is designed to protect their reputations. Companies have reputations just as individuals do, and the reputation of a company is an important asset that can be easily destroyed by false statements and innuendo. For that reason, we believe that corporations ought have the same right of action as individuals and that no satisfactory justification has been made for taking away that right.

We have heard that some companies, allegedly, have misused the defamation laws by issuing so-called 'stop writs' to prevent discussion about their activities. We have heard it claimed that large companies—very often multinational corporations engaged, for example, in the tobacco or fast food industries or in environmental pursuits such as forestry, etc.—have used the defamation law for the purpose of silencing critics and covering up their nefarious activities, using their financial power to overwhelm persons who do not have comparable power. Our answer to that is that the procedural laws ought be adjusted to prevent that sort of behaviour if it is contrary to the public interest.

We do not believe that any corporation should be prevented from suing for defamation. We accept that the provision which now appears in the bill in clause 9 is better than that which originally appeared, but we do not believe that there is any difference in principle between a company which employs nine people and one which employs 11 people, or 11 000 people. They are corporations engaged in business. We also believe (and I ask the minister to comment on this) that a distinction should not be drawn between corporations which are not engaged in business or trade for profit and other corporations—whether they be local government authorities, charities, benevolent institutions or the like. They are all bodies corporate, and all bodies corporate should be treated in a similar fashion. So, for that reason we will be opposing clause 9 of the bill; not because we do not think it is an improvement—because we do think it is an improvement—but because it is not as good as it should be.

**The Hon. P. HOLLOWAY:** First, I would like to make a point in relation to the issue raised by the Hon. Robert Lawson that there should be no distinction between public and private corporations. When we have public corporations such as councils—in other words, government public corporations, government bodies—the long-standing situation has been that those bodies should be subject to public criticism; that is part of their function. We really have a situation where the councils could sue people for making criticism of them, and I do not think anyone would uphold that as a sensible proposition. In that sense, there always has been a distinction between public and private corporations, and that position has been reflected in current practice.

It is important to point out that the provision in this bill would only allow not-for-profit corporations and small corporations to sue for defamation. A small corporation is defined in the bill as one that employs fewer than 10 people and that is not related to any other corporation. For the purposes of counting the number of employees, part-time employees are to be counted as an appropriate fraction of a full-time employee, and for the purposes of determining whether a corporation is related to another corporation the test used in the Corporations Act 2001 is to be applied. There will be no change to the common law that public corporations—such as local government, councils and government corporations—cannot sue for defamation. The common law right of natural persons who are so closely associated with a corporation that they are identified by the defamatory matter to sue would be preserved by clause 9(2)(c).

The government knows that the restriction on corporations suing for defamation is controversial, and it received diametrically opposed submissions about whether they should be able to do so. Submissions from people who do agree that there should be limits do not agree about what the limits should be.

Some business organisations and some lawyers oppose any restrictions at all. On the other hand, organisations interested in matters such as the environment, some academics from various disciplines, organisations for free speech and at least one political party believe that corporations tend to use the threat of legal proceedings to stifle criticism and debate about their activities and motives. They refer to SLAPP actions, which is an abbreviation for an American description, that is, strategic litigation against public participation.

In Australia, lawyers and the mass media talk of issuing stop writs or gagging writs. Despite all the assertions, counter-assertions and differences of opinion, there seems to be more acceptance that small commercial operations—that is, dad, mum, son and daughter companies—should be able to retain the right to sue. That is a compromise that has been accepted by state and territory attorneys-general. The exception for not-for-profit organisations was included because of concern by some jurisdictions about defamation causing the drying up of philanthropic support and their limited financial and other ability to restore their reputations by non-litigious means. Clauses 8, 9, and 10 of the bill represent the best policy compromise that could be agreed upon at this time. It is in all the defamation bills that have been introduced in other parliaments, and I expect it will be in the remaining ones.

Most of the arguments for preventing corporations from suing for defamation are more persuasive when one is talking of large trading corporations than of small companies. A large part of the law of defamation is making up for the hurt to pride and feelings by apologising, correcting and paying damages. However, corporations are artificial creations of the law that suffer no feelings of mortification, loss of self-esteem and so on that can be assuage or restored by the award of damages. As a former Northern Territory judge put it, 'Would the corporate seal blush?' Nor can they be made sick as a corporation does not have a personal reputation. It can be injured only in its trading reputation. There are other

causes of action that are intended to protect or vindicate trading reputations and to compensate for financial losses. Moreover, large trading corporations usually have other means of protecting their trading reputations because of their monetary resources, expertise and influence.

I should also point out that New South Wales has had the same limitation on corporations suing since 2002, and it is reported that this has not caused problems. So, at least we have some historical experience in that jurisdiction from which to draw.

**The Hon. IAN GILFILLAN:** I indicate that the Democrats' position will be consistent with my second reading contribution, that is, that we will not oppose this clause. However, I think it is valuable to indicate that I have had what I would call a friendly opinion from the legal profession regarding this clause. It states:

> There is no cogent reason to stop corporations from suing to protect their reputations, and this should be opposed. This comes out of a New South Wales amendment to its laws last year at the time of the tort reforms and is driven by the view that the big end of town can look after itself and has no need to use defamation laws to protect its reputation.

The opinion was that this is more driven by ideology than principle. I have put that on the record because I think that that is a sincerely held opinion. However, my sincerely held opinion and that of the Democrats is that it is not a level playing field and that the defamation laws—certainly as they are to this point—have been used as a weapon of abuse to silence what could have proved, in the view of large corporations, to be embarrassing and awkward in various ways.

Were I persuaded that it was so beautifully and ethically implemented that it was entered into only when there was genuine hurt, there may be some argument. However, as the minister has outlined, there are avenues available. There does not appear to be reason why individuals in their own right cannot sue for defamation if the issue is so important to them as being involved in the corporation.

I wanted to put some balance into the debate. It is not because we have not considered the aspect that was put by both the Hon. Robert Lawson and my friend in the legal profession. It is just that, on balance, we do not believe that the retention of that right is a benefit to the community at large. In fact, I believe it to be a disadvantage. As I said in my second reading speech, I have had personal first-hand experience of how it can be used by large corporations which, as I have said, find it uncomfortable. In the eventual revelation of the accuracy of my comments, I was proved correct in what I said. But, unfortunately, I was bullied—and I use that word advisedly—into signing forms because I felt that I did not have the resources to handle a defamation action.

I do not claim to be particularly timid. Certainly, as a member of parliament, I would expect members of parliament to have an extra degree of confidence. So, if that is how I felt and reacted, I would say that many members of the public would not even contemplate going down that path while they felt there was risk that they would be smitten by the muscle and financial forces of large corporations. We have seen international trials along similar lines where big corporations have used their extra resources to 'physically' obstruct the proper course of revealing the truth.

**The Hon. R.D. LAWSON:** I thank the Hon. Ian Gilfillan for placing on the record the legal opinion he received. I think it is a very sound legal opinion, not simply because it is consistent with the view I have expressed but because it is quite consistent with the view of the legal profession, through the Law Council of Australia.

I do not think there is any doubt that the reason we see this abolition of the right of corporations to sue is ideological on the part of the Labor states. It is also a matter of practical politics for them. The media proprietors were hot to ensure that the category of plaintiffs that can sue media organisations should be confined in some way. If they could remove a category such as corporations from those who are entitled to sue, that was all to their advantage. In my mind there is no doubt that the Labor states kowtowed to the great pressure that was applied by the media proprietors. I do not blame the media proprietors for exercising their corporate muscle and influence in seeking to advantage them commercially—fair enough. That is part of the way in which the market works, but that does not make it right and it certainly does not mean that we should be abolishing this right.

*The Hon. Ian Gilfillan interjecting:*

**The Hon. R.D. LAWSON:** I will let the Hon. Mr Gilfillan place on the record any comments he wants me to answer, but I do take up the point he raised in relation to his own personal experience. I am sure he will correct me if I am wrong, but my understanding of his personal experience is that during the dying days of the State Bank, when issues about the State Bank of South Australia were being raised by the honourable member and others in parliament, he made a statement which questioned the bank. He made it inside parliament, and he repeated it outside parliament, in consequence of which he received a threat of legal proceedings; and perhaps legal proceedings very promptly from the State Bank. In consequence of the circumstances he has described, he was forced to make some form of retraction—a retraction which, in the fullness of time, was proven he would have been entirely justified if he had taken the matter to a legal action.

I commend the honourable member for his courage on that account, but I do not believe the way in which to address that sort of issue is to abolish the right of all companies to sue. That was the case of a company which was being run by a megalomaniac, Marcus Clark, who would brook no criticism whatsoever, and which used its economic power to bully and muscle anyone in our community—other corporations, companies and members of parliament. The way in which to address that is not to remove the right but, rather, to control the way in which that right can be exercised, and to give appropriate protection to plaintiffs. Individuals can be wealthy, strong and bullying. They are not losing their right to sue for defamation. There are millionaires and multimillionaires and other people in our community who can behave in exactly the same way in which the State Bank and Marcus Clark behaved in relation to the Hon. Mr Gilfillan. As a point of principle, we believe they should retain the right to sue, but other mechanisms should be devised to prevent the misuse of their power.

I turn now to another point (referred to by the Hon. Ian Gilfillan), namely, the claim of the minister that corporations will continue to have other causes of action available to them. These are causes of action such as malicious falsehood, injurious falsehood and criminal libel, and section 52 of the Trade Practices Act can be used. That is the section which proscribes misleading and deceptive conduct by corporations. It is true that those causes of action exist, but they are certainly malicious falsehood, injurious falsehood, etc. They are causes of action which are very little used and employed. Their full scope is not readily apparent. The courts are not

used to dealing with them. One cannot get an action of that kind before the courts as quickly as one can get a defamation action, as a matter of practical reality. At present you can get an injunction and some protection from the court under the law of defamation: you cannot in relation to those other causes of action.

I indicated during my second reading contribution that there is the case of a South Australian company, one of the energy companies, in respect of which a newspaper published a report which was false and misleading and which had the effect of affecting the market price of its shares. The newspaper received a letter from solicitors for this company pointing out the error. The newspaper promptly printed a retraction and, because it was on a weekend, the market was not unduly affected. The company was able to do that because it had available to it the right to sue for defamation. In consequence of receiving a letter on a defamation, the newspaper backed down and the damage was minimised.

*The Hon. Ian Gilfillan interjecting:*

**The Hon. R.D. LAWSON:** Indeed; and the honourable member says the letter pointed out the error. The newspaper did that—corrected its error—because it was being threatened with libel action. If it had not been threatened with libel action, it would not have bothered.

*The Hon. Ian Gilfillan interjecting:*

**The Hon. R.D. LAWSON:** It was a letter that pointed out the error and said, 'Correct it. If you don't correct it, we will be applying to the court this afternoon to get an order which will protect our reputation to the extent available.' That ready remedy which is currently available will be denied to a company of that kind. It is not only the shareholders (for whom people might not have much sympathy) but it is also employees of companies such as this. Employees and other businesses that rely upon them can be adversely affected by a company having its business and reputation destroyed by defamation.

I do have a particular question for the minister in relation to his point that public corporations, such as the councils, should not be able to sue for defamation; that they should be subject to public criticism; and that they should not be able to defend their reputation by action. But what about the case of a minister? In many respects, a minister of the Crown is like a local government corporation. He has public responsibilities. He is fulfilling public roles. The corporation (the local council), according to the minister's line of logic, should not be able to sue for defamation, yet, under this bill, a minister will continue to have the right to sue, and that seems to me to be entirely inconsistent. A minister can sue personally: while a corporation cannot. The second part of this question is: what about those ministers who are corporation sole? Because, under our law of this state, there are some ministers who are constituted as corporations by law. Is the effect of this bill to take away from such ministers the right to sue?

**The Hon. P. HOLLOWAY:** A number of matters have been raised in the debate. The first point I make is that the corporations provision can be reconsidered under the Inter-Governmental Agreement (IGA), along with the ideas behind the Greens' bill, for protection of public participation, which would establish procedures for dismissing at an early stage defamation and other actions instituted to silence people from debating matters of public interest. I make the point to the Hon. Ian Gilfillan that the capacity is in there. It is important, I believe, that we do have uniform laws in the country, and that, therefore, we not be the one state out of step with the rest of the country. However, there are procedures by which these complex issues can be addressed whilst still keeping the uniformity. If our bill differs from other states on corporations, it may be that the commonwealth will legislate under the corporations powers to override state acts, and I think that is a real danger. It would be most unfortunate if we got to that stage.

The Hon. Ian Gilfillan talked about ministers' suing. Clearly, ministers do have two roles. Ministers are individuals. A minister can, like any other human being, suffer from being unfairly and wrongly defamed. That should be understood by all members of this parliament, I would have thought. Ministers who are corporation sole could sue in their personal names. For example, John Smith could sue rather than minister Smith or the minister for whatever the position would be. I would have thought that there was a fairly clear distinction between suing a government for defamation and suing an individual person. Of course, I suppose that one could say that, obviously, it depends on the nature of the defamation. Clearly, if a defamation was particularly hurtful, unfair and damaging to the individual, why should that person be any different from members of the community who have their reputation sullied?

**The Hon. R.D. LAWSON:** I know where the numbers stand in relation to this. I will not be dividing on the question. But, notwithstanding the fact that, in my perception, a majority of members of the committee do not support our view that the corporation should continue to have the right, we believe that, as a matter of principle, we ought to have placed this on the record. I believe that, at some time in the future, parliaments around the country will be revisiting this issue, because I believe that it will create some injustice.

Clause passed.

Clauses 10 to 21 passed.

Clause 22.

**The CHAIRMAN:** I draw the committee's attention to a clerical error in this clause. At line five, page 13, the words 'exclusion or' should correctly read 'exclusion of'.

Clause passed

Clauses 23 to 27 passed

Clause 28

**The Hon. R.D. LAWSON:** Clause 28 of the bill deals with the defence of qualified privilege for the provision of certain information. Subclause (1) provides that there is a defence of qualified privilege for the publication of defamatory matter to a recipient if a defendant proves, amongst other things, that the conduct of the defendant in publishing the matter is reasonable in the circumstances. Subclause (3) provides that, in determining for the purposes of subclause (1) whether the conduct of the defendant in publishing material about a person is reasonable in the circumstances, the court may take into account a number of factors, including the extent to which the matter published is of public interest, and other matters.

This provision takes up section 22 of the New South Wales Defamation Act, and it has been the subject of fairly robust criticism in some circles, particularly in Queensland where PTD Applegarth, Senior Counsel, a barrister at the Queensland bar, sent a circular letter which encapsulates the criticism of this concept contained in the New South Wales legislation. I want to read some extracts from Mr Applegarth's opinion on to the record because I think it is important, but I should begin by saying that most people might think that the inclusion of a provision in legislation which requires that conduct be reasonable is a fair thing.

Reasonableness is one of those sorts of motherhood concepts that everybody agrees that, if something is reasonable, it ought be accepted. However, the fact is, as Applegarth explains, in this particular context it has a highly restrictive application and is interpreted by the courts in such a way as to reduce the freedom of speech in this country. I should indicate that from my own point of view and that of my party we are interested in enhancing free speech, not restricting it. Mr Applegarth says in a letter of 16 June:

The recent decision in John Fairfax Publications v O'Shane—

this is the case involving the celebrated New South Wales magistrate Pat O'Shane, where she obtained damages for defamation—

confirms that judicial interpretation of. . . the New South Wales act—

that is the comparable provision—

renders qualified privilege practically useless for media defendants and many other participants in public affairs. Yet the media seems to have resigned itself to the fact that the defence of statutory qualified privilege in the uniform defamation act will reflect section 22 of the New South Wales act. The proposed uniform defamation law does not contain a qualified privilege defence that provides practical protection to report and discuss public affairs. The defamation debate in the last year has been sidetracked.

The defence of statutory qualified privilege rarely rates a mention. As interesting as issues about defamation of the dead and the right of companies to sue for defamation may be, they are far less important to the life of our democracy than a robust defence of qualified privilege. It may be hard to persuade politicians that there is anything wrong with the reasonableness test of the kind contained in section 22 of the New South Wales act. But the last 30 years is littered with unsuccessful attempts to rely on the section 22 defence. In recent years, the Lange defence has been interpreted as picking up judicial interpretation of section 22 of the New South Wales act. Influential decisions like Morgan v John Fairfax—

a 1991 decision—

subject defamation defendants to harsh retrospective judgments to which few of us would like to be subjected in our daily communications. Section 22 was never intended to operate so strictly. It was supposed to capture and simplify qualified privilege defences contained in the 1958 act. The potential of the 1958 act—

I will not go into the details of that—

to protect harsh criticism from public figures was confirmed in the case of Calwell v IPEC Australia—

an action by Arthur Calwell, the then leader of the federal parliamentary Labor Party against IPEC, the publishers of, I think it was, the *Nation Review*—

Initially, section 22 of the New South Wales act was interpreted as the New South Wales Law Reform Commission had intended, namely to replace, but not to alter, the effect of section 17 of the 1958 act, but a series of court of appeal decisions dramatically narrowed its protection. As Hunt J has pointed out in Calwell's case, there was no inquiry into the circumstances of the publication itself. There was no inquiry as to the defendant's belief in the truth of what was published. If the interest of readers in knowing the truth about the subject matter was sufficiently strong, then the defendant was able to argue that it was reasonable in the circumstances to publish the defamatory matter. Any inquiry into the defendant's belief in the truth of what was published arose in determining whether the publication was in good faith. It was not a precondition of proving that an occasion of qualified protection existed.

Section 17 of the New South Wales Act had its origins in the act drafted by Sir Samuel Griffith in 1889. That act remains the law in Queensland. Applegarth states:

It protects robust expressions of opinion. It also has provided in recent decades extensive protection for the media and others to make and report defamatory statements of fact about matters of public interest. This is well-illustrated in Bellino v Australian Broadcasting Corporation. It was this 'bread-and-butter' defence that was relied upon by the ABC and other media defendants to defend publications that exposed political and police corruption prior to the Fitzgerald Inquiry in Queensland. But if the proposed model Defamation Act of 2005 had applied back then, the media and individuals would have had far less protection to expose corruption in Queensland.

In short, a qualified privilege defence drafted by Sir Samuel Griffith in 1889 has been shown to provide far more protection than the qualified privilege defence proposed by politicians in 2005. Can this be regarded as progress?

Oddly, the media seems content to accept this. But if it accepts a practically useless statutory qualified privilege, then there won't be any realistic opportunity to improve it. An inadequate defence will be entrenched across the nation.

In recent weeks, I have been contacted by colleagues in Sydney [who] voiced concern about rumours that the Queensland Attorney-General had expressed reservations about losing the statutory qualified privilege defences that currently apply in Queensland. Concerns have been expressed that the Queensland Attorney-General is rumoured to want to 'break ranks' with other states. I do not know whether this rumour is mischievous or true. If it is true, it is interesting that a politician seems more concerned about having a protective qualified privilege defence than the media.

This is a significant point that is raised in Queensland, where the legislation has, since the time of Sir Samuel Griffith, been different from that which is in New South Wales. We know from what the government has conceded here that this particular bill was prepared in New South Wales by New South Wales parliamentary counsel and that the Labor states agreed to adopt the New South Wales defence of reasonableness.

I said in my second reading contribution that this bill represents a compromise. The media proprietors were happy to compromise in the interests of getting a uniform bill. They believe that if they have a uniform bill they will at least have a basis from which to seek to improve the law of defamation. But, in this regard, it seems to me that Applegarth has a strong point and that this measure is in effect a retrograde step. I have indicated that the Liberal opposition will not be opposing this national endeavour, but I think it is worth placing on the record that this endeavour is not as rosy as the government would have us believe and that at some time in the near future it will be appropriate to revisit section 28 and enhance freedom of speech rather than further restrict it. The undoubted effect of this section, which has not previously applied in South Australia, is that it will have a restrictive effect.

**The Hon. P. HOLLOWAY:** I will make some points. Common law qualified privilege as extended by the Lange v ABC case will remain available. I refer members to clause 22(1) which provides that qualified privilege is applicable to protect publication of defamatory matter that is false. The public interest is not advanced by sloppy or reckless journalism and mass media publication. Another point I make is that clause 28(3)(f) has been added to address the concerns expressed by the mass media representatives about courts not taking into account time pressures under which they work. I am advised that the media support the passage of the bill, but it is to be expected that they will keep lobbying. Would they do anything else?

**The Hon. R.D. LAWSON:** I do not propose to divide on that or oppose the clause, but I think it is worth placing on the record the fact that, certainly in the view of Queenslanders, they have had a better law in that state than the New South Wales model on which this bill has been based. If Applegarth is correct, it is a pity that the Labor states did not agree to adopt the Queensland position. I ask the minister to confirm that in fact there has been no break-out in Queensland. In that state the legislation proposed will have a section which contains these provisions in section 28.

**The Hon. P. HOLLOWAY:** I have been advised that Queensland has not put its bill into parliament yet. Our expectation of course is that it will be the same and part of the uniform bill but, dare I say it, in Queensland you do not always know.

**The Hon. R.D. LAWSON:** I indicate that, if in fact the Queensland government takes an independent line on this, then we will certainly be coming back into this parliament with a proposal to enable this parliament to have a full debate on whether or not we should be adopting the New South Wales rather than the Queensland model. We are content with the New South Wales model now, because it is said to be part of a national deal but, if Queensland gives to its citizens better rights than the rest of the country, I believe we should be following Queensland and not New South Wales. Let us wait and see what they do in Queensland rather than stopping to seek to change this model.

**The Hon. P. HOLLOWAY:** That is a fair point.

**The CHAIRMAN:** It is indeed.

Clause passed.

Clause 29 passed.

Clause 30.

**The CHAIRMAN:** I am advised that there is a clerical error on page 20, line 35. The words 'whom the operator has no effective control' should read 'whom the operator or the provider has no effective control'. It makes sense if you read the rest of the clause where it talks about an operator or provider. It is a clerical error and the committee ought to be aware of it.

Clause passed.

Clauses 31 to 41 passed.

Clause 42.

**The Hon. R.D. LAWSON:** This clause provides that the Governor may make regulations as are contemplated. Will the minister indicate whether it is proposed to formulate regulations? If so, in respect of what matters have the regulations been drawn, and when is it contemplated that they will be available?

**The Hon. P. HOLLOWAY:** No regulations are contemplated at present.

Clause passed.

Schedule and title passed.

Bill reported without amendment; committee's report adopted.

Bill read a third time and passed.

## PITJANTJATJARA LAND RIGHTS (MISCELLANEOUS) AMENDMENT BILL

The House of Assembly agreed to the bill with the amendments indicated by the following schedule, to which amendments the House of Assembly desires the concurrence of the Legislative Council:

*No. 1.* Clause 5, page 4, line 6—
Delete 'Ngaanyatjara' and substitute:
Ngaanyatjarra

*No. 2* Clause 26, page 30, line 34—
Delete 'Ngaanyatjara' and substitute:
Ngaanyatjarra

*No. 3* New Clause 30, page 32, after line 6, insert new clause as follows—

Clause 30—Amendment of Schedule 3—Rules of election under section 9

(1) Schedule 3, clause 1, definition of *electorate*—delete the definition

(2) Schedule 3, clause 2—delete clause 2 and substitute:

2—Elections

An election under section 9 will consist of an election of 1 member of the Executive Board from each of the following community groups (and each community group will constitute an *electorate* for the election):

(a) Pipalyatjara/Kalka;
(b) Watarru;
(c) Kanypi/Nyapari/Angatja;
(d) Amata/Tjurma;
(e) Kaltjiti/Irintata/Watinuma;
(f) Anilalya/Turkey Bore;
(g) Pukatja/Yunyarinyi;
(h) Mimili;
(i) Iwantja;
(j) Amuruna/Railway Bore/Witjintitja/Wallatinna.

(3) Schedule 3, clause 3(3)(c)—delete ', if permissible under local custom,'

(4) Schedule 3, clause 4(1)—delete 'on a day' and substitute:
during a period

(5) Schedule 3, clause 4(1)—delete 'same day' and substitute:
same period

(6) Schedule 3, clause 4(2)—delete 'on the day' and substitute:
during the period

(7) Schedule 3, clause 4—after subclause (2) insert:

(3) Subject to this Schedule, the period determined by the returning officer during which voting may be held must be not less than 1 day and not more than 7 days.

(8) Schedule 3, clause 5(2)(b)—delete 'time and date when voting shall' and substitute:
period during which voting may

(9) Schedule 3, clause 5(2)(c)—after 'location' insert:
or locations

(10) Schedule 3, clause 5(2)(d)—delete 'each ballot at the election on the date and time advertised' and substitute:
the election during the period during which voting may take place

(11) Schedule 3, clause 6(1)—delete 'A *Pitjantjatjara*' and substitute:
An Anangu

(12) Schedule 3, clause 6(1)(a)—delete paragraph (a) and substitute:

(a) to nominate for the office of the member of the Executive Board to be elected from the electorate; and

(13) Schedule 3, clause 6(2)—after 'location' insert:
or locations

(14) Schedule 3, clause 6(5)—delete ', if permissible under local custom,'

(15) Schedule 3, clause 8(1)—delete 'a time and at locations' and substitute:
during the period, and at a location or locations,

(16) Schedule 3, clause 8(1)—delete 'such time should be' and substitute:
such period should commence

(17) Schedule 3, clause 8(2)—delete ', if permissible under local custom,'

(18) Schedule 3, clause 8(4)—delete ', if permissible under local custom,'

(19) Schedule 3, clause 8(5)—delete subclause (5) and substitute:

(5) A person may, at an election, only cast 1 vote in relation to the election of members of the Executive Board.

(6) To avoid doubt, voting is not compulsory.

(20) Schedule 3, clause 17(3)(b)—delete paragraph (b) and substitute:

(b) must within 1 month after the conclusion of the election cause the result of the election to be published—
(i) in the Gazette; and
(ii) in a newspaper circulating throughout the State; and
(iii) in any other manner determined by the Minister.

(21) Schedule 3, clause 20(2)(a)—delete paragraph (a) and substitute:

(a) to nominate for the office of the member of the Executive Board to be elected from a particular electorate; or

(22) Schedule 3, clause 20(2)—delete 'a *Pitjantjatjara*' and substitute:

an Anangu

(23) Schedule 3, clause 24—after 'member of the' wherever occurring insert:

Executive

(24) Schedule 3, clause 24—delete 'or the Chairperson of Anangu *Pitjantjatjara* (as the case requires)' wherever occurring

(25) Schedule 3, clause 30—after 'may' insert:

, on the recommendation of the Minister and Anangu *Pitjantjatjara* Yankunytjatjara,

(26) Schedule 3—after clause 30 insert:

31—Costs

Any money required for the purposes of an election under section 9 is to be paid out of the Consolidated Account (which is appropriated to the necessary extent).

*No. 4* Clause 32, page 34, lines 21 to 26—

Delete subclauses (2) and (3) and substitute:

(2) The review must be conducted by a panel of 3 persons of whom—

(a) 1 must be an Anangu nominated by the Executive Board of Anangu Pitjantjatjara Yankunytjatjara; and

(b) 2 must be persons selected by the Minister with the agreement of the Executive Board of Anangu Pitjantjatjara Yankunytjatjara.

*No. 5* Clause 32, page 34, after line 34—

Insert:

(7) In this section—

*Anangu* has the same meaning as in the *Pitjantjatjara Land Rights Act 1981.*

Consideration in committee.

*Amendment No. 1.*

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

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

**The Hon. R.D. LAWSON:** We certainly support this amendment to change the spelling of Ngaanyatjara to Ngaanyatjarra. This was the subject of discussion when the matter was last before the committee in this place. The opposition agrees that this is a more appropriate spelling and ought be adopted.

**The Hon. KATE REYNOLDS:** I indicate the Democrats' strong support for this amendment. Members will recall that I moved an amendment to this effect when the bill was before the council. The government and the opposition opposed my amendment at that time. We are pleased that they have seen sense, and we indicate our strong support for both this amendment and the next one.

**The Hon. T.G. ROBERTS:** I thank members for their support. We did get agreement on this in the council, but we did some cross-checking. The information supplied was that there are two ways of spelling this word and that both are in common use. We have chosen the spelling which the Hon. Kate Reynolds opted for in her amendment.

Motion carried.

*Amendment No. 2:*

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

That the House of Assembly's amendment No. 2 be agreed to.

This is the same argument used by the government in relation to the spelling of Ngaanyatjarra.

Motion carried.

*Amendment No. 3:*

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

That the House of Assembly's amendment No. 3 be agreed to.

**The Hon. KATE REYNOLDS:** I move:

That the House of Assembly's amendment be amended by deleting subclauses (21) and (22) of clause 30 and substituting:

(21) Schedule 3, clause 20(2)—Delete subclause (2).

My amendment is to ensure that the Court of Disputed Returns is able to hear an appeal in relation to the election process. Currently, as I outlined previously—I will not go through the detail again—during the election process for the AP executive board, which is now effectively the APY executive board, any person can turn up to a polling booth and declare that they are Anangu and live on the lands and are entitled to vote. That could be you, Mr Chairman, me or the Hon. Bob Sneath. Clearly, we are not Anangu, but the law does not recognise that.

The Pitjantjatjara Land Rights Act and this amendment bill does not give any protection to Anangu from coming in and making a false attempt to vote. We do not know whether that has occurred in the past, but I think all members here would have heard stories about that. Certainly in the broader community there is ongoing discussion about the need for people to provide some form of identification before they are eligible to register to vote in federal elections, and I assume that would translate to state and local government elections. However, in the law that relates to our local state and federal government elections, there are appeal processes. We suggest there should be an appeal process for elections for the APY executive board as well. We do not anticipate that a lot of people would dash off to lodge an appeal—that would probably be a quite costly and tedious exercise—but we believe that, if any Anangu have serious concerns and wish to exercise their right to challenge, that right should exist according to law.

**The Hon. T.G. ROBERTS:** It is unfortunate that the honourable member's interpretation of eligibility to vote is made on the basis that the Hon. Mr Sneath would be able to qualify to vote when that is not correct. The situation is that you have to be a member of the APY groupings and a traditional owner; there is no provision for non-Anangu to vote in elections. If you did have a strict code that applied to people voting, you could hold up an election and have objections raised forever. The nature of the voting system and the way in which elections are carried out is based on trust, on the basis that everyone knows everyone else and if, in the past, there have been some non-Anangu who have voted then objections have been raised. The scrutiny that takes place while the elections are being held is now under the auspices of the Electoral Commission, and there are certain disciplines that can be brought to bear according to the act as it stands now and the act as it will stand when the amendments are carried and endorsed. So, I think the honourable member's fears are misplaced, and this amendment will be opposed by the government.

**The Hon. KATE REYNOLDS:** With respect, I think the minister's advice might be somewhat misplaced. I will start off by refuting the comment that anything we are trying to do is seeking to hold up the election. That is absolute nonsense—

**The Hon. T.G. Roberts:** I did not say that.

**The Hon. KATE REYNOLDS:** I think the minister may want to check the record. This amendment is intended to give people the right to appeal after an election has been held. It does not in any way seek to hold up any election, and I think it is quite mischievous to claim anything even remotely resembling that.

I refer back to the comments I made in previous debate. I spoke with Mr Steve Tully, who was the electoral commis-

sioner previously, at the time that we were debating changes to the act that forced elections to occur within a certain time frame last year. I could not believe that this situation existed, that there was no right of appeal, and I said to him, 'Are you telling me that I can turn up to a polling booth on the lands and say that I am an Anangu, that I reside here and that I have come to vote?' He answered, 'Yes', and I said, 'And no-one has any recourse, no-one can appeal against that in any way?' He replied that that was right.

**The Hon. R.D. Lawson:** You want a DNA test, do you?

**The Hon. KATE REYNOLDS:** No, I am not suggesting that people be DNA tested—that is an outrageous allegation. What I am saying is that if a certain rule applies for other elections—local government elections, state government elections and federal government elections—why can the same rule not apply to give the right to appeal? I do not intend to prolong this debate for hours and hours, members will be pleased to know, but I would like to place on the record our view that this is clearly one set of rules for some and another set of rules for other people, with differences that cannot be justified.

It is not such a big deal to build an opportunity to appeal into the legislation, and I see this as just another example of the government refusing to accept a reasonable amendment simply because it has come from the South Australian Democrats and simply because some egos are at stake.

**The Hon. T.G. ROBERTS:** If the words I put forward gave you an indication that I was implying that you are deliberately holding up the election it was not intended; it was not my intention to make that accusation. What I am saying is that if that interpretation is being put to Anangu then it is a misconception; it is not correct.

**The Hon. Kate Reynolds:** What interpretation is that?

**The Hon. T.G. ROBERTS:** The interpretation that anyone can roll up at an annual general meeting and vote in an election for the executive. There are many things that are different about the way the AP carry out their elections and there are many things that are different from, say, a local government election.

Under the previous legislation we tried to make it as easy as possible for the people to vote and to maximise the returns on any given day, but that process is impeded by a whole range of other issues. Over time we have had meetings where 400 to 500 people turn up but, because the meetings are held over two days, sometimes the number of people who remain at a particular polling area diminishes to fewer than 100. That is unsatisfactory as far as a broad democracy goes—and if you were concerned about broad democracy then you would be concerned about issues like that.

We have to make sure that Anangu are consulted in any process that brings about change, and in the second tranche of amendments we are going to make sure that there is discussion about what is the best way to get the best returns in relation to people voting. People have been discussing a lot of ways of improving that—postal ballots have been mentioned as well as having mobile booths—but we have deliberately separated those issues out on the basis that we do not want confusion to reign so that people can have reason or excuse to make sure that the bill is not supported. We have tried to keep it simple, and that is the best way of getting the best returns in the annual general meeting. So, if there is any conspiracy theory being peddled it is, hopefully, not being picked up on the lands, and hopefully we can get this legislation through so that the next election can be run along the lines of past elections, and then we can discuss it over time. Some Anangu have put forward the proposition that it may take another 12 months to talk through the rest of the issues, and that is something that will have to be considered.

**The Hon. R.D. LAWSON:** I think I am correct in saying that the minister described this as a mischievous amendment. I think it is a misguided amendment, which I think will have very unfortunate effects. In moving the amendment the honourable member suggests that there should be the same rule applied for AP elections as apply to federal, state and local government elections. I do not believe that is the case at all. I believe that the procedures that have been adopted on the lands have adapted to what is called the 'Anangu way', and it is entirely appropriate that the formality of elections in the wider community is not necessarily appropriate to the situation on the lands: formality should not be insisted upon. I also believe that a provision of this kind will be productive of disputation.

The honourable member says, 'Oh, it's only after the election that this question could arise, because an appeal would be made after the election.' But, if a right of appeal exists on this ground after the election, it will mean that, at the polling booth, when the poll has been taken, people will be able to raise the sorts of objections they could raise on appeal—'This person is not Anangu for whatever reason,' 'He's not Anangu' or 'If I'm not Anangu, he's not Anangu,'—and you will have eligibility issues that previously have not arisen. The honourable member has not suggested that there has been a problem about this in the past. I do not believe that we should be starting at shadows and, from this place, imposing on Anangu—who have been consulted on this and who have agreed to procedures in the bill—additional complications.

By way of interjection, I said, 'Do you want to actually insist upon DNA testing for Anangu?' That was only a half jocular remark. As members would know, there has been such a suggestion made in relation to ATSIC elections in Tasmania. It caused a great stir, and it was not conducive to peace and good government in indigenous communities. I do not believe we should be going down that route, so I will certainly be supporting the government's opposition to this proposal.

**The Hon. KATE REYNOLDS:** I think it is worth placing on the record during this discussion that there is not an electoral register on the lands, and I am not going to suggest here and now that there should be. I understand why there has not been one developed in the past. I had long conversations with the former state electoral officer (Mr Steve Tully) about that, and he expressed his absolute reluctance to even attempt that. But what I would ask is that the minister give a commitment that, during the review this act will now require, there will be discussion about this idea of there being some sort of register of voters and some sort of appeal process. I think the minister indicated earlier that proposals such as polling booths would be discussed in the second tranche of the amendments. I assume the minister means the review, because my understanding is that the second round of amendments (as discussed during debate on this bill) relate to mining. From what the minister has said in this place and what was said in the other place, my understanding is that the government's position is the amendments in this round are just about governance.

The minister needs to indicate that either there will be governance discussions in the second round or that he will commit to that during the review of the act, which seems to me to be the more appropriate place. So, a simple yes or no

on the record that the minister will commit to reviewing both of those issues—that is, some sort of register and some sort of appeal—will help to lower my blood pressure. We can then move on from this amendment.

**The Hon. T.G. ROBERTS:** I think I can give an undertaking in order to lower the honourable member's blood pressure. These issues have been under discussion with Anangu over the last 3½ years. Some discussions may have been undertaken by the previous government. We have decided not to go down the path of complicating the issue for this election. Some issues outside lands management will be discussed over time, and continual changes will be made to the act by way of amendment to make things better for Anangu not only in the areas of administration and governance but also in service delivery as well. The obligation is on the government to partner Anangu in all of this.

I suspect that the act will be upgraded after the review, but amendments may be requested by AP that will need to be put in. Certainly, there are different views and opinions now as to the progress of the bill and whether it is the model required by everyone. However, we are moving forward with the bill as it stands, and we will certainly reflect on any suggestions made by honourable members, the standing committee, the traditional owners themselves, and the APY executives and the communities: the communities have a right to make suggestions as well. We will be open to those views and ideas.

**The Hon. KATE REYNOLDS:** I have been having a quick think about procedures whilst I was also listening intently, as a multi-tasking kind of women, to what the minister had to say. I thank the minister for putting that commitment on the record. When we debated this bill previously, members will recall that we were unable to debate this amendment at the time, because it was connected to clause 30 of the bill, which was described as a money clause and therefore had to originate from the other place. I assume that this is a money clause, and I wish to raise an issue about money in relation to the bill. I seek your guidance, Mr Chairman, about whether this is an appropriate place to do so. The next clause, which I understand is the last opportunity for me to speak, is not related to money in the same sense. I seek your approval to speak at this stage about money.

**The CHAIRMAN:** My advice is that we can deal only with the amendments that are before us. I understand that you are making the point that clause 30 was declared a money clause. It was sent to the House of Assembly. I am certain I said then that it was the only time this committee could comment on it.

**The Hon. KATE REYNOLDS:** Thank you, Mr Chairman; I am glad we all were of the same view. I want to make a comment about money, given that this is a money clause. When I made my second reading contribution, I spoke at some length about money that has or has not been spent on the lands by the government; and money in control of the executive or the state government in terms of service provision. I spoke a number of times and I raised a number of issues. This bill was debated in the other place last night—with great haste, I have to say. It was introduced in the other place only yesterday, and it was debated in its entirety until 4.18 a.m.; and I was there listening to the discussion. The House of Assembly was informed that the bill had to pass this parliament by today, otherwise some $10 million of commonwealth government funding would be withdrawn. I want to spend a couple of minutes talking about this matter. I think it is an absolutely extraordinary situation in which we have found ourselves.

**The CHAIRMAN:** Order! You have sought clarification about the right to speak on money. You should speak about the money that is being allocated in this clause. You are introducing new grounds and going back over the whole bill. I ask you to remember that. If you are going to make a comment, it should be concise. If it is an observation about proceedings in the other house, it is not relevant to this money clause. I will allow you to conclude what you are saying, so I can judge precisely whether you are complying with standing orders. I ask you to consider that when making your comments.

**The Hon. KATE REYNOLDS:** Thank you, Mr Chairman. I thought it was important to put it into context, so members did not wonder why I was suddenly asking these questions and had not asked the questions I am about to put to the minister in my previous contributions. It appears that the government is claiming that, if the bill is not passed quickly, some $10 million of funding will be lost. It was claimed that the commonwealth government has made it plain that it will no longer fund any indigenous organisation that does not have a 'clean set of governance arrangements'.

I have a number of questions I will pose to the minister. First, who informed the government of this position, bearing in mind we are talking about a particular clause that relates to money for the holding of an election? I am talking about the commonwealth's attempting to hold the state to ransom on the claim that it will not provide money unless there is a 'clean set of governance arrangements'. That has a direct relationship to the election and the clause we are debating currently. The clause has financial implications. So, which commonwealth government officer contacted a state government officer? When was this contact made? Was it made formally? Was it a chat over the telephone, as has been suggested?

It has been suggested that this contact was made some weeks ago. Why was the parliament not informed? Why was the Aboriginal Lands Parliamentary Standing Committee, whose function is to review the act, not informed? There have been meetings of that committee in the past couple of weeks. If it is the case that the commonwealth is attempting to hold the state to ransom, why did the government not attempt to take a bipartisan approach, get us all sitting around the table and say, 'Listen, there are some serious financial implications here; how will we deal with this?' Members will recall that when I spoke previously I talked about a particular document—

**The CHAIRMAN:** Order! I gave the Hon. Ms Reynolds an opportunity. The honourable member made an attempt to make a connection between her general concerns about federal funding and procedures of the bill which are not part of this clause. I have allowed her to put some of that in *Hansard*; however, I will have to direct that the honourable member talk about the money that is appropriated for the elections within this clause 30. I am sure that her concerns are genuine (and probably well-founded), but they are just not applicable to this clause. I will have to insist on this.

The minister, I am sure, has heard every word that she has said. I will give the minister an absolute right to make a reply, although it is strictly not within the protocols and procedures of the committee. The honourable member should be talking about the clause that is before the committee. As I said, I am sure that her concerns about these matters are genuine, but they are just not applicable.

**The Hon. KATE REYNOLDS:** Can I make one very brief summing up statement before the minister speaks?

**The CHAIRMAN:** If it relates to the clause and its contents; the honourable member really should not stray beyond that.

**The Hon. KATE REYNOLDS:** I understand that. I am talking about clauses 30 and 31 in relation to costs and any money required for the purposes of an election. I am trying to lead to the question: is this $10 million about which the commonwealth government is holding the state government to ransom and making us compress debate into such ridiculous short periods of time at such ridiculous late hours, when people are tired and cannot think and discuss properly, something that will affect either the state government's ability to fund the election (due on 20 November) or fund any of the other services and programs that it has already announced in conjunction with the commonwealth, that is, announcements made by Senator Amanda Vanstone walking hand in hand with Premier Mike Rann?

**The CHAIRMAN:** Is the honourable member asking whether the money referred to for appropriation for the cost of these elections is being jeopardised by the federal government's attitude? On that basis, the honourable member's question is in order, and I will ask the minister whether or not he wants to reply. I will not tell him how to reply.

**The Hon. T.G. ROBERTS:** The best way to explain it is that the government worked on this bill well before the announcement of the commonwealth's new policy in relation to dealing with local communities. The commonwealth has announced a number of policies in relation to how it will engage the states in dealing with communities that have poor governance or, in some cases, no governance. Caveats are being placed upon engagement protocols with the commonwealth and the states which the states must take into account. You go into negotiations around programs for regional and remote areas with a thought in your mind that the rules that the commonwealth will apply might jeopardise the funding that you are trying to achieve in running joint programs or state programs using commonwealth funds.

The threats, as the honourable member has called them, in relation to defunding the state in relation to the elections have no power or meaning in that respect. The election funding has never been threatened by the commonwealth. It is state funds that are applied. Certainly, in relation to the way in which the commonwealth is dealing with the states and local communities as far as their funding regimes are concerned, those protocols of good governance are questions to which the states must adhere, and we must be cognisant that, if we are not moving with the communities to change their governance and to have more transparent processes on the lands, we could be jeopardising funds for other programs, but not the elections. The elections are state financed.

**The Hon. KATE REYNOLDS:** Perhaps the minister will offer some answers to the questions that I asked previously about which commonwealth officer contacted which state officer, when this occurred and why the Aboriginal Lands Parliamentary Standing Committee and the parliament were not informed of this during the debate.

**The Hon. T.G. ROBERTS:** The question of who relays what to whom is not relevant. The relevancy is the commonwealth's policy and the state's obligation to adhere to those policies if they want the funding regimes to be unfolded, and if we are going to work in cooperation with the three tiers—and I have said this in the council on many occasions. If we are going to cooperate to get it right in relation to how we deal with remote communities, we have to have include the commonwealth and the state; and, in the case of the outback services, we have to have cooperation and understand each other's rules. If we do not abide by the commonwealth's rules, the funding is jeopardised. That is a decision we make at a particular time. We may not want to apply the commonwealth rules to a particular situation. They are decisions that the states have to make.

**The Hon. KATE REYNOLDS:** Hopefully the minister can make it plain that this $10 million was subject to this legislation being passed, as was said by the minister in the other place yesterday. That was known many weeks ago throughout the time that we were debating this bill in this place, and it was never said, not until the last day as the government was pushing the legislation through in the early hours of the morning in the other place. In fact, it emerged only because somebody else raised it—not because the government raised it.

**The CHAIRMAN:** We are talking about funding arrangements.

**The Hon. Kate Reynolds:** I am happy with a yes or a no.

**The CHAIRMAN:** We are talking about funding arrangements with the federal government. This clause is a binding commitment that the state government appropriate the money for these elections whether it gets two bob or $2 million from the federal government. You have gone straight back into the area where I asked you not to go. I cannot tell the minister not to respond, but I have to try to abide by the rules of the committee. The rules of the committee say that you must talk about this appropriation. This clause, if it passes, is very clear: the state government will have to appropriate the money whether it gets it from the federal government or from some other source.

**The Hon. R.D. LAWSON:** The agreement of the opposition to the immediate passage of this bill was not based upon any threat from the commonwealth government or any belief that there would be financial ramifications if the bill was not passed. Our desire to pass this bill and pass it quickly is because that is what the government has promised for two years—to produce a bill. That is what the people on the lands, the duly elected AP executive, wants. We all know that there is an election due on the lands shortly. That election ought to be held under the new regime. We all know from the information given to us by the Electoral Commissioner that, unless the legislation is passed this week, such an election cannot occur, and it is for that reason that we have supported the rapid passage of the bill and not as a result of blackmail from anyone.

**The CHAIRMAN:** The Hon. Mr Lawson has also managed to bring other things back into the debate on this bill. I am sure the Hon. Ms Reynolds is going to make me happy and confine any remarks she makes to this clause.

**The Hon. KATE REYNOLDS:** In relation to the appropriation of state funds, we are still waiting for an answer to our many previous questions about the difference between the Rann Labor government's policies on Aboriginal affairs and the federal Liberal government's policies on Aboriginal affairs.

Amendment negatived; motion carried.

*Amendment No. 4:*

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

That the House of Assembly's amendment No. 4 be agreed to.

**The Hon. KATE REYNOLDS:** I move:

That the Legislative Council disagrees with Amendment No. 4 made by the House of Assembly and substitutes in lieu thereof:
Clause 32—
Delete subclauses (2) and (3) and substitute:
(2) The review must be conducted by a panel of 3 persons of whom—
(a) 1 must be an Anangu nominated by the Executive Board of the Anangu Pitjantjatjara Yankunytjatjara: and
(b) 1 must be a person selected by the minister with the agreement of the Executive Board of the Anangu Pitjantjatjara Yankunytjatjara; and
(c) 1 must be a person selected by the Aboriginal Lands Parliamentary Standing Committee (established under the Aboriginal Lands Parliamentary Standing Committee Act 2003) with the agreement of the Executive Board of Anangu Pitjantjatjara Yankunytjatjara and the minister.

I really hope that we do not have to have a long debate on this. People are tired, especially all those people present who were following the debate last night, but I would like members to give serious consideration to my amendment. Again, through legislation, I am attempting to install a place for the Aboriginal Lands Parliamentary Standing Committee to have some formal participation in the review. When we were debating an earlier amendment in this place the minister made some suggestion that the committee might be the body that undertook the review. The Hon. Mr Lawson argued against that at the time. I think he made some very good points. We supported that position, and we continued with the amendment that I had proposed at the time.

The government has put up its own amendment in the other place which we believe is not adequate, because it does not have some participation by the committee. All I am asking for by this amendment is that the Aboriginal Lands Parliamentary Standing Committee be able to select a person who then has to be approved by the minister, and also has to be approved by the Executive Board of APY. We think that is quite appropriate, but we think the committee should have a role.

It has been put to me by government advisers and other people that there are concerns about whether or not the government might have a majority on the Aboriginal Lands Parliamentary Standing Committee and what that means or does not mean about the government's ability to have its own way with the composition of the panel. Frankly, that is neither here nor there for us. This is a matter of principle about the committee whose first function is to review four acts, one of those being the Pitjantjatjara Land Rights Act, being able to select one of those members of that panel of three. And I am very happy for that to still be approved or disapproved by the minister in the executive.

If the government is not willing to accept this amendment then I think it would seem to any reasonable person following this that that is incredibly churlish and an attempt to grab more control over the review process. I would have thought that one of the top 10 lessons was to involve the Aboriginal Lands Parliamentary Standing Committee from the beginning, and involve it in a genuine kind of way. This is an opportunity to do that. I urge members to support my amendment.

**The Hon. T.G. ROBERTS:** Being the chair of the standing committee, I have complete confidence in the ability of the committee to participate at all levels, including choosing those people on the review. However, I do not think it is the role of the standing committee to involve itself in the make up of what would be the government's responsibility. It can partake in an examination of candidates and it can put forward its own suggestions, but our position is to oppose the amendment and support the proposition we have developed, which gives more power to Anangu in relation to who they believe is fit to be on that review process. It brings a relationship between the minister and the executive where the minister has to get an agreement with the executive on the type and nature of the people who are going to be included in the review process. The honourable member's intentions are honourable—and I do not want to be patronising—about involving the standing committee. It can be involved under its own constitution in relation to how it reviews the act and other aspects of the APY's business, but governments have to govern.

**The Hon. R.D. LAWSON:** I indicate that we will support the position adopted in the House of Assembly in relation to this matter. I commend the Hon. Kate Reynolds for initially raising the suggestion that one of the persons on the review panel should be an Anangu, which was a good initiative. I am very supportive of the fact that the executive board will have a key role in the selection of the panel of three reviewers.

I am a great supporter of the Aboriginal Lands Parliamentary Standing Committee. I know the mover is an enthusiastic contributor to that committee. That committee already has as its remit and jurisdiction the review of the legislation that is an ongoing statutory responsibility of the committee. It is an important responsibility, but the review being created by this section is separate. I believe the process will be better served if the committee sticks to its knitting, as defined in its constitution, and that this other review be conducted. The lands committee may not agree with the result of that review. I do not believe it should be compromised or connected with the review, and making it a part of the review by having it appoint somebody to be a reviewer misunderstands the function of the review and the function of the standing committee. I in no way denigrate the standing committee as it has important responsibilities. However, one of them is not to select one of the panel of reviewers.

**The Hon. KATE REYNOLDS:** The minister may want to have a closer reading of my amendment. He is suggesting that the government's amendment will build a better relationship between APY and the minister and that the APY should be involved in the choosing of every member of the panel. That is precisely what my amendment supports. That is exactly the wording in front of the minister. In relation to the comments the Hon. Rob Lawson has made about whether or not the standing committee should or should not have involvement in the choosing of the panel, irrespective of whether it might agree with anything the panel ultimately recommends, exactly the same argument could be put if we want to spend all day here—and we do not—talking about the APY. I do not think that argument makes any sense. I am disappointed that here is yet another sensible, reasonable and logical amendment that neither the government nor the opposition are prepared to support. I am not surprised, but I am still disappointed. Whilst I would love to talk for another hour, I will not.

The committee divided on the motion:

AYES (14)

| | |
|---|---|
| Dawkins, J. S. L. | Gago, G. E. |
| Gazzola, J. | Holloway, P. |
| Lawson, R. D. | Lensink, J. M. A. |
| Lucas, R. I. | Redford, A. J. |
| Roberts, T. G. (teller) | Schaefer, C. V. |
| Sneath, R. K. | Stefani, J. F. |
| Stephens, T. J. | Zollo, C. |

NOES (5)

| | |
|---|---|
| Evans, A. L. | Gilfillan, I. |
| Kanck, S. M. | Reynolds, K. (teller) |
| Xenophon, N. | |

Majority of 9 for the ayes.

Motion thus carried.

*Amendment No. 5:*

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

That the House of Assembly's amendment No. 5 be agreed to.

The definition that we agree to include is that Anangu means all Aboriginal members of the APY and who are traditional owners.

Motion carried.

*[Sitting suspended from 1.13 to 2.20 p.m.]*

### GENETICALLY MODIFIED CROPS

A petition signed by 58 residents of South Australia, concerning the Genetically Modified Crops Management Act 2004 and praying that the council will amend the Genetically Modified Crops Management Act 2004 to remove section 6 of that act, was presented by the Hon. Ian Gilfillan.

Petition received.

### PAPERS TABLED

The following papers were laid on the table:

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

Reports, 2004-05—
- Department of the Premier and Cabinet
- Equal Opportunity Tribunal
- Legal Practitioners Disciplinary Tribunal Report to the Attorney-General and the Chief Justice pursuant to Section 90A of the Legal Practitioners Act 1981

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

Reports, 2004-05—
- Adelaide Festival Centre
- Zero Waste SA

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

Reports, 2004-05—
- Adelaide Convention Centre
- Adelaide Entertainment Centre
- Non-Government Schools Registration Board
- South Australian Tourism Commission

2007 World Police and Fire Games.

## QUESTION TIME

### SUPERANNUATION

**The Hon. R.I. LUCAS (Leader of the Opposition):** I seek leave to make an explanation before asking the minister representing the Treasurer a question about the massive blow-out in unfunded superannuation liabilities.

Leave granted.

**The Hon. R.I. LUCAS:** At the change of government a little over three years ago, the former government had significantly reduced the state's unfunded superannuation liabilities to $3.2 billion. In a statement issued yesterday, which I think was issued exclusively to *The Advertiser* and which was headed 'Super liability on track for elimination by 2034,' the Treasurer indicated, in the bowels of that press release, that the superannuation liability had now gone through the $7 billion mark for the first time—$7.115 billion. Mr President, I remind you that at the time of the change of government the unfunded superannuation was $3.2 billion. Whilst the measures obviously measure different issues, the level of increase in the unfunded superannuation is bigger in quantum than the size of the State Bank debt, which was $3 billion—we are talking about almost $4 billion in increased unfunded superannuation.

The government is aware that, in the last two budgets in particular but in all the government's budgets, there have been very significant unbudgeted increases in public servants, even discounting for the service deliverers in teachers, doctors, nurses and police—so, a significant increase in the administrative level of public servants within the public sector. In fact, in the last budget the increase in public servants over the budget was almost 1 800 public servants. As one media commentator pointed out to me, there is no-one in South Australia who believes that in the past 12 months there has been an increase of 1 800 teachers, nurses, doctors and police in South Australia.

In the previous budget year, the unbudgeted increase in public sector workers was some 600. Since this government came to power there has been an increase of at least—and the numbers are still being counted—5 000 public servants in the public sector. As I said, no-one believes the story that there are 5 000 extra teachers, doctors, nurses and police.

The other issue, which has been highlighted in the past two days and which is highlighted in the actuary's report, is that one of the factors in the increase in the unfunded superannuation liability is that workers are retiring later in a higher position with a higher salary, meaning larger superannuation pay-outs. As the Leader of the Opposition has highlighted, under this government there has been an increase of 850—more than double—in the number of public servants that the Premier and Deputy Premier refer to as fat cats; that is, anyone earning over $100 000 in the public sector. Rather than the cut of 50, as the Rann government promised, there has been an increase of 850 public servants earning more than $100 000 in the public sector. My questions are:

1. Does the Treasurer concede that the unbudgeted increases in public sector numbers that do not relate to teachers, doctors, nurses and police have led to an increase in unfunded superannuation liabilities?

2. Does the Premier concede that, contrary to his public promise, the increase in the number of public servants earning more than $100 000 a year at present has also led to an increase in the unfunded superannuation liability?

3. Has the government accepted the recommendations of the report that require the employer contribution (that is, the department's) to increase from 20 to 22 per cent for the pension scheme and from 12 to 13 per cent for the lump sum scheme?

4. Will all agencies and departments be required to find from within existing funds the increased superannuation payment from the department's funds, such as correctional services, into the Treasury black hole to help fund this issue; or will the government from the Consolidated Account supplement the agency budgets for what will be the increased superannuation charges?

**The Hon. P. HOLLOWAY (Minister for Industry and Trade):** There are a few old furphies kicking around there. I well recall during the term of the previous government, when the then Liberal government had an actuarial review of superannuation, it used the results to reduce the amounts

because it happened to correspond with a favourable period on the stock market.

**The Hon. R.I. Lucas:** You are out of your depth!

**The Hon. P. HOLLOWAY:** No; I am not out of my depth. It is the Leader of the Opposition who is out of his depth.

*The Hon. R.I. Lucas interjecting:*

**The Hon. P. HOLLOWAY:** Well, what happens is that, if actuaries got it right all the time, there would be no increase.

*The Hon. R.I. Lucas interjecting:*

**The Hon. P. HOLLOWAY:** No; actuaries make assumptions. They predict into the future and they do not always get it right. What is the honourable member really suggesting? What is the Liberal opposition suggesting? If there is an increase in the unfunded liability, because people are living longer or retiring on higher salaries, what is the honourable member suggesting? Is he suggesting that we reduce their salaries or superannuation, or find some way of making them end their life quicker? Is that what the honourable member is putting? The fact is that unfunded superannuation liabilities largely respond to those people who are already retired in the old pension superannuation schemes, which were changed many years ago.

For the Leader of the Opposition to try to tie this back to this government when we have had all the changes to the super scheme for some years now is really disingenuous. The other old furphy relates to the number of public servants earning more than $100 000 a year. As the Treasurer pointed out, some of those would be members of parliament. Members of parliament were earning less than $100 000 a year or two ago. As salaries rise by the average amounts (3 per cent, 4 per cent, or whatever the rates are each year), a certain number of people will cross over the threshold.

Of course, if you do not index the thresholds, if you still use what they were 10 to 15 years ago, more and more people on lower levels will cross that threshold. That is a simple statistical fact. As I say, 10 or 15 years ago, $100 000 would be, if it had been indexed in terms of salary movements, probably equivalent to $150 000 or $200 000 today.

*The Hon. R.I. Lucas interjecting:*

**The Hon. P. HOLLOWAY:** Well, the point is that those measures had only been put in. It is now five years later. We have had an increase. The other furphy of the Leader of the Opposition was that no-one believes that there are extra police or nurses. Let me say that, in fact, there is a record number of police in this state, and the state government has increased the number of nurses. The thing is that you can use statistics to prove anything. The fact is that the Leader of the Opposition is trying to use some statistical aberrations to try to make some quite unfounded—

*An honourable member interjecting:*

**The Hon. P. HOLLOWAY:** Well, you know what they say: there are lies, damn lies and statistics. The Leader of the Opposition is using the example of people on a salary of $100 000. Of course, every year the number will increase. As levels of salary increase, even if not a single person is on a higher executive level, the number each year earning more than $100 000 will increase, as it must. Of course, it will go up next year and the year after that as salaries rise, regardless of whatever government is in office.

**The Hon. R.I. LUCAS:** As a supplementary question, given the leader's response, why then did his leader (the then leader of the opposition, now Premier Rann) promise to cut by 50 the number of public servants in the public sector earning $100 000 or more?

**The Hon. P. HOLLOWAY:** Those comments related to executives. It was the policy given at the time of the election, and those matters were actioned after the election. You cannot look back four or five years further on and try to pretend that salaries today are the same as they were in 2003. They are not. The fact is that what the Labor Party was talking about then and what it made quite clear was the number of executive positions.

**The Hon. J.F. STEFANI:** As a supplementary question, will the minister advise the parliament how many public servants employed when the Labor government took office were paid $100 000 or more? How many public servants employed at the time when the Labor government took office were paid less than $100 000 and, because of the bracket creep, are now paid $100 000 or more? How many public servants employed by the Labor government when it came into office were paid more than $100 000? How many new public servants employed by the government since it took office were paid less than $100 000 but are now being paid more than $100 000? That will ferret out the information.

**The Hon. P. HOLLOWAY:** The honourable member would be well aware that, in his report every year, the Auditor-General reveals the number of people who are earning above this level. In fact, I think that that recommendation was made when I was a member of the Economic and Finance Committee back in 1991, and it has sort of applied since then, so that the public has some accountability. If one looks at those statistics correctly, one can see what levels they have moved up in. Those statistics are readily available and have been for years in the report of the Auditor-General.

*Members interjecting:*

**The Hon. P. HOLLOWAY:** As I said, they are available now and have been for years through the Auditor-General's Report. In relation to those more specific matters, I am not sure how easy those statistics would be to get, but I will pass the question on to the minister responsible and see what he can provide. However, I would have thought through the Auditor-General's Report there is more than adequate information for anyone who really wants to understand what is happening in this area.

**The Hon. R.I. LUCAS:** I have a supplementary question. Does the Leader of the Government concede that there are actually fewer teachers employed by this government than were employed in 2001 by the former Liberal government?

**The Hon. P. HOLLOWAY:** I do not have the figures. I think it is true that there are fewer students in public schools now than there were five years ago, and I know that the government has put extra resources into the early years of education, where, of course, it is important to increase class sizes. Of course, we know that the birth rates in this state are dropping and the number of students in our public schools has declined significantly, but at the same time our population has been ageing at the other end, and that is where the demand has been and we have responded in relation to the number of health professionals.

## DIRECTOR OF PUBLIC PROSECUTIONS

**The Hon. R.D. LAWSON:** I seek leave to make a brief explanation before asking the Leader of the Government,

representing the Attorney-General, a question about the Director of Public Prosecutions.

Leave granted.

**The Hon. R.D. LAWSON:** In the annual report of the DPP tabled in this place yesterday, the DPP points out that he was appointed to office on 26 April this year. He then outlines a number of disturbing incidents, the first of which occurred on 25 May, less than a month after his first appointment, when he said he received a telephone call from the Treasurer which, to use his words, was 'an unjustifiable attempt to interfere with the independence of the operation of the office'. Secondly, on 9 June the DPP points out that he sought to have a conversation with the Attorney-General, but the Attorney-General declined to meet with him. He says in relation to that:

> It needs to be emphasised that conduct of this nature—

that is, conduct of interference with the prosecution—

> makes government vulnerable to a myriad of allegations including improper political interference and the fact that government has not addressed perception in this case is a matter of continuing regret.

Thirdly, he says that since April he has had a number of dealings with the Solicitor-General. He says:

> It has become apparent that we have widely divergent views on the interface between our respective offices. . . It is clear to me that another possible source of unwelcome involvement in the proper functioning of my office may be the role played by the Solicitor-General.

Fourthly, he points out that on 12 July he received a subpoena from the Auditor-General which, to use the DPP's words, 'was unnecessary and provocative'. He said:

> I am concerned that the Auditor-General has expressed serious concerns publicly about this office's dealing with a public relations firm before raising any aspect of this concern with me.

Fifthly, he says:

> The Auditor-General has expressed the intention to conduct an inquiry into the decision to prosecute Randall Ashbourne.

He says of the Auditor-General:

> He has no role or expertise in determining whether a matter should be prosecuted in the courts. That is my statutory function.

Sixthly, he says:

> The impression of deliberate antagonism and provocation is only heightened by the conduct of the Hon. the Leader of the Government in the Legislative Council who publicly conceded to providing background to journalists prior to my—

that is, the DPP's—

> testifying before a parliamentary committee.

Seventh, the DPP continues:

> This attitude persisted in the comments of the Hon. Attorney-General both in parliament and public talk-back radio concerning my request to government through him for consideration of the position of the DPP in the government hierarchy.

He states:

> Given this level of government involvement with the Office of the Director of Public Prosecutions in four months of my holding office, I do have some concerns for the future.

When that report was tabled in another place, the Attorney-General surreptitiously tabled a three page response from the Solicitor-General.

**The Hon. R.I. Lucas:** What; at the same time?

**The Hon. R.D. LAWSON:** At the same time. In the response, the Solicitor-General justifies his actions, provides a short summary and says that he has prepared a more detailed response that he would happy to provide if requested. My questions to the Attorney-General are:

1. Does the Director of Public Prosecutions, the Elliot Ness appointed by this government, still have the confidence of this government?

2. Does the Attorney agree that cooperative relations between the Solicitor-General and the Office of the Director of Public Prosecutions is an important public matter?

3. What action has the Attorney-General taken to resolve the differences that are apparent between the Solicitor-General and the Director of Public Prosecutions?

4. If the Attorney-General is not prepared to or not capable of personally discharging his responsibilities as first law officer of the state, will he appoint someone who does have the necessary competence, experience and integrity to mediate between these two important statutory officers?

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

## MENTAL HEALTH

**The Hon. J.M.A. LENSINK:** I seek leave to make a brief explanation before asking the Minister Assisting in Mental Health a question about her ministerial statement yesterday.

Leave granted.

**The Hon. J.M.A. LENSINK:** Yesterday I asked some questions regarding the ministerial statement that the minister made. In her reply she stated:

> You probably also neglected to quote, if you had read the report—

and this is the report entitled 'Not for service'—

> that according to the National Mental Health Report 2004 South Australia finishes third out of the eight states and territories in terms of per capita spending. And you probably also neglected to remember that we put $25 million injection into our community services.

It goes on again and blames the previous government, and states:

> There is so much catching up to do because the ball was dropped under the Liberal Party.

On page 73 the National Mental Health Report of 2004 does indeed state:

> According to NMHR South Australia finishes third out of the eight states and territories in terms of per capita expenditure ($96.19) just above the national average ($92.03).

If we go to the actual source of the document 'National Mental Health Report 2004' we see at page 3 the per capita spending on mental health by the states and territories and, indeed, those dollar figures are there. However, it refers to the period 2001-02—under the previous Liberal government. In 2001-02 I believe the minister at the time was the Hon. Dean Brown. My questions to the minister are—

*The Hon. R.K. Sneath interjecting:*

**The Hon. J.M.A. LENSINK:** Do you want to hear it? Do you want to hear my question?

1. Does the minister agree that her comments yesterday regarding South Australia's position as the third highest per capita spending state in fact relates to the last full year of the previous Liberal government, that is, 2001-02?

2. Will the minister concede that under this Rann Labor government mental health funding per capita has actually fallen behind all other states?

*Members interjecting:*

**The Hon. J.S.L. DAWKINS:** On a point of order, sir, I am having difficulty hearing the member ask her question, because she is being drowned out by members opposite.

**The PRESIDENT:** I was about to raise the same issue myself. There is too much audible conversation on this side of the council, which seems to transpose to the other side of the council when an answer is given. We need to hear what the Hon. Ms Lensink is trying to convey to the council.

**The Hon. J.M.A. LENSINK:** I thank the Whip for his protection.

**The Hon. R.K. Sneath:** You're welcome.

**The Hon. J.M.A. LENSINK:** Ours. In her ministerial statement yesterday, the minister referred to increases in funding for non-government organisations. Will the minister advise what the funding was for NGOs in mental health in 2004-05 and what it will be in 2005-06? Why has the government not commuted the $25 million in new funds for community health services into the recurrent budget? The Mental Health Coalition of South Australia says in its press release post this year's budget that we are still behind. In spite of the recurrent increase of $5 million, we are still behind all other Australian states. Does the minister concede that she misled the council yesterday?

**The Hon. CARMEL ZOLLO (Minister Assisting in Mental Health):** The honourable member really should not be pinning her colours to the mast of the member for Finniss in another place but should be working with us and looking forward in this place. That is what you should be doing.

*Members interjecting:*

**The Hon. CARMEL ZOLLO:** That is exactly what she should be doing.

*Members interjecting:*

**The PRESIDENT:** Order, the Hon. Mr Redford!

**The Hon. CARMEL ZOLLO:** I said in my ministerial statement yesterday that the report also argues for new models of community based care. I said that South Australia, unlike many other states, has acknowledged that poor health and limited access to services for mental health consumers is a human rights issue. I said all those things.

**The Hon. J.M.A. Lensink:** Congratulations!

**The Hon. CARMEL ZOLLO:** I am pleased that you are now working with us. Do not pin your mast to the member for Finniss in another place. He is looking backwards. He is pining still to be leader of your party, in case you have not worked it out. This government has acknowledged that we have a lot of work to do. We have acknowledged that and we do not resile from it. We are putting more money into community health—as you have said, $25 million—and we have identified that it can be used for up to two or three years and then we will look at it again.

We will see which models work and which do not. It comes on top of other recurrent funding you did not put in. We are devolving a mental health service in this state, especially close to where people actually live—is that not a wonderful thing? You should be celebrating with us. We all know that we have a lot of work to do, and you should be working with us. Do not look to the member for Finniss in another place—work with us. Mental health is everybody's business. It should be a bipartisan issue—work with us.

**The Hon. J.M.A. LENSINK:** By way of supplementary question, does the minister concede that the government has further work to do in providing accurate information in future ministerial statements on mental health?

**The Hon. CARMEL ZOLLO:** No.

**The Hon. J.F. STEFANI:** By way of supplementary question, is the minister confident that Monsignor Cappo and the Hon. Lea Stevens will have the cooperation of Dr Sev Ozdowski in nominating a representative on the reference group when the then leader of the opposition, the Hon. Mike Rann, savagely attacked him in 1997 for keeping political dossiers?

**The PRESIDENT:** I am struggling to see how that comes out of the minister's answer, but the minister is in a position to respond.

**The Hon. CARMEL ZOLLO:** I think so many members in this place flout standing orders, and a lot of the supplementaries do not arise from the answer at all. In good faith, because we believe mental health is important to everyone in this state, the Hon. Lea Stevens, as Minister for Health, and Monsignor David Cappo, as chair of the Social Inclusion Board, have written to Dr Sev Ozdowski. He would be well known to the state. He worked here as the head of the Multicultural Affairs Commission for quite a few years. We were pleased for him when he got his promotion. We will wait to see what he has to say, but we would very much welcome his nominating someone else if he cannot do it personally.

## COUNTRY FIRE SERVICE

**The Hon. J. GAZZOLA:** I seek leave to make a brief explanation before asking the Minister for Emergency Services a question about CFS stations.

Leave granted.

**The Hon. J. GAZZOLA:** I am aware that three new CFS stations have been opened in country South Australia. Will the minister provide the council with the locations and details of these new Country Fire Service stations?

**The Hon. CARMEL ZOLLO (Minister for Emergency Services):** I would like to thank the honourable member—

*Members interjecting:*

**The PRESIDENT:** Order! You have already ambushed the minister. Let her try to respond.

**The Hon. CARMEL ZOLLO:** —for his important question regarding new CFS stations. Three new CFS stations have been opened in the past few months: at Kingston in the South-East and Wirrabara and Blyth/Snowtown in the Mid North of the state. Kingston's Volunteer Emergency Services celebrated the official opening—

*Members interjecting:*

**The Hon. CARMEL ZOLLO:** —this is a good news story—of their new combined building at an open day on 10 July this year. The centre, which became operational late last year, accommodates both the CFS brigade and the local SES Rescue Unit, and it is one of the largest facilities in South Australia. Two main sheds provide for three appliance bays, with each bay holding a service vehicle. The two bays are joined by a shared office and training building. The combined building will encourage collaborative working relationships between the CFS and the SES, which will enhance rescue and firefighting capabilities within the community.

The official opening of the CFS fire station at Wirrabara was held on 24 July this year. Wirrabara's CFS is unique, as the brigade is the oldest volunteer fire brigade in the state, having been formed in 1916. Wirrabara's CFS has 51 members consisting of 46 firefighters, four auxiliary members and one life member. I was pleased to meet with the brigade members at the opening and to view the new $256 000 fire shed, which has been built on the same site as the old shed. The fire shed comprises a bay for one truck, an

office, a communications room, a meeting room/training room, a kitchen and amenities.

The new centralised headquarters for the Blyth/Snowtown CFS station has been greatly anticipated. The government was pleased to work with the CEO of the Wakefield Regional Council in building this new facility. I was delighted to open the centre on 7 August this year. The new CFS station has adjoining offices for SA Ambulance, the SES, and South Australia Police. This highlights the partnerships and, in particular, the working relationships between the local police, ambulance, and fire and emergency services. The station will house one CFS appliance, a command vehicle and equipment trailers, and includes storage areas for other plant and equipment. The adjoining Snowtown council building is being used as offices by the CFS group and has also been upgraded as part of the project.

*An honourable member interjecting:*

**The Hon. CARMEL ZOLLO:** The honourable member does not take it seriously, but these new stations are very important for the communities in country South Australia. The Blyth/Snowtown group incorporates CFS operations from the communities of Hoyleton, Lochiel, Blyth, Brinkworth and Snowtown, with combined callouts totalling approximately 55 each year. The Snowtown unit also responds to 25 callouts throughout the community and along National Highway 1 each year. The government expects that these new facilities will assist local emergency service crews to continue to provide protection and assistance for their local communities.

## GRAHAM (POLLY) FARMER PROJECT

**The Hon. IAN GILFILLAN:** I seek leave to make an explanation before asking the Minister for Aboriginal Affairs and Reconciliation a question about the Polly Farmer project at Port Augusta.

Leave granted.

*Members interjecting:*

**The Hon. IAN GILFILLAN:** In spite of the hubbub, I hope honourable members remember the issue raised in this place of a very exciting project proposed in Port Augusta for an indigenous education partnership to be run, possibly, by the Graham (Polly) Farmer Foundation. I refer to a letter (which I know, from the copy, that the minister would have received) from Mr John Cunningham, chief executive officer of the Graham (Polly) Farmer Foundation, to the Minister for Education and Children's Services, the Hon. Dr Jane Lomax-Smith. It reads:

> We will be keen to ensure that the elements, that research and experience have shown us to be essential ingredients to the success of the projects, are incorporated into the plan, particularly:
> - the appointment of a suitable dedicated full time project leader reporting to the foundation;
> - the use of a dedicated off-campus facility which project students can use and have 'ownership' of;
> - committed industry partners providing employment opportunities for the successful students;
> - committed support from Australian and state education departments; and
> - the signing of a memorandum of understanding between the partners for a period of at least three years.
>
> On this latter point, we prefer to have at least a three year commitment for the project leader, as private industry donors have already committed for periods of three to five years.

That letter was dated 13 October this year. So far as the private industry donors are concerned, it is very pleasing for me to confirm the information the Graham (Polly) Farmer Foundation has provided. NRG has guaranteed $20 000 per year for three years; Desert Knowledge CRC has promised $30 000 per annum for three years; the ARG Group $10 000 per annum for three years; Downer EDI $5 000 per annum for five years; and an Anthony Simpson scholarship of $2 000 per annum for three years. Western Mining has also previously offered computers, and BHP Billiton is currently considering coming into the team.

It is poised to go. The gestation period has been long and, I am afraid, rather frustrating, but on the brink of eventually getting this up and going I am asking the minister whether he can confirm the obligations asked of the government—namely, the appointment of a suitable dedicated, full-time project leader reporting to the foundation for three years, the use of dedicated off-campus facilities (which I know has already been assured), and that there will be the signing of a memorandum of understanding with the expectation that the project can commence at the beginning of the school year 2006.

**The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation):** I thank the honourable member for his question. Certainly, the update he has just given the council by way of correspondence to him corresponds with the government's position and plan. We have not made an announcement as yet regarding the final wash in relation to the setting up of the Graham (Polly) Farmer Foundation. As the honourable member acknowledges, there are a lot of players involved, and a lot of people in the private sector have made commitments. The Graham (Polly) Farmer Foundation is a public-private enterprise-building program for individuals, using education services and private sector participation to try to build up the work skills, base and knowledge of young Aboriginal people, in particular, in regional and remote areas to work constructively within their communities in paid employment. It operates very well in Western Australia.

Graham (Polly) Farmer, for all of those who are as old as me and remember him as a footballer in the 1960s in particular, was a great sportsman and a very powerful individual in how he influenced change in the Australian Rules game by directly palming the ball and using long handballs to break up play. I think he played for Geelong in the 1963 Grand Final and thereafter.

*An honourable member interjecting:*

**The Hon. T.G. ROBERTS:** Yes, that's right. The honourable member is right. The agreement between the public and private sector in the business partnership and the offer of in-kind support from government is in train and about to be put into play. There have been some hiccups in the role and function across agencies in education and training, as well as the siting. Port Augusta almost picked itself, but there are certainly other centres that would have housed the first Polly Farmer Foundation base. I am sure that the honourable member would agree with me that the project style will be suitable for places like Ceduna, Port Lincoln, Coober Pedy and other regional places.

In answer to the honourable member's question, we will be able to make an announcement very shortly. It is more to do with protocols than with tidying up any of the outstanding negotiations, but the principles and protocols are all in place. Getting sections of the public sector to understand what will be the role and function took some time, and I thank all those people involved in negotiating their way through the public-private partnerships. It is not easy for the private sector to work in partnership with the public sector, just as it is not that easy, in a lot of cases, for the public sector to work with the

private sector in partnerships, because certain protocols and some restrictive practices have to be renegotiated and opened up so that people know their responsibilities.

It is the other way of getting commonwealth, state and local government participation, which I think the honourable member neglected to highlight. Therein lies other barriers for getting a cooperative program running, that is, getting those three tiers of government to work with and understand each other's difficulties when it comes to cross agency, cross government and cross commonwealth, state and local government bodies. In itself it has been a frustrating period.

The Polly Farmer Foundation negotiators have been patient and understanding about all these issues; they went through the same problems in Western Australia. However, it is up and running, and we will soon be able to make a public announcement. We did not want to build up people's hopes unduly, but we are now at a point where we can make a public statement. I acknowledge the honourable member's personal contribution, as well as that made by my staff member Richard Mills, who has been very patiently putting together those meetings.

**The Hon. IAN GILFILLAN:** I have a supplementary question. I take it from the minister's answer that the requirement for a full-time coordinator position (the project leader) reporting to the foundation for a period of three years has been committed to by the government?

**The Hon. T.G. ROBERTS:** I think the commitment is for two years, but the final commitment has to be made by Education and Training.

**The Hon. Ian Gilfillan:** It has not been finalised yet?

**The Hon. T.G. ROBERTS:** The understanding is that a final position has been drawn, and it is not three years: it is two years. An assessment will be made after two years as to the impact and value of the foundation's work. I am confident that, once everyone understands the role and function of the foundation, the cooperation we appear to be getting from all levels, private and public, it will continue to work and operate in Port Augusta and the period will be extended. The position of the government at present is to wait and see. If public support remains, then the government's commitment and support will remain.

## WORKCOVER

**The Hon. A.L. EVANS:** I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Industrial Relations, a question about WorkCover.

Leave granted.

**The Hon. A.L. EVANS:** The Stanley report was commissioned by the state government to review the state's safety laws and systems. It is my understanding that one of the recommendations called for a host organisation to be deemed the employer of labour hire employees for the purpose of section 54 of the Workers Rehabilitation and Compensation Act 1986. Following this recommendation, a working party was established by WorkCover Corporation and a subsequent recommendation was made to the minister by the body in April 2004. The recommendation was that section 54 be restricted to apply only to cases where a host employer participated in the rehabilitation of an employee after the employee sustained an injury while hired by the host organisation. I understand that the working party was of the opinion that such a measure would result in a speedier return to work of injured workers, with a consequent reduction in cost claims. My questions are:

1. Did the minister commission an inquiry to be conducted on the impact of this recommendation? If so, what was the result available to the public?

2. Will the minister provide an explanation as to why the recommendations from the Stanley report concerning section 54 of the Workers Rehabilitation and Compensation Act 1986 require that a host organisation be deemed the employer of the labour hire employees for the purpose of that section?

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

## TECHNICAL COLLEGES

**The Hon. T.J. STEPHENS:** I seek leave to make a brief explanation before asking the Minister for Emergency Services, representing the Minister for Education, a question about technical colleges.

Leave granted.

**The Hon. T.J. STEPHENS:** Members would be aware that the federal government has committed to building and funding a technical college in the Upper Spencer Gulf region.

**The Hon. A.J. Redford:** And Christies Beach!

**The Hon. T.J. STEPHENS:** But, more importantly, the Upper Spencer Gulf region. In yesterday's radio precis under the headline 'Government questions the need for a proposed technical college for the Upper Spencer Gulf region', the member for Giles was quoted as saying that the technical college 'will have a detrimental effect on our schools in our current TAFE system that we already have'. She also said:

> I believe that the employers have something to answer on this; that in the past the apprenticeships haven't been offered. This way has huge potential to create a lot of damage in our communities.

My questions are:

1. Does the minister agree with the member for Giles that technical colleges will decrease the level of skill training in the region?

2. Will the minister clarify whether the government supports technical colleges for the people of the Upper Spencer Gulf region, Christies Beach, which Angus raised, and, indeed, for South Australia as a whole?

3. Does the minister accept that it is the government's responsibility to provide adequate skills education?

4. Does the minister support the member's unprovoked attack on local businesses in the Upper Spencer Gulf region?

**The Hon. CARMEL ZOLLO (Minister for Emergency Services):** I will refer the questions to the Minister for Employment, Training and Further Employment in the other place and bring back a response.

## ELECTRICITY SUPPLY

**The Hon. A.J. REDFORD:** I seek leave to make a brief explanation before asking the Minister for Industry and Trade, representing the Minister for Transport, a question about electricity shortages.

Leave granted.

**The Hon. A.J. REDFORD:** Last week the Electricity Supply Industry Planning Council repeated a series of warnings made in June this year regarding this summer's looming power shortages. On Saturday night the Minister for Energy (which, I must say, is a contradiction in terms) said

on television that he had known about the problem for sometime and that he had arranged to meet with his Victorian counterpart in Melbourne. I dropped down to the airport yesterday to see the minister off in the hope that he would return with good news.

*An honourable member interjecting:*

**The Hon. A.J. REDFORD:** He did. He waved at me. He smiled and invited me to meet him at 10 o'clock this morning on his return, which I thought was a very civil hour, but I will come to that in a minute. In any event, I understand that the minister arrived in Victoria just in time to hear the Victorian Minister for Energy announce a 5.6 per cent decrease in electricity prices—and, I must say, it was a learning experience for a minister who has presided over a 25 per cent increase in electricity prices. He was also greeted with the news that, whilst the Victorian energy minister had some sympathy for South Australia, it was only NEMMCO that can fix South Australia's problems so far as electricity shortages are concerned. I understand that today the minister held a press conference at which he announced that he was having more meetings to look at this issue.

**The Hon. T.G. Roberts:** None with you?

**The Hon. A.J. REDFORD:** I am happy. I am available, but the minister would rather meet at the end of a plane trip. My office is only a short walk away. In any event—

*The Hon. G.E. Gago interjecting:*

**The Hon. A.J. REDFORD:** The Hon. Gail Gago interjects about my attendance at committees. I can go through each member on the other side of the chamber about their attendance at committees. I am happy to contrast my attendance at committees with the Hon. Gail Gago's regular absences, her inability to attend the Mount Gambier Hospital select committee and her inability to go to mental health committees.

**The PRESIDENT:** Order! There is too much interjection, and the questioner is being diverted. He should return to his question and be heard in silence.

**The Hon. A.J. REDFORD:** Thank you, Mr President; it is just the falsity of the allegations that come from the honourable member opposite. In any event, we all understand on this side of the council the complete lack of class over in that corner. Yesterday, I asked a series of questions of the Minister for Industry and Trade seeking some information about where the power blackouts or brownouts will occur in South Australia this year. The minister was unable or unwilling to provide any information.

*The Hon. R.K. Sneath interjecting:*

**The Hon. A.J. REDFORD:** I see that the Hon. Bob Sneath has woken up. There he is, busily putting the letter 'z' back into the word 'lazy'. The only contribution or any activity we see from the Hon. Bob Sneath is the enormous effort he goes to in the morning to get into that new black jumper he has got on.

**The Hon. R.K. SNEATH:** I rise on a point of order, Mr President. All I was saying—

**The PRESIDENT:** That is not a point of order.

**The Hon. R.K. SNEATH:** —was that the Leader of the Opposition said that they are all too dumb to fill Martin Hamilton-Smith's spot.

**The PRESIDENT:** There is no point of order. It is a frivolous point of order. If all members would concentrate on question time, it would be helpful.

**The Hon. A.J. REDFORD:** I suspect that probably half a per cent of people out there would appreciate the honourable member's wit. In any event, I intended to go down to the airport this morning, and I appreciate, acknowledge and am really pleased that, at last, we are seeing some energy from the Minister for Energy, because he tricked me. He caught the red eye back in the hope that I would turn up at the airport and be left stranded. I can only congratulate the minister. That sort of level of energy will go some way towards improving his performance. In any event, my questions are:

1. Why has Victoria announced a 5.6 per cent decrease in electricity prices whilst South Australia has had a 25 per cent increase in electricity prices, given that both states have privatised their electricity assets?

2. Apart from monitoring petrol prices and going to electricity meetings, what does the minister intend to do to address South Australia's looming energy and, in particular, electricity shortages?

3. Will the minister consult with the South Australian community about where, when and how looming blackouts and brownouts are likely to occur?

4. Will the minister answer my three questions asked of the Minister for Industry and Trade yesterday?

**The Hon. P. HOLLOWAY (Minister for Industry and Trade):** It ill-behoves the honourable member to be talking about likely blackouts. That is just completely and utterly scurrilous and irresponsible behaviour. If the honourable member had, as I suggested, read the transcript from the evidence given by the Secretary of the Electricity Supply Industry Planning Council yesterday he would have known that in fact the negotiations in relation to the adequate supply of electricity are mostly completed towards the end of the year, up towards January. He would know that the only reason why there was some shortage was the delay in the completion of the Basslink, the underground cable with Tasmania, and also the delay in the refurbishment in relation to the Hazelwood Station in Victoria. He would have heard the Electricity Supply Industry Planning Council say that in South Australia the position was much more robust. The problem was, of course, that because of the link that we have with Victoria we do have a south-east Australian market, and most of the problems have been caused because of delays within Victoria, and that is obviously what my colleague the Hon. Pat Conlon was seeking to address the other day.

In relation to the first question—and I will refer these to the Minister for Energy and he can reply—that, given that both Victoria and South Australia have privatised electricity, why has the price dropped in Victoria and gone up here, I would suggest that the reason for that is the incompetent way in which the privatisation process was handled within this state, and in particular the fact that there was a lack of competition, whereas in Victoria when it was privatised there was competition.

**The Hon. A.J. Redford:** What have you done about it? Nothing.

**The Hon. P. HOLLOWAY:** In fact, my colleague the Minister for Energy has done an enormous amount in relation to that, and in fact in recent times as a result of the competition that has been introduced into this market. If the honourable member goes back to the electricity select committee he will see there is a high level of competition in this electricity market now, a higher level of competition now than in any other electricity market around, and that has had an impact on the reduction of prices. Of course the government has also done what the previous government failed to do and introduced substantial concessions. For the first time since 1991 electricity concessions for pensioners were introduced. I will

refer the rest of that question to my colleague the Minister for Energy.

## SHOOT TO KILL POLICY

**The Hon. P. HOLLOWAY (Minister for Industry and Trade):** I table a copy of a ministerial statement on the Shoot to Kill policy made today in the other place by the Premier.

## MANUFACTURING, LOGISTICS

**The Hon. G.E. GAGO:** I seek leave to make a brief explanation before asking the Minister for Industry and Trade a question on logistics in manufacturing.

Leave granted.

**The Hon. G.E. GAGO:** Today's manufacturing is a skill and knowledge intensive sector and to be globally competitive every possible advantage must be seized upon. Logistics, for example, is very important, and an efficiently functioning supply chain is crucial to the success of any manufacturing business. My question to the minister is: what is the state government doing to foster improvements in logistics in the manufacturing industry?

**The Hon. P. HOLLOWAY (Minister for Industry and Trade):** I thank the honourable member for her question. This is an important matter and, with the rising prices of fuel and congestion in ports and other matters, logistics is becoming an ever more important issue in relation to effective trade. I am pleased to advise the council that the state government is continuing the successful Logistics Management Scholarships Program, to the tune of $16 000. In recent years the state government has awarded two logistics management scholarships per annum, and they have been administered through the University of South Australia. This program is designed to promote the development of supply chain and logistics expertise within South Australia's manufacturing industry, with the intent of recognising excellence and encouraging further formal education for professional development in supply chain and logistics.

The recent scholarship winners have included Ms Marie Paterson of Taylors Wines, based in Auburn, and Deepak Shah from Southcorp, who received scholarships in 2004, as well as Bernard Zanic from Yalumba and Ms Ipninder Kaur of Clyde-Apac, who were 2005 recipients. Past students say they have found the course to be highly relevant and they have applied the knowledge that they have gained to the benefit of their respective organisations. These people are all influential in their successful manufacturing organisations and are considered to be future leaders in the field of supply chain and logistics within manufacturing.

In fact, Marie Patterson went on to do her Masters after completing the scholarship. I am told that companies that have permitted staff to participate have benefited greatly from the experience. Other companies whose staff have participated include: Technoplas, Technik, Minelab, Grudfos Pumps, Electrolux, Southcorp, Australian Arrow, Yalumba and TNT. As a result, I am pleased to announce that this very successful program will continue into next year. Two postgraduate scholarships will be offered, one regional and one city based. We look after the bush over here; we recognise the importance of regional areas. Preference will be given to employees with a supply chain and logistics management role or background.

I hope that dedicating one scholarship to regional South Australia will help to improve regional access to postgraduate courses in logistics and manufacturing. Quite simply, supply chain and logistics management is a vital element in global competitiveness. South Australia's Strategic Plan calls for the state to exceed Australia's average productivity growth within the next 10 years. By improving the level of supply chain and logistics management in manufacturing, industry will find a mechanism of helping to achieve that target. Ultimately, the ability to do business effectively depends on the efficient functioning of the entire supply chain, and the continued success of this scholarship program helps build a better future for all South Australians.

## ANTI-TERRORISM LEGISLATION

**The Hon. KATE REYNOLDS:** I seek leave to make a brief explanation before asking the Minister for Industry and Trade, representing the Premier, a question about the commonwealth-state terror bill.

Leave granted.

**The Hon. KATE REYNOLDS:** The Labor premiers of two states, Steve Bracks in Victoria and Peter Beattie in Queensland, revealed that none of the premiers had seen the draft commonwealth-state terror bills when they signed the COAG agreement with Prime Minister John Howard. ACT Chief Minister John Stanhope and West Australian Premier Geoff Gallop immediately joined Queensland and Victoria in opposing the shoot to kill laws. South Australia dithered until after demands this morning from the South Australian Democrats that our Labor government state its position. Premier Rann eventually (this afternoon) rejected the shoot to kill policy. But Premier Rann has not expressed any reservations about other aspects of the proposed bill. My questions to the Premier are:

1. Will the Rann Labor government's proposed bill allow South Australians to be jailed for sedition?
2. Will it—and I cite here the commonwealth's draft legislation—give a definition of sedition or seditious intent as being contemptuous of the Queen of England?
3. Will the state legislation mirror the commonwealth's in that it will also define 'seditious intent' as urging disaffection against the Constitution?
4. Will the 15 000 people who marched along with the South Australian Democrats on 16 February 2003 against Australia going to war with Iraq be guilty of sedition?
5. Does the government acknowledge that, as Mike Rann's bill will tear up four centuries of hard-won freedoms and liberties, those very freedoms and liberties the government claims to be protecting will be surrendered and the terrorists will have won?

**The Hon. P. HOLLOWAY (Minister for Industry and Trade):** I am not certain whether the bill that is being introduced by the state government has been introduced into the House of Assembly; if not, it will be very soon, and the honourable member can see for herself what is in there. She will see that it does differ significantly from the commonwealth's proposed legislation. As the Premier said in his ministerial statement, which I have only just tabled, he did not commit this state to a shoot to kill policy; he would have announced it if he had. The Premier indicated that he wanted to make it quite clear that he did not intend to adopt or support additional or extra shoot to kill powers.

In his statement, in fact, the Premier does indicate that he has already introduced legislation to give effect in part to the commitment he gave in September that the Terrorism (Police Powers) Bill introduced yesterday provides for random bag

searches in transport hubs and other areas of mass gatherings designated as special areas, with judicial confirmation. I suggest the honourable member get a copy of the bill from the House of Assembly and have a look at it if she wishes to answer the other questions in relation to what is in that bill. I can only assure her that it is quite different from the commonwealth legislation.

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## WESTERN MOUNT LOFTY RANGES

**The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation):** I table a ministerial statement made by the Hon. John Hill about proscription of water resources in the western Mount Lofty Ranges.

## MURRAY RIVER

**The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation):** I table a ministerial statement made by the Hon. Karlene Maywald on the release of a strategy of the environmental flows of River Murray water, made on 19 October 2005.

## STATUTES AMENDMENT (TRANSPORT PORTFOLIO) BILL

Adjourned debate on second reading.

(Continued from 19 October. Page 2796.)

**The Hon. P. HOLLOWAY (Minister for Industry and Trade):** I thank the Hon. Caroline Schaefer for her indication of support on behalf of the opposition. This is a bill about which the Hon. Sandra Kanck wrote to me earlier in the week, indicating that the Democrats supported it but did not wish to speak on it. I thank them for their indications of support and look forward to the speedy passage of the bill.

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

## OCCUPATIONAL THERAPY PRACTICE BILL

Adjourned debate on second reading.

(Continued from 17 October. Page 2720.)

**The Hon. CARMEL ZOLLO (Minister for Emergency Services):** I thank members for their contributions. I am pleased there is support for the bill and we can now move into committee without delay. I will not reiterate the general comments that have been made about this bill or the information provided in the second reading explanation. However, I point out that these health practitioner bills fulfil government obligations under the National Competition Policy but, more importantly, they have as a primary aim the protection of the health and safety of the public.

Members will be aware that the council has already passed (and the Governor has assented to) the Medical Practice Act, the Podiatry Practice Act, the Physiotherapy Practice Act, and the Chiropractic and Osteopathy Practice Act. This bill is based on the same template legislation and therefore its provisions are identical to most of the provisions in those acts already passed by this council.

For the information of members I will explain the minor amendments that were made to this bill in another place. The amendment to clause 6 made it clear that the board member nominated by the university was to be a person who taught in occupational therapy, and the second government amendment deleted schedule 2, which was no longer necessary since the Statutes Amendment (Honesty and Accountability in Government) Act 2003 came into operation on 31 July 2005 under the Acts Interpretation Act.

A minor amendment was also moved to clause 69. This clause allows an appeal to be made to the minister where the board refuses to approve or revokes the approval for a course leading to registration as an occupational therapist. The amendment makes it a requirement for the minister to consult with the authorities whom the minister thinks are appropriate before making a decision in regard to a course. Even without this amendment it would be usual for the minister to seek advice before making such a decision; however, this amendment makes this explicit.

Concern was expressed during the debate in another place about the ability of the presiding member alone to deal with questions of costs. In between the houses consideration was given to this clause, 46(6), and I would like to point out that the clause is part of the template legislation for the health registration bills and has been passed through both houses in the medical practice, podiatry, physiotherapy, chiropractic and osteopathy legislation without problem. The board is satisfied with the provision as it is.

It is also the practice of the board to determine costs at the same time that it determines any fines or penalties, and therefore it is the board's view that it is very unlikely that a situation would arise where the presiding member, sitting alone, would determine costs. An appeal mechanism is also provided and exists under clause 22(2), which enables a person who is dissatisfied with the amount of costs awarded by the board to request the master of the District Court to tax the costs. After taxing the costs, the master may confirm or vary the costs awarded. Again, I reiterate that this has not been an issue with the other health registration acts, and there are proper checks and balances to ensure that this clause is used appropriately.

I stress that the clause is about administrative matters, and costs is one of those matters. It does not include the issue of penalties or disciplinary matters. Giving powers to the presiding member to make a decision on this administrative matter supports a more efficient administrative process that is of advantage to the person concerned and the board. I also stress that there is a very strong appeal process available, so the decision can be reviewed and altered if it is seen to be unreasonable by the District Court. I trust that this explanation addresses any outstanding concerns regarding this bill and commend the bill to the council.

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

## GUARDIANSHIP BOARD

**The Hon. P. HOLLOWAY (Minister for Industry and Trade):** I table a ministerial statement relating to the Guardianship Board made today by the Attorney-General.

## LIQUOR LICENSING (EXEMPTION FOR TERTIARY INSTITUTIONS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 18 October. Page 2757.)

**The Hon. T.J. STEPHENS:** I indicate that the opposition supports the government in relation to this bill. It will simply enable the supply of liquor to a student who is a minor enrolled in a tertiary education course declared by the liquor licensing regulations to be an approved course under the act where liquor is supplied to the minor as part of that course. The bill was drawn up at the request of the University of Adelaide, which holds a special circumstance licence under the act with respect to the National Wine Centre. The university conducts the Bachelor of Science Oenology course at that centre. There is concern that, as some first year students are minors, the university will breach section 110 of the act if, as part of the course, liquor is supplied to a minor on or in an area pertinent to licensed premises. This amendment does not weaken the provision of the act prohibiting access to liquor or to licensed premises by minors but provides practical relief for tertiary education institutions where a limited number of minors may be enrolled in an approved course.

The opposition does not seek to hold up unnecessarily the work that is being done by the university, particularly at that fantastic facility, the Wine Centre. It is good to see the government acknowledging the important role the Wine Centre plays in developing opportunities for future winemakers. Wine plays an important role in our economy and also in South Australia's culture, and the opposition is determined to support the industry wherever it can. The opposition supports the bill.

**The Hon. KATE REYNOLDS** secured the adjournment of the debate.

## CRIMINAL LAW CONSOLIDATION (INSTRUMENTS OF CRIME) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 21 September. Page 2668.)

**The Hon. IAN GILFILLAN:** I indicate the Democrats' support for the second reading of this bill. I think it is fair to say that the government has been ruthless in its pursuit of the proceeds of crime, based on the very sound principle that a criminal should not be allowed to profit from his or her crimes and that, once caught, they should lose the benefits accrued for their malfeasance. However, it turns out that current laws do not adequately cover the instruments of crime, despite efforts to use money laundering provisions elsewhere to do so. Looking to the bill we see that instruments of crime are defined as follows:

(a) property that has been used or is intended for use for or in connection with the commission of a crime; or
(b) property into which any such property has been converted.

This is a broad definition. In a nutshell, the government does not want criminals to be able to convert the proceeds of crime or the property that has been used to commit a crime to salt away their earnings; and, in particular, this bill makes it possible to take on those who deal with these instruments of crime.

Like the opposition, we are very concerned that a bill of this nature has made it into this place without any input yet from the Law Society of South Australia. Having inquired into the circumstances of what to us has been an unusual oversight, I was informed that the Law Society's Criminal Law Committee received a copy of this bill only on 7 October this year—a mere 12 days prior to today. Given that the bill has quite substantial maximum penalties—20 years' imprisonment for dealing in instruments of crime in some circumstances or four years' imprisonment in some other circumstances—I believe it would be irresponsible for us, or at least far less efficient and thorough, to proceed further without having the Law Society's commentary.

Our previous experience has been that the Law Society has quite generously devoted a considerable amount of time from the committees which work on a voluntary basis to look at legislation. Whether those of us in here agree or disagree, no-one would argue that its opinion ought not to be sought and/or disregarded. I am asking the chamber, in light of the fact that the Law Society's Criminal Law Committee is currently looking at the bill and we have a fortnight in which the parliament does not sit, to leave this debate until such time as we reconvene. With that in mind, I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

## JUSTICES OF THE PEACE BILL

In committee.

Clause 1 passed.

Clause 2.

**The Hon. R.D. LAWSON:** I ask the minister to indicate when it is proposed that this bill will be proclaimed to come into operation?

**The Hon. P. HOLLOWAY:** My advice is that that will happen when the regulations have been drafted.

**The Hon. R.D. LAWSON:** Will the minister then indicate what regulations must be drafted and when is it anticipated that they will be finalised?

**The Hon. P. HOLLOWAY:** The government will need to draft a code of conduct for justices of the peace, as provided for in clause 4. Also, there will be an additional provision in the code for special justices or retired justices, and that relates to clause 17(2)(a). There will be the need for the prescription of provisions of the code of conduct, non-compliance with which will be proper cause for disciplinary action pertaining to clause 11(1)(b). Also, there will be the need for prescription for the period for which a JP must have served before being entitled to describe himself or herself as 'JP (Retired)' (clause 16(4)).

In addition to those which are absolutely necessary, there is also likely to be eligibility requirements in addition to those set out in section 5(7)(a) to (c) (see subsection (5)(7)(d)). There will be further eligibility requirements for special justices pertaining to section 8(3)(c) additional to section 8(3)(a) and (b). It is possible that there could also be regulations in relation to conditions of appointment, applications for appointment and conditions of appointment of special justices, remuneration of special justices and regulations exempting specified classes of persons complying with the provision of the act pertaining to clause 17(2)(b). They are just possibilities. It will be some time next year, obviously—presumably as soon as the bill is passed. Work has already started in anticipation.

**The Hon. R.D. LAWSON:** Will the minister indicate whether the proposed code of conduct for justices—which has been the subject of much discussion—has been agreed with the Royal Association of Justices?

**The Hon. P. HOLLOWAY:** The Royal Association of Justices has been liaising with the Attorney's office, but, as yet, there is no draft on which some more formal agreement might take place.

**The Hon. R.D. LAWSON:** In relation to the possibility of regulations relating to eligibility requirements, will the minister indicate whether it is proposed to include in regulations of that kind a stipulation about, for example, the number of justices per geographic area and other informal eligibility requirements which are currently applied?

**The Hon. P. HOLLOWAY:** My advice is that at this stage the government is not considering regulations that would introduce a quota system into the eligibility criteria; rather, that what is being looked at at this stage are conditions such as not being a bankrupt; matters relating to referees and the like; also perhaps evidence of community involvement; perhaps evidence of ability in foreign languages, etc.—that sort of thing.

Clause passed.

Clause 3 passed.

Clause 4.

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

Clause 4(2) page 4, line 17—
Delete '5' and substitute:
10.

Clause 4 of this bill will provide that a justice will be appointed on conditions determined by the Governor for a term not exceeding five years, specified in the instrument of appointment, and persons at the expiration of that term will be eligible for reappointment. The effect of my amendment is that we will extend from five to 10 years the duration of the standard appointment of a justice of the peace. Hitherto there has been no limitation on the term of a justice of the peace. They are appointed for life although, of course, commissions can be terminated before that time. Not that many are terminated, and certainly not many are terminated except at the express wish of a justice.

Given that, hitherto, appointments have been for life, we believe that to reduce that to five years in one hit is inappropriate. There is no rational explanation that we have heard that is convincing for limiting the term to five years. We believe that, if somebody has the necessary qualities and ability to be appointed a justice of the peace, the appointing authorities ought to have sufficient confidence in that person to give him or her a reasonable term of office without having to reapply and go through all of the necessary steps. These days we allow motorists to renew their driver's licence for 10 years. If it is good enough to give somebody a driver's licence for 10 years, we cannot see why it is not good enough to appoint a person to this important office for 10 years.

**The Hon. P. HOLLOWAY:** The government opposes this amendment. Its effect would be that justices of the peace would be appointed for a term not exceeding 10 years rather than for a term not exceeding five years. The same negative arguments for a five-year term can be made against a 10-year term, a seven-year term, or any other term that might be chosen. The government considers that five years is a more appropriate term of appointment than the 10 years proposed by this amendment. Five years is the same as the New South Wales legislation, and it is the same as the policy of the Northern Territory. I also understand that Victoria is considering five-year appointments. Thus, two and perhaps in future three of the states with whom we have common borders will appoint their JPs for five years. No state or territory of Australia appoints for 10 years.

Further, it is consistent with the practice of this government and the previous government to have the Governor appoint people to hold public office for terms of up to five years. One could give the following examples: the Solicitor-General is appointed for five years; the DPP is appointed for seven years; and chief executives are appointed for terms of up to five years. The purpose of this measure is to keep the roll of justices of the peace up-to-date and to make as sure as we can that the people who are still on the roll are still willing and able to perform the official duties of a justice of the peace and are still suitable to be JPs. A police report on any criminal history within the previous five years would be obtained. Regrettably, it has been found that some JPs have been convicted of offences and failed to notify the Attorney-General's office.

A reasonably up-to-date roll of willing JPs is much more useful to members of the public who need a JP than an out of date roll. It is time wasting and frustrating for people to be given the name, address and phone number of JPs who, when contacted, are not willing to assist. Sometimes it is upsetting to relatives when the name of a JP who has died years before is given to members of the public despite the best endeavours of the JP section to keep accurate records. The need for regular reappointment would increase the frequency of contact between justices of the peace and the Attorney-General's office and give the opportunity for an exchange of information. It would give an opportunity to remove, vary or impose conditions of appointment so that the authority of the JP is appropriate to the JP and the public in his or her area.

As to the matter of statutory interpretation, I am advised that, although the Hon. Mr Lawson's amendment would set only a maximum period of appointment, it would result in an assumption that the intention of parliament was that appointments would generally be for more than five years, otherwise the parliament would have passed the bill without the amendment. No useful public purpose is served by a person holding the public office of JP just for the honour of it. The honour of the title must be accompanied by a willingness to undertake the duties of office. It is for those reasons that I oppose the amendment.

**The Hon. IAN GILFILLAN:** I feel that the situation has somewhat changed in relation to special justices and their potential special role as introduced by this bill. It does bear on the amount of time which could be safely housed in this legislation for appointment. For the more mundane tasks that a JP seems to have been serving in the past couple of decades, they have really been required to witness a signature on documents. I have found it quite frustrating to actually find one; they are very difficult to find. If appointments are going to be unsettled every five years, it may make it even more difficult. But, in the light of the extra powers under clause 8, I feel that we ought to play it safe and, from that point of view and that point of view only, the Democrats will be opposing the amendment.

**The Hon. R.D. LAWSON:** I respect as always the opinion of the Hon. Ian Gilfillan in this and other matters. I do, however, feel that he is letting the tail wag the dog a little in this matter, because there are 9 000 justices hopefully fulfilling what might be regarded as the standard functions of a justice of the peace in relation to documents. There will be but a handful of special justices, so that keeping their term at five years for the purpose of ensuring that that small pool—and I suspect it will be something less than 100 justices—

*The Hon. Ian Gilfillan interjecting:*

**The Hon. R.D. LAWSON:** The honourable member by way of interjection has suggested that perhaps it is possible to split the term of a special justice and limit it to five years, but others for 10 years. That amendment might be accommodated. If my learned colleague were prepared to do that he would support this motion, which would be that generally it is 10 years, and when we get to the provision for special justices in clause 7(2) it would include a limitation on the duration of that appointment. Those two would be consistent because, under clause 4(1), a justice would be appointed on conditions determined by the government for a term not exceeding 10 years.

In dealing with special justices, I would have to insert in clause 7(2) 'a special justice reappointed on conditions for a term not exceeding five years and on conditions determined by the Governor. I believe that would be a satisfactory way of achieving that objective. We will have to speak to parliamentary counsel before doing that. If the honourable member were minded to support this amendment, the general 10 years, I will introduce an amendment and will agree to a recommittal of the bill if there is any insurmountable difficulty in relation to that.

**The Hon. IAN GILFILLAN:** It is probably a bit abrupt to expect the government to respond to that, but it certainly appears to me—and I tried to indicate in my contribution earlier in the committee—that a five-year period for the ordinary tasks of a JP seems to be too short, and I have no difficulty with a 10-year period. However, I am very supportive of the concept of special justices, as introduced in this bill, and I hope people who get these appointments will serve the judiciary in the roles identified in the bill effectively and well. It is a different tier or level of responsibility from the ordinary role of justices under the current act. What I have been discussing with the shadow attorney-general would be satisfactory and I indicate Democrat support for it.

**The Hon. P. HOLLOWAY:** The government believes that it should be five years, and I have set out the arguments why we believe that, whether it be special justices or ordinary justices. We believe the roll needs to be more regularly updated, and that is why I believe five years is a better term. The compromise the Hon. Ian Gilfillan is suggesting is at least better than just the change alone that the Hon. Rob Lawson has proposed. We can tidy it up later when the bill goes back to the house. The government would have preferred five years across the board.

I also indicate that, given that we held up the bill because we were waiting to hear what the Law Society said, it is interesting to note that in this case the Law Society supports five years (as do other submissions) because the case is overwhelming. However, we do not have the numbers, so this is a compromise of five years maximum for special justices and 10 years maximum—

*The Hon. Ian Gilfillan interjecting:*

**The Hon. P. HOLLOWAY:** Yes, they support five years.

*The Hon. Ian Gilfillan interjecting:*

**The Hon. P. HOLLOWAY:** No, but if they thought there was a difference I guess they would have said so. I suppose this can be revisited between the houses, but I think we might as well go with that at this stage and see what happens.

**The Hon. IAN GILFILLAN:** It is quite clear that this is not an issue towards which there needs to be a combative approach. I think all teams are working towards the most desirable result. With that background climate, I repeat: the Democrats' support for the amendment to clause 4 is conditional on there being a successful amendment to clause 7(2) in relation to specifying a five-year term for special justices.

**The Hon. R.D. LAWSON:** I thank the honourable member for his indication of support. I have spoken to parliamentary counsel, and I seek leave to withdraw my amendment.

Leave granted; amendment withdrawn.

**The Hon. R.D. LAWSON:** I now seek to move the following amendment:

Page 4, line 17—Delete 'A' and insert 'Subject to section 7, a'.

Amendment carried.

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

Clause 4(2), page 4, line 17—
Delete '5' and substitute:
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Amendment carried; clause as amended passed.

Clauses 5 and 6 passed.

Clause 7.

**The Hon. R.D. LAWSON:** Parliamentary counsel has kindly prepared at short notice an amendment to clause 7 which I will seek to move. It will involve the deletion of existing clause 7(2). The terms of the amendment are presently being copied by the staff and will shortly be circulated to members but, basically, the effect of it will be that subsection (2) will provide that a special justice be appointed for a term of five years on conditions, etc.

*The Hon. P. Holloway interjecting:*

**The Hon. R.D. LAWSON:** After five years. It is being copied now, if the committee might wait for a moment.

**The Hon. P. HOLLOWAY:** Obviously, I have not seen the amendment, but I indicate that in principle the government supports it. It has been drafted on the run, but I suppose there is the opportunity to examine it between the houses, and if there are any technical problems they can be fixed then. I do not think there is any point in delaying the committee further.

**The Hon. IAN GILFILLAN:** Subject to seeing the actual wording of the amendment, the intention fits what the Democrats have undertaken to support, so we do not intend to debate it again unless there is something in the wording that throws us off balance. We are quite happy to vote on it as soon as it is distributed.

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

Page 6, lines 7 to 9—delete subclause (2) and substitute:
(2) A special justice will be appointed on conditions determined by the Governor for a term, not exceeding 5 years, specified in the instrument of appointment.

**The Hon. IAN GILFILLAN:** I did not quite foresee this. Subclause (2) as it currently is in the bill provides, 'A special justice will be appointed on conditions determined by the Governor and specified in the instrument of appointment for the term. . . ' It appears to me that those conditions are going to cover more than just the term of the appointment, whereas the wording of the amendment we have just received (and that is why I am looking at it with a little deliberation) is that 'A special justice will be appointed on conditions determined by the Governor for a term, not exceeding 5 years, specified in the instrument of appointment.' I am not clear that the amended wording embraces the fact that those conditions are for other than just the term.

**The Hon. R.D. LAWSON:** It is certainly my intention that the effect of the amendment would ensure that the instrument of appointment can determine not only the term of five years but also the other conditions upon which the

appointment is held. I believe that is the effect, because subsection (1) provides, 'The Governor, may on. . . recommendation. . . appoint a justice to be a special justice.' To be a justice you have to be appointed under clause 4, which includes widespread powers to insert conditions of appointment, which include, for example, 'conditions specifying or limiting the official powers.'

**The Hon. IAN GILFILLAN:** It is not difficult to solve. I believe the current wording of the bill that 'A special justice will be appointed on conditions determined by the Governor and specified in the instrument of appointment for the term. . . ' is quite satisfactory. The term is then defined as not to exceed five years. I believe the first part of that subclause covers more than just the term of the appointments: it offers the opportunity for conditions, and I think there should be conditions which are spelt out more than just the number of years.

**The Hon. P. HOLLOWAY:** We believe subclause 7(4) takes care of that. It provides, 'The conditions of appointment may include conditions specifying or limiting the official powers that the special justice may exercise.' That provides a suitable qualification.

**The Hon. IAN GILFILLAN:** It is the government's opinion that subclause (2) deals purely with the time frame of the term. The government's argument is that any other conditions the government may want to apply to special justices is covered by subclause (4).

**The Hon. P. HOLLOWAY:** In its original form, clause 7 provided:

> A special justice will be appointed on conditions determined by the Governor and specified in the instrument of appointment for the term during which the special justice also holds office as a justice.

The term of a justice was set under clause 4(2). Now that we are differentiating between the term of a justice and a special justice, we need to change the way in which clause 7(2) is worded. Under this amendment, as we perceive it—and, admittedly, it has been done fairly quickly—it would provide:

> A special justice will be appointed on conditions determined by the Governor for a term, not exceeding five years, specified in the instrument of appointment.

Clearly, the instrument of appointment for a special justice would be different from that for a justice, and clause 7(4) relates to those powers and conditions of appointment. It provides:

> The conditions of appointment may include conditions specifying or limiting the official powers that the special justice may exercise.

**The Hon. R.D. LAWSON:** I agree with the minister's interpretation. I hope that has satisfied the Hon. Ian Gilfillan. No doubt, if between the houses we have not achieved the intended result, the matter may be revisited. I apologise to the committee for introducing the amendment at such a late stage.

**The Hon. IAN GILFILLAN:** I am the one who should apologise, because I am the one who threw the cat among the pigeons—and I am throwing in another one. I would feel much more at ease if an extra subclause that dealt specifically with the term had been inserted with more or less the simple wording specifying the term and the fact that the person referred to in clause 4(2) is eligible for re-appointment. However, it seems as if the team is going to work together with a more deliberate approach and, if there are some sort of bumps, we can iron them out later. I make it quite plain to the committee that I am not at ease with the current wording but, because we are moving it along, I am prepared not to shout out my opposition or my enthusiastic support.

**The Hon. P. HOLLOWAY:** Obviously, everyone wants this corrected. If there are some unintended consequences in there, we will need to fix it. We will certainly look at it between the houses.

Amendment carried.

**The Hon. R.D. LAWSON:** Can the minister indicate whether the course of training referred to in clause 7(3), which is to be approved after consultation with the Chief Justice, has been approved by the Attorney-General? If so, is that course of training yet being offered, at what institutions is it intended it will be offered, what is the likely cost of participating in the course of training proposed, and are there are any other details about that course, including its duration, the educational eligibility criteria for participating in the course and the like?

**The Hon. P. HOLLOWAY:** The courses have certainly been approved and are to be offered at Adelaide TAFE and, when sufficient demand exists, it is proposed that they will be offered in the country. We are just not sure whether or not they have taught the first one yet. However, they have certainly been approved and are ready to roll. I am advised that the government will pay the cost of the courses for special justices. I am also advised that there is a semester subject, a three-day course and also assessments.

Clause as amended passed.

Clauses 8 to 12 passed.

Clause 13.

**The Hon. P. HOLLOWAY:** I move:

> Page 8, after line 26—Insert:
> (e) any conditions specifying or limiting the official powers that the justices may exercise;
> (f) the expiry date of the current term of office of the justice.

This amendment is identical to the amendments moved by the Hon. Robert Lawson. I think the opposition in another place suggested this amendment. It would require the keeping of some additional information on the roll of justice of the peace. The information relates to any conditions that specify or limit the official powers of a particular justice of the peace and the expiry date of the appointment of each justice of the peace. Sometimes this information would help members of the public to select an appropriate JP, and it would also be convenient for the Attorney-General's Office when the staff deal with inquiries from the public. It is a useful amendment which was suggested by the opposition and which the government has picked up.

**The Hon. R.D. LAWSON:** I thank the minister for that acknowledgment. We also believe that one of the advantages of that information is that persons using a justice of the peace will have a way of ascertaining, by some public record, the conditions upon which the justice is operating, namely, whether there are any limitations—as there well might be in these instruments of appointment. We heartily support the amendment.

Amendment carried; clause as amended passed.

Remaining clauses (14 to 17), schedule and title passed.

Bill reported with amendments; committee's report adopted.

Bill read a third time and passed.

**The Hon. P. HOLLOWAY:** Mr President, I draw your attention to the state of the council.

*A quorum having been formed:*

## CARERS RECOGNITION BILL

Adjourned debate on second reading.

(Continued from 19 October. Page 2796.)

**The Hon. KATE REYNOLDS:** I am very pleased to support the second reading of this bill today. I assume that we will be progressing it through all stages, and that is extra pleasing. It is Carers Week and it is certainly gratifying to the South Australian Democrats that the Rann Labor government has proceeded with some of its commitments. It has introduced and is now willing to conclude debate on this bill in order to provide some additional recognition for carers.

The bill is intended to provide a mechanism to ensure implementation of the South Australian Carers Charter and the reporting of compliance by government departments within their annual reporting. That appears to be its prime purpose. On the surface that is not a particularly exciting or sexy kind of object for a bill but, when taken in combination with the Carers Charter and the carers policy, which this government has developed—and I give it credit for that—we have the beginnings of something that will strengthen support for carers in South Australia. Of course, we welcome that.

I do have some concerns about whether or not this bill will meet the many needs for additional support, recognition and assistance for carers. I suspect that will not occur because those needs are still enormous. I will speak about those more in a minute. This is a start and it is welcomed. There is a review period, which is very sensible. Hopefully, in five years a review will have been completed and areas for improvement identified; and that might mean the growing of some teeth for this bill if it turns out that that is necessary.

As I mentioned earlier, this is National Carers Week. Members will remember that, two years ago, I introduced into this place the Equal Opportunity (Carers Responsibilities) Amendment Bill, which was also designed to strengthen support for carers in South Australia and specifically provide legal protection for them against discrimination on the basis of their caring responsibilities. That bill passed this place in, I think, December of that year with support from the opposition, the government and the Independents.

At the time when the government spoke on the carers' responsibilities amendment bill, it said through its spokesperson in this place, the Hon. Gail Gago, that the Labor government had undertaken a review of the Equal Opportunity Act. Some comment was made during debate that the government was a little frustrated that it had been forced to take this position earlier than it had intended, because it had not concluded its own process of reviewing the Equal Opportunity Act.

The Hon. Gail Gago, I think in December (after my bill had been on the *Notice Paper* for a couple of months and I had indicated that I wanted it dealt with), foreshadowed that legislation substantially amending the equal opportunity laws could be expected to be brought before the council later this year. Of course, members will know that that has not occurred, and those members who attended the forum held by the South Australian Democrats in September this year will know that we have pressed ahead and drawn up our own amendments to the Equal Opportunity Act.

In fact, we have gone so far as to prepare a bill that will effectively be an entirely new act to replace the existing Equal Opportunity Act. Of course, within that, there will be provisions to protect carers from discrimination on the basis of their caring responsibilities. The bill before us is intended to recognise carers and to require that organisations providing services pay attention to the particular needs of carers, and that is very welcome because, as we all know, caring is resource intensive emotionally, physically and financially for individual carers.

It is also becoming increasingly expensive for the state, despite the number of people who give of their time voluntarily to care for people outside their close family relationships, and so on. This is becoming a significant challenge for us all. I note that in September this year Ian Yates from COTA National Seniors Partnership wrote one of his regular columns in *The Advertiser* newspaper. He spoke about the challenge of caring for an aged population. He talked about the fact that people now understand that the ageing of our population presents a number of challenges with the numbers of very old people over 85 years almost doubling. His article states:

> In the next 20 years there will be huge increases in demand on our hospitals and other health services, on aged care for new forms of community transport, and much more.

Mr Yates draws attention to the work that has been undertaken by the Carers Association on the projected numbers of so-called informal carers (who are mostly family members and friends) over the next 25 years, which shows that by the year 2031 there will be just 35 carers for every 100 people over 65 years needing care—well down from the current 57 per 100 now. The figures that Mr Yates summarises in this article are, of course, very alarming. In his article, Mr Yates said:

> We now know (well, everyone expect Treasury does) that we can have a major impact on the level of demand for health in aged-care services if we invest more in programs that promote health and prevent or slow down the development of frailty and disability.

He further states:

> All these steps will make a difference. Doing nothing is not really a choice. So when are more politicians going to stop fighting over the problems and start tackling the solutions?

I think that point is extremely well made by Mr Yates. We congratulate the government on this initiative. We do not wish to keep squabbling about the problems and not acknowledging some steps towards the solutions when they are made. However, it is important that we do not all say, 'Well, we have done carers. We have fixed carers now. It is all sorted', because, very clearly, it is not.

Members will remember that, early this week, I spoke about a report about unmet needs that had been compiled by the state government. Of course, it had not been publicly released and, as I understand it, it still has not been publicly released. This was a report of unmet needs by just one of the state government's service provider agencies, APN. I will summarise four examples for members. As members will remember, there were about 50 pages with about seven examples on each page. If any member should ask me to table it, I would be very willing to do so, but what I have in front of me is just one-third of the total report that is available. This represents unmet needs from just one organisation.

'D' lives alone and his mother used to visit to provide care. However, her other daughter has cancer and she now cares for her. 'D' needs domestic help, especially with meal preparation, laundry and cleaning. He has short-term help from carers respite that is due to expire soon. He needs five hours per week and without this his nutrition is at risk as is his personal safety if the house is not cleaned, and he will not have clean clothes and linen, etc., and so his hygiene is jeopardised.

The second example is 'A', who lives alone and who currently has 18 hours per week for personal care and putting him to bed. His 78-year-old mother who lives nearby provides daily support for cooking, shopping and all domestic

chores. His mother is becoming frail and is finding it more difficult to visit him daily to provide this support. 'A' has deteriorated and now needs one hour per day for personal care, as he is barely able to feed himself. 'A' received aged carer funding in 2001 but still needs another seven hours per week. Without this support, 'A' is at risk of institutionalisation, as his mother is unsure how much longer she can continue in her caring role. The third one is about a young carer who is 11 years old. 'V' is a 46-year-old single mother with Huntington's Disease. She has deteriorated physically and cognitively and now requires 14 hours per week personal care assistance. She needs assistance with all her household tasks, she can not maintain the household, and the welfare of this 11-year-old child who cares for her is also at risk because she is providing care.

Lastly, this is one example of a frail aged carer. 'J' lives with her ageing husband. She experiences extreme pain throughout her body and is frequently confined to bed. Her husband is her main carer. He suffers from increasing back pain and is finding it more difficult to care for his wife. APN provides seven hours of support per week. 'J' sometimes falls as a result of her condition, and her husband is often unable to help her up, and so emergency services need to be involved. 'J's husband is a reverend and is often called away from home. 'J's condition has deteriorated and therefore her support needs have increased. Her husband is not in a position to provide all the care required and she therefore is in urgent need of further support.

Those are just four examples. I think I spent about 10.2 seconds finding those, and Carers SA and other organisations that support carers and provide services would be able to provide any member with thousands more stories about unmet need for carers. I think it is fair to say that there is certainly more emotional support, more access to information and so on than there has been in recent years and in recent decades. For some people, there is increased access to respite care, to equipment and so on to help make their caring job a little easier, and that is very welcome, but there are still enormous waiting lists for care. There is still an enormous amount of unmet need for the sort of equipment that can make carers' lives a little easier and often make the lives of people that are being cared for safer.

So, I do not think we should be kidding ourselves that, by passing the Carers Recognition Bill in Carers Week 2005, we are doing anything of any enormous magnitude. This is a welcome step. Credit where credit is due, but please do not let any of us think that we can now ease up on trying to make life better, safer, healthier and a little happier for people who have either caring responsibilities or rely on other people for their sometimes minute by minute, hour by hour, daily or weekly care and survival. I commend the government for this. I support the second reading on behalf of the South Australian Democrats. I urge all honourable members to support it, and I urge all honourable members to become a little more involved in trying to support those people who are doing an incredibly difficult job under incredibly difficult circumstances that, hopefully, will be eased a little by the passage of this bill, but more work is still needed, and urgently.

**The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation):** I thank members for their contributions and also thank all those people who over the years have worked towards the recognition of carers through a charter and through working towards a better program, more government support for carers and working cooperatively cross-agency to make sure that we do care for the carers. I attended a meeting some five years ago now with David Wotton who was the minister responsible and who was looking at the issues of respite care for carers at that time, and there was certainly a growing need for respite and other support services for carers.

With our ageing population, with the mental health issues that we are now starting to deal with, many other health issues with exiting patients from hospitals, and for those of frail age, South Australia is certainly going to be hard pressed to find the resources through taxation revenue measures and through the government services area to keep up with the workload that is going to be expected to look after our citizens in the future. Probably more than any other state we will have difficulties in meeting those needs and, therefore, we welcome any support that can be supplied by carers through family support services and friends, neighbours, and certainly as a caring society we have to encourage all avenues to support those who cannot support themselves, either full-time or part-time.

I pay tribute to the minister in another place for the work that he, his support staff and others have put in to bring before us the charter and the Carers Recognition Bill for us to discuss. As the Hon. Kate Reynolds has said, it is a stage. It is not the final step in the journey, but it is a staged journey that we have to take, and this is the first formal public recognition of carers in this state.

I understand that we have worked with carers from the UK who have put together a charter, and we have in some way used some aspects of the British experience to put together our charter. However, I understand that there are many aspects of our stages that are recognised by the British carers where we go a few steps further. I am sure that South Australia has led the way with Meals on Wheels and other home support programs and will eventually lead the Western world, anyway, in the way in which we deal with carers, having officially recognised them through this bill. And, hopefully, we will be able to put in place a support service that other states and countries might look at in dealing with carers.

I would like to thank the Carers Association for its support, all the younger carers whom this bill recognises, and those people on the advisory committee whom the minister named in another place. With those few words, I thank everyone for their contributions and look forward to the speedy passage of the bill.

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

## LOCAL GOVERNMENT (FINANCIAL MANAGEMENT AND RATING) AMENDMENT BILL

In committee.

(Continued from 19 October. Page 2813.)

**The Hon. CARMEL ZOLLO:** Mr Chairman, I draw your attention to the state of the committee.

*A quorum having been formed:*

Clause 11.

**The Hon. NICK XENOPHON:** My amendments Nos 7, 8 and 9 are consequential, so I will not proceed with them. That leaves Nos 10 and 11.

Clause passed.

Clause 12 passed.

Clause 13.

**The Hon. CARMEL ZOLLO:** I move:

Page 10, lines 34 to 37—Delete paragraph (a) and substitute:
(a) to the principal member of the council (who must ensure that a copy is immediately provided to the chief executive officer, and that copies are provided to the other members of council for their consideration at the relevant meeting under subsection (6) or (6a)); and

Amendments Nos 2, 3 and 4 are all part of the same package and deal with the process of handling a report from the Efficiency and Economy Review Commission by the council under proposed section 130A. Proposed section 130A(4) requires the report to be provided to the principal member of council and to be formally received by the council at its next meeting. The LGA is concerned that the obligation to receive the report at the next meeting of the council might raise problems if the report is received in the two or three days prior to a scheduled council meeting after the agenda for that meeting has already been distributed.

In these circumstances there might not be sufficient time for the chief executive to analyse the report or provide information to councillors to place the report in the context of the council's policies, the annual business plan and the strategic management plan. Therefore these amendments provide that, if the agenda for the next meeting has already been distributed, the efficiency and economy review report may be held back for the following meeting of the council.

Amendment carried.

**The Hon. CARMEL ZOLLO:** I move:

Page 10, lines 39 and 40—Delete subsection (6) and substitute:
(6) Unless subsection (6a) applies, the report must be placed on the agenda for consideration—
(a) unless paragraph (b) applies—at the next ordinary meeting of the council;
(b) if the agenda for the next ordinary meeting of the council has already been sent to members of the council at the time that the report is provided to the principal member of the council—at the ordinary meeting of the council next following the meeting for which the agenda has already been sent, subject to the qualification that this paragraph will not apply if the principal member of the council determines, after consultation with the chief executive officer, that the report should be considered at the next meeting of the council as a late item on the agenda.
(6a) The report may be the subject of a special meeting of the council called in accordance with the requirements of this Act (and held before the ordinary meeting of the council that would otherwise apply under subsection (6)).

Amendment carried.

**The Hon. CARMEL ZOLLO:** I move:

Page 11, line 2—Delete 'at the next meeting of the council' and substitute 'at the relevant meeting of the council held under subsection (6) or (6a).

Amendment carried; clause as amended passed.

Clauses 14 to 18 passed.

Clause 19.

**The Hon. NICK XENOPHON:** I move:

Page 12, after line 36—Insert:
(4a) Despite a preceding subsection, a council must ensure that any increase in the general rate to be charged for a particular financial year on rateable land within its area that constitutes a principal place of residence within the ambit of subsection (4b) does not exceed any change in the consumer price index for the period of 12 months ending on 31 December of the immediately preceding financial year.
(4b) A principal place of residence is within the ambit of this subsection if—
(a) a ratepayer with respect to the land is a prescribed ratepayer; and
(b) the relevant land is the principal place of residence of the prescribed ratepayer; and
(c) any change in the valuation of the land for the relevant financial year is not attributable to development undertaken with respect to the land.

This amendment is linked to amendment No.11, so I will treat it as a test clause. This amendment in essence provides that if you are a prescribed ratepayer—a pensioner, the holder of a current pensioner concession—then your rates cannot go up beyond the CPI compared with the rates for the previous financial year. I so move because of the difficulty many pensioners have had since the boom in property values.

I know the Treasurer previously said words to the effect that people's assets have gone up, and that may be true in the context of land tax. That is cold comfort for people on fixed incomes who have lived in the same home for many years, in some cases for most of their adult lives, particularly in beachside suburbs. Values have gone up and rates have also gone up and they are facing increases above the CPI. If anyone needs to be insulated from these increases it is pensioners who are on a fixed income.

**The Hon. CARMEL ZOLLO:** The government does not support the Hon. Nick Xenophon's amendment. This amendment has an obvious superficial attraction. It limits a rate increase for a pensioner's principal place of residence to no more than a CPI increase. However, there are good reasons of principle and policy for why this amendment should be opposed. First, it is a key principle that local government is an independent and legitimate sphere of government and should be accountable to its community. The commonwealth and state governments can and do adjust taxation levels that affect pensioners and others in particular ways that might in one or more years exceed CPI increases. Those governments are accountable to their voters for that. So, too, should elected local councillors be accountable to their voters (including pensioners) for their decisions.

Secondly, there are already a number of provisions of this bill that require improved standards of rate setting practices and improved responsiveness to those in financial hardship and those on lower fixed incomes, bearing in mind that pensioners are not the only persons on low or fixed incomes. For example, clause 16 of the bill requires rating policies to deal with the matter of relief from rates where appropriate. Clause 19 requires council to consider limiting rate increases on at least a ratepayer's principal place of residence. Clause 24 widens the council's powers to give discretionary rebates in any circumstances in which rates are unfair or unreasonable and requires reasonable consideration of all applications for rebates. Clause 28 permits any holder of a state Seniors Card to postpone a prescribed proportion of rates on his or her principal place of residence until the property is transferred to another owner.

Thirdly, this amendment would unnecessarily fetter the council's powers to budget responsibly over time frames of longer than one year. There have been circumstances in the past—and there will be again—when, after several years of low rate rises or no rate rises at all, a well-managed council might require in a subsequent year a significant increase in rates to provide a service or to build an asset that the community has decided it wants. Even if the average rate rises for previous years have been below inflation, this amendment would prevent the council in one later single year raising rates for pensioners above the level of inflation for that one particular year.

Fourthly, this amendment might protect pensioners in times of rising rates, but it might have the opposite effect when rates for other landowners are falling, are steady, or are rising by less than the CPI. In those years, the council would be able to have pensioners rates catch up with annual CPI rises which others would not have to pay. Fifthly, this amendment would place a substantial additional administrative burden on councils.

*The Hon. Nick Xenophon interjecting:*

**The Hon. CARMEL ZOLLO:** Well, it's a free market. The added complexity and consequential cost would have to be passed on to all ratepayers. If councils are to be required to fund this major new administrative burden, then it is more reasonable to ask: why not simply not put those funds into administration expenses but use them to provide a rebate directly to each pensioner? For example, the City of Port Augusta provides a rebate of up to $160 when a pensioner's rate liability exceeds $900. This is in addition to the state government's pensioner concession of up to $190.

**The Hon. CAROLINE SCHAEFER:** My reason for opposing this amendment is considerably shorter than that. Either we believe in three tiers of government or we don't. I do not believe we should have the right to cap rates for another tier of government. If we took that to its logical conclusion, the federal government could legislate to see how much this government taxes us. While that has some considerable appeal, it would not be right. Neither would it be right for us to endeavour to cap the rating ability of local government.

**The Hon. KATE REYNOLDS:** For the reasons outlined by the government and also because we agree with the Liberals, the South Australian Democrats do not believe that it is appropriate that we determine taxes, etc. for what I will call another sphere of government rather than another tier of government. So, we will not support this amendment.

*The Hon. Caroline Schaefer interjecting:*

**The Hon. KATE REYNOLDS:** The Hon. Caroline Schaefer is right: some of the complexities around rating are enough to make you cry.

Amendment negatived; clause passed.

Clauses 20 to 27 passed.

Clause 28.

**The Hon. CARMEL ZOLLO:** I move:

Page 17—
Line 12—Delete 'principal' and substitute 'prescribed'.
Line 13—Delete 'principal' and substitute 'prescribed'.

This is a drafting matter. The word 'principal' is incorrect in this context; the clause refers throughout to prescribed ratepayer and not principal ratepayer.

Amendments carried.

**The Hon. KATE REYNOLDS:** I move:

Page 19, after line 2—insert:
(10a) A regulation cannot be made for the purposes of this section except after consultation with the LGA.

This amendment is intended to alter clause 28, which relates to the postponement of rates for seniors. Because much of the detail of the operation of these provisions will be prescribed in regulations, and those regulations are yet to be drafted, we believe that it is desirable that there be an imperative for the government to consult with the Local Government Association about the impact of those regulations. We are aware that there are other sections of the act that provide for consultation on the regulations, but I think there is still some review work to be done on that and we are seeking to have a statement made that says that the impact of this regulation should be subject to close scrutiny.

**The Hon. CARMEL ZOLLO:** The government opposes the amendment. There can be no doubt about the government's intention to consult the LGA before making regulations, and the commitment to do so is in the State-Local Government Relations Agreement signed by the Premier and the president of the LGA. There is a general provision in section 303(9) of the act, as follows:

The minister should, so far as is reasonably practicable, consult with the LGA before a regulation is made under this Act.

That is the general provision and it applies to all regulations made under the act. There is one exception to the general rule, in section 156, and it goes so far as to prohibit the making of a regulation under section 156 unless the LGA has been consulted. The amendment moved by the Hon. Kate Reynolds seeks to make another identical exception in proposed new section 182A. The government does not want to see a series of exceptions dotted about in various sections of the act. It would prefer to consider consultation with the LGA as a matter of principle and practice and apply a consistent legislative scheme rather than various different schemes for various sections of the act.

I am advised that the minister in another place is willing to review all regulation-making powers in the act to consider whether, on a whole of act basis, the general provision in section 303(9) can or should be strengthened. To show the government's good faith in this, the minister in another place has agreed to an amendment to section 303(9). The amendment (No. 7 standing in my name) has the support of the Local Government Association and will be moved later. However, it is unwise to be inserting another exception into the act before the review that the minister has promised has even commenced.

It is not a trifling matter for the government to fetter the executive power of making regulations. An amendment of the type sought may seem innocuous—after all, the government certainly intends to consult very thoroughly with the LGA before regulations are made under this section—but the government expects that if this amendment succeeds it will provide a beach-head or precedence for the LGA to seek similar subsections not only in the Local Government Act but also in many other acts.

If the government is to be bound by legislation so that it cannot make a regulation on a particular subject without consulting the LGA, it might be appropriate to define what level of consultation is appropriate for these purposes. The government might also seek, in return, to bind the LGA to consult the government on certain matters. Discussions about these sorts of matters have not been held; the process has not even commenced. The process will commence as part of the review that the minister has promised; however, it should not be pre-empted by this amendment.

**The Hon. CAROLINE SCHAEFER:** The opposition supports the amendment. We had what seems to be commonly called a 'round table' the other night, and the LGA was of the view that agreement had been reached with the minister on this matter, as was I. The amendment that I believed was forthcoming, and that my correspondence from the LGA indicates that it also believed was forthcoming, has not arrived. Had the Hon. Kate Reynolds not moved this amendment I would have. After all, the LGA is the prescribed peak body for local government within South Australia and this is, if you like, a benchmark-type regulation. In my view

it has every right to have legislative assurance that it will be consulted before it is introduced—or, indeed, before it is altered in any way.

**The Hon. NICK XENOPHON:** I support the amendment.

Amendment carried; clause as amended passed.

Clauses 29 to 31 passed.

New clause 31A.

**The Hon. CARMEL ZOLLO:** I move:

Page 21, after line 13—Insert:
31A—Amendment of section 303—Regulations
Section 303—delete ', so far as is reasonably practicable,

Many provisions in the bill permit or require regulations to be made. In most cases, a regulation-making power has been proposed to permit further consultation with the LGA over outstanding policy questions. It is not possible to provide a firm indication of what is proposed for regulations under these provisions because the process of consultation with the LGA and others is incomplete or, in some cases, has not even commenced. Therefore, the LGA has requested—and the minister has agreed—to modify the provision of section 303 about consultation with the LGA. After deletion of the words 'so far as is reasonably practicable' the subsection would read 'the minister should consult with the LGA before a regulation is made under this act.'

New clause inserted.

Clause 32.

**The Hon. CARMEL ZOLLO:** I move:

Page 21, after line 16—Insert:
(1) Schedule 2, clause 19(4)—delete subclause (4) and substitute:
(4) The charter may be reviewed by the constituent councils at any time but must in any event be reviewed at least once in every four years.

The bill was amended at the request of the LGA so that under section 122(4)(b) a comprehensive review of a council's strategic management plan must occur on at least one occasion within two years after each general election of the council. Schedule 2, clause 19(4) of the act requires constituent councils to review the charter of a regional subsidiary at least once in every three years. To render these provisions consistent with each other, this amendment to schedule 2, clause 19(4) provides that the charter for a regional subsidiary may be reviewed at any time but must be reviewed on a four year basis, rather than a three year basis. The LGA has been consulted and, in turn, it has consulted its legal advisers, and both agree that this amendment is warranted.

Amendment carried; clause as amended passed.

Remaining clauses (33 and 34) passed.

Schedule 1.

**The Hon. NICK XENOPHON:** I move:

Page 22, after line 19—Insert:
Part 3—Transitional provisions.
7—Rebates of rates—volunteers
(1) The minister must cause a report to be prepared on the proposal that a rebate of council rates be provided to ratepayers who act as volunteers within the community.
(2) The review must consider—
(a) the feasibility of providing such a rebate; and
(b) if such a rebate were to be provided—
(i) the appropriate level of volunteer work in order to qualify for a rebate;
(ii) the appropriate amount or level of a rebate;
(iii) the way in which a rebate could be claimed or provided; and
(c) any other matter specified by the minister.
(3) The results of the review must be embodied in a written report.
(4) The report must be completed within 12 months after the commencement of this act and, on completion, furnished to the minister.
(5) The minister must cause a copy of the report to be laid before both houses of parliament within six sitting days of his or her receipt of the report.

This amendment simply provides for the minister to cause a report to be prepared on a proposal that a rebate of council rates be provided to ratepayers who act as volunteers within the community. This is something that I know that Mayor Fiona Barr of Port Adelaide Enfield has previously raised in the community. It is something about which I have been approached by a number of constituents who have raised this as an issue.

I think it would be fair to say that volunteers do what they do not because they expect any benefit—there is no question of that. The government has acknowledged them through the Office of Volunteers for the very valuable work they do at all sorts of levels in the community. This amendment is simply taking it one step further to investigate the feasibility of giving some rebate to volunteers. It gives a fair degree of discretion for the minister to look at all the options and to provide a report to the parliament in 12 months.

**The Hon. CARMEL ZOLLO:** I indicate that the government does not support this amendment. As the Hon. Nick Xenophon has said, it would require the minister to provide a report on the concept of offering volunteers rebates on rates. As a matter of procedure, I suggest that, if the honourable member believes the matter deserves scrutiny, there are different ways of dealing with it. Alternatively, the honourable member could even ask a question without notice during question time to get a considered response from the minister.

**The Hon. NICK XENOPHON:** I do not want to add to the debate unnecessarily. With respect to the minister, I do not know whether simply asking a question of the minister would do what this is intended to do. I understand the government's position on this issue. Looking at the feasibility and mechanics of a rebate, I think these are things that could best be done by the minister providing a report to the parliament. I will not take it any further in terms of the government's response, but I would have thought it would be a valid exercise, given the importance of volunteers to the community.

**The Hon. CAROLINE SCHAEFER:** The opposition opposes this amendment. We see it as unnecessary detail. The minister and, indeed, the department have a great deal to do. I cannot see that this is necessarily a good use of resources.

**The Hon. KATE REYNOLDS:** I will be opposing the amendment but for different reasons. I have done a lot of work with volunteer organisations over the years and conducted a lot of training programs about how organisations can better recruit, train, support and reward volunteers. The question of reimbursements and so on always comes up, and the question of financial contributions made to the community by volunteers always comes up, too. I understand the appeal of having a report prepared. I suspect that the report would say that it is not an idea that should be proceeded with because, frankly, it is too complicated. Who is a volunteer and who is not? Is there formal and informal volunteering? Do we have an accreditation scheme for volunteering? Is it within the boundaries of the council? Is it this or is it that?

Certainly, my work with volunteering organisations indicates that, with the exception of some emergency services

volunteers, very few people have been attracted to this. I think there are better ways in which we can recognise emergency services volunteers and other volunteers, other than certificates from the Premier on Volunteers Day. Most organisations make a much more wholesome acknowledgment than that.

The reason I oppose this amendment is that I do not think the minister is the appropriate person to conduct such a review. This is a review about the rebate of council rates. Therefore, the appropriate body, if any, to undertake such a report would be the LGA. I happen to know that the LGA at present is bursting with demands for various reviews and reports. I do not believe the minister's office is the appropriate place for such a review to be done. I would be sympathetic to the idea of some kind of review or report being prepared, but I do not believe the resources are sitting around. Perhaps the Local Government Association could attract a graduate student to undertake a review, but I do not believe the minister's office is the appropriate body to look at this issue.

**The Hon. CARMEL ZOLLO:** Putting aside this amendment, as Minister for Emergency Services I place on record that South Australia is indebted to the many thousands of volunteers who give their time willingly for a variety of worthwhile community causes. I echo the comments of other members in relation to volunteers.

Amendment negatived; schedule passed.

Title passed.

Bill reported with amendments; committee's report adopted.

Bill read a third time and passed.

### EYRE PENINSULA BUSHFIRES

Adjourned debate on motion of Hon. Ian Gilfillan:

That this council respectfully requests the South Australian Government, on behalf of the people of Eyre Peninsula, to make a substantial ex gratia payment to Kevin Warren of Eyreial Ag Services, to offset the expenses incurred providing his three crop duster aircraft to act as water bombers to fight the January bushfires on Lower Eyre Peninsula

(Continued from 21 September. Page 2659.)

**The Hon. CAROLINE SCHAEFER:** My colleague the Hon. Angus Redford has responded on behalf of my party. However, I would like to support this motion as an individual member of the parliament and someone who knows Mr Kevin Warren. He has taken on almost legendary status within Lower Eyre Peninsula, not just because of the amazing job he did saving stock, homes and probably lives this year but also because he did a similar thing during the Tulka fires at a previous time. Mr Warren and his family run a crop dusting and tuna spotting business based just outside Port Lincoln. Therefore, they know the terrain and the people intimately. The second time I went over there shortly after the Eyre Peninsula fires, there were numerous stories of what can only be described as heroism by Mr Warren. One farmer in particular told me that Mr Warren was solely responsible for saving his sheep stud—a sheep stud that had been in existence for over 100 years. The family had managed to get their stud stock into the sheep yards where normally they would be safe, but the intensity of the fire meant the shearing shed and the sheep yards were on fire.

Only someone with such local knowledge would have known that. Mr Warren flew over and saw that the house was safe. He dumped water on the sheep and sheep yards, and he saved almost all of them. My understanding is that Kevin Warren has been placed under considerable publicity and pressure because of the tragedy of the bushfires in January this year. As such, he has not invoiced the government. He has said that, at this time, he does not want compensation. I think that what Mr Warren wants—and certainly what the people of the Eyre Peninsula want—is to recognise that Mr Warren is in a better position to save them should this tragedy occur again than anyone else because of his intimate knowledge, because he is based on the Lower Eyre Peninsula and because he is willing to fly through smoke in very dangerous circumstances to save the lives of his neighbours and friends.

As I say, there are numerous witnesses to some of the things that he did in January this year. Again, I will describe them as nothing short of heroic. To fly in those circumstances, I have been told by a number of people, is quite dangerous in itself. Mr Warren flew at low level knowing that the terrain was particularly dangerous. People tell me that they could not see more than a few metres in front of them. At times the smoke was so intense that it was like the dark of night, yet Mr Warren continued to fly under those circumstances to save people's lives. What we would like to see by this government—and the assurance was there after the Tulka fires, and the contractor was prepared and has never been signed off—is an opportunity for Mr Warren in emergency circumstances to continue to fly his plane and to be insured and indemnified when he does so. He was advised this time that if he flew he would have no insurance and that he would not necessarily receive any compensation by the government.

He was advised on a number of occasions—I am sure that the minister will be able to tell me the correct terminology; I cannot remember—that, basically, he was self-responding, which meant that, if he flew, he was uninsured and unprotected by the law. Yet for a man like Mr Warren to sit on the ground in order to save what may have been his insurance and his business was beyond his scope. The man shows far too much courage for that. He has far too much local knowledge for it to be wasted. No-one could put a dollar figure on how much property Mr Warren saved. However, I am sure that some lives, had he been able to get there, may still be with us at this time. As I say, the reality of this is that he has a local knowledge that no rescue plan from Adelaide will have with them.

The Hon. Mr Gilfillan's motion is for monetary acknowledgment of what Mr Warren did. I am sure that would be acceptable, but not, I think (knowing Kevin Warren), as acceptable as a guarantee by the government of the right to self-respond again and to be indemnified by the government if he is forced to do so. I hope that I never see a circumstance like that again. However, given that we have seen it twice in a very short space of time, and given that emergency services in Adelaide do not appear to have learnt any lessons from those tragedies, what we are asking for is some flexibility and acknowledgment of Mr Warren's unique position. Indeed, probably the best acknowledgment at this stage would be a contract of indemnity and the right to self-respond. Given that, if the government intended to do so, that would have been operational by now, the very least it can do is to compensate him for what he did as an acknowledgment of his saving so many lives and so much property on 11 January.

**The Hon. CARMEL ZOLLO (Minister for Emergency Services):** I must say that my preference would have been for this motion to have dropped off for the reason, I am told, that it could cause embarrassment to those individuals who were

supposed to have benefited from the motion. I do not ascribe those intentions to the Hon. Ian Gilfillan, but I could not say the same for the opposition. Certainly, I could not say the same for the Hon. Angus Redford. The CFS has been in dialogue with the Warren family for several years now. I would like to place on the record our appreciation for their assistance to the people of the Lower Eyre Peninsula over many years. They are a very important part of that community. When the CFS last spoke to them, the Warrens indicated that they had not initiated the motions before either house. As I said, they are embarrassed and they are not in favour of them. Their basic reasoning is that they made a local contribution in the same way as many other land owners and businesses did during and after the fire. I am advised that they say that they know of people who put in a far greater commitment to fighting the fire.

They realise that no-one else will be getting ex gratia payments. They have asked for us to place on the record that they have no expectation of such payment and have never had any such expectation. As I said, they appear to be embarrassed. In early July, the Chief Officer, in a telephone call to Kevin Warren, first raised the notion of the CFS paying the actual costs that the Warrens incurred on the days of the fire. There was no response. In early August the Chief Officer wrote to the Warrens to acknowledge their contribution, to thank them for it and to again invite a submission of invoice for payment by the CFS.

Because there had been no formal response to this letter, even though I am advised that Kevin Warren has verbally indicated that they will not be submitting an invoice, I know that again they have been in dialogue and again they say they are embarrassed by the position they are being placed in. I understand that they have asked that it be conveyed that they would want to see those motions withdrawn. Nonetheless, following the Tulka fire, Mr Warren submitted an invoice to the CFS for payment of his fuel costs, and again on this occasion that avenue of payment is available to Mr Warren. The Hon. Angus Redford thinks I am insensitive. Of course I am not insensitive. There would be fuel costs, and again that avenue is available to him.

In relation to the arrangements for Mr Warren to take part in assisting the CFS, the CFS has worked with crown law to develop a generic call-when-needed contract that can be used to casually engage aircraft operators who are not on specific contracts but may wish to be considered for casual work. It is important to note that aerial firefighting is inherently very risky, as evidenced by six fatalities involving six firebombing aircraft crashes in Western Europe in the fire season just finished. Operators who agree to a call-when-needed contract will still be required to meet certain minimum requirements to ensure safety and appropriate management of risks.

I am advised that the first offer of a call-when-needed contract arrangement with the Warrens occurred in January 2003, and at the time the Warrens declined a formal arrangement, preferring to self-respond, and the CFS respects that. Since the Wangary fire, CFS has been in dialogue with the Warrens about future aircraft arrangements, and I am advised they have been closely involved in negotiations which have resulted in the CFS firebombing contractor establishing a two-winged firebombing capacity on the West Coast for a 12-week period for this fire season.

Mr Warren has indicated to the CFS on a number of occasions that he is very happy with this outcome. He was involved with those negotiations. In other words, he is not particularly looking for any personal contractual involvement. He just wanted to see a firebombing capability established, which now has occurred. Some ground infrastructure and other resources owned by the Warrens will also be used by AMR on the West Coast as part of this arrangement. Notwithstanding this, the CFS has sent the Warrens a copy of a call-when-needed contract, which is a different level contract.

We understand that the Warrens do have their own business to run. They are volunteers so they have not had the opportunity to properly consider the contract, but I am advised that tomorrow two CFS officers will travel to the West Coast to work through the details of the document with the Warrens and, in the meantime, the agreement reached in January 2003, that is, that the Warrens can self-respond their resources to any local fire, still stands. The meeting tomorrow will also discuss the options for provision of government radio and network radio for the Warrens. It is expected that the number, type and identity of such radios will be resolved.

It is envisaged that portable GRN radios will be the most flexible for most of the situations in which the Warren aircraft will operate, and these can be provided very quickly within days following their discussions when they reach agreement. I think we all know the additional funding provided to the CFS in the 2005 budget has enabled our contract variation with the CFS firebombing contractor Australia Maritime Resources and, as already said, that will provide for two fixed-wing firebombers to be based on the West Coast for a 12-week period on an ongoing basis.

It is envisaged that the call-when-needed negotiations, which hopefully will happen with the Warrens tomorrow, will be based on two types of service: aerial surveillance and aerial firebombing. In relation to aerial firebombing, by his own admission, I understand Mr Warren has said the aircraft used by him have only marginal effectiveness, particularly as the fire intensity increases. So they so expect that the major use of the Warrens' aircraft will in fact be for aerial surveillance.

As I said when I commenced, we are very much indebted to the Warrens for all their help and assistance to the people of Lower Eyre Peninsula. It is regrettable that we see sometimes political opportunism—and I do not, as I said, ascribe that to the Hon. Ian Gilfillan—being played out for this reason. Really, I think such opportunism just serves to divide the community, and when you have to listen to a contribution by the Hon. Angus Redford, talk about a personal attack, my car, my money, my insensitivity, that is just absolute tosh on his part, including that this motion was to be moved the other day, which is just a blatant lie. It really is regrettable to see that kind of division in the opposition.

**The Hon. CAROLINE SCHAEFER:** I rise on a point of order. The minister accused my colleague of telling a blatant lie.

**The Hon. Carmel Zollo:** I did.

**The Hon. CAROLINE SCHAEFER:** I understand that that is unparliamentary, and I ask her to withdraw.

**The Hon. Carmel Zollo:** I ask the Hon. Angus Redford to withdraw the fact that apparently we were circulated to move this motion last time we sat, which was not true. Can you move that?

**The PRESIDENT:** Unfortunately we cannot have a consequential point of order. The point of order of the Hon. Caroline Schaefer was that you accused the Hon. Mr Redford of telling a blatant lie. The word 'lie' is generally assumed to be non-parliamentary. I think the Hon. Mrs Zollo knows the usual practice.

*Members interjecting:*

**The Hon. A.J. REDFORD:** On a point of order, the honourable member has been asked to withdraw a ridiculous, untrue, unfair and unparliamentary statement, and she should do so.

**The PRESIDENT:** Is the minister prepared to withdraw the word 'lie' and substitute 'misrepresentation'?

**The Hon. CARMEL ZOLLO:** I withdraw the word 'lie' and use the word 'misrepresented' instead.

**The PRESIDENT:** Okay; continue your contribution on that basis.

**The Hon. A.J. REDFORD:** I rise on a point of order. The direction was that she was to apologise, and she has failed to do that.

**The PRESIDENT:** No. There is a myth about that: she has to withdraw, but she does not have to apologise.

**The Hon. CARMEL ZOLLO:** I had nearly concluded at any rate. I again place on record our indebtedness to the Warrens. It is with some regret that, of course, I cannot support the motion before us, and I have explained all the reasons. The CFS looks forward to working with the Warrens for many years to come. They are a very important part of the community of Port Lincoln in the Lower Eyre Peninsula. This motion, I guess, was moved for honourable reasons by the Hon. Ian Gilfillan. I place on record that it was such a sad occasion in South Australia's history when we saw the Lower Eyre Peninsula fires. The government and all of South Australia all still feel for that community.

**The Hon. IAN GILFILLAN:** In concluding the debate, I make the observation that, certainly, the intention of the motion was for this parliament to express, in supporting the motion, a gesture of thanks to people who, as all who have spoken and all who have knowledge of it acknowledge, have given extraordinarily valuably to the community through the course of the trauma of the Wangarry fire, particularly on 11 January. On reflection and in the light of somewhat heated debate that has emerged, I feel that it could have been a little more appropriately worded in so far as I probably should not have linked an ex gratia payment to the other part of the motion, that is, to offset the expenses incurred. The essence of an ex gratia payment is to say thank you. It is not some sort of quasi way of covering costs or covering part of a bill.

Many of us and the many hundreds if not thousands on Eyre Peninsula who feel this sense of gratitude would like to see the government of South Australia on behalf of the parliament, the people of South Australia and, in particular, the people of Eyre Peninsula say thank you and make a financial ex gratia payment to them to reflect that, and only that. Sadly, it did extend into other areas of debate in this place, which I think the Warrens found embarrassing, and it focused on them in a way which I certainly did not intend would happen. But, if as the dust settles we focus on the real sincerity of the motion from the hearts of all people and other members in this place who contributed to it, and if the sincere gratitude to people who gave so much at that time does distil out and get through to the Warrens, then the motion has been worthwhile.

I would urge the government—which for some reason which I do not understand is not prepared to support the motion—to have a sense of decency and say thank you in a way which may well be modest but which will be the expression of thanks on behalf of the people of South Australia, because no-one else can do it. Sadly, if I have interpreted her indication, the minister's opposition to this motion will mean that the government will not entertain such a gesture. However, the motion was put up in good faith. A lot of the comments that have been made have indicated appreciation of the Warrens. I certainly would urge this chamber to support the motion so that the Warrens can feel that they have been appreciated for what they offered to the people of Eyre Peninsula on 11 January.

Motion carried.

## EYRE PENINSULA BUSHFIRES

**The Hon. A.J. REDFORD:** I seek leave to make a personal explanation.

Leave granted.

**The Hon. A.J. REDFORD:** I understand that earlier today the minister made a comment or suggested that I had circulated a note calling on a vote in relation to this. What occurred was that I received a note from the Hon. Mr Gilfillan that he wanted a vote on 21 September and, as is my normal custom in respecting that, I attempted to deal with that on that occasion. I think that should be the end of the matter, and I think the minister has been extraordinarily precious about this.

**The Hon. CARMEL ZOLLO (Minister for Emergency Services):** I seek leave to make a personal explanation.

Leave granted.

**The Hon. CARMEL ZOLLO:** I am astounded that the Hon. Mr Redford received notice. Nobody else did—and perhaps the Hon. Mr Gilfillan can tell us the truth.

**The PRESIDENT:** A personal explanation is where someone has been misrepresented or misquoted.

## CAPE JAFFA LIGHTHOUSE PLATFORM (CIVIL LIABILITY) BILL

Second Reading.

**The Hon. D.W. RIDGWAY:** I move:

That this bill be now read a second time.

This is a bill to remove the civil liability from the Cape Jaffa lighthouse. I have some interest in the Cape Jaffa or Margaret Brock lighthouse platform. At one stage I breached standing orders by showing the minister at the time a photograph of that particular platform. You told me, sir, that I was breaching standing orders. The bill before the council today is quite small and quite simple. It appeared at the time it was introduced in the other place, over 12 months ago, that the Minister for Transport was more than happy for the ownership of this lighthouse to be transferred to Transport SA.

Cape Jaffa is a point on the coast of the South-East of the state not far from the township of Kingston, which is the most northerly of the southern ports of the south of the state and is the first port south of the Murray mouth. All members would be aware of the very treacherous nature of that piece of the coastline adjacent to the South East of the state and the dangers historically associated with shipping in that area.

A number of lighthouses were placed along ports on that part of the coast, Cape Jaffa being one, to guide ships through the Margaret Brock Reef. The structure at the Margaret Brock Reef was established in the early 1870s. It was in about 1868 when the construction began, and I am led to believe that such were the weather conditions that the constructing contractor actually went broke and it took six years to erect

the structure. But it has now stood for over 130 years, even under the conditions it has been subjected to.

In 1972, about 100 years after commissioning the lighthouse, the old lighthouse was switched off and was replaced by an automatic light on the same structure. A few years later the local community, with considerable help, removed the lighthouse building from the lighthouse platform and relocated it to the jetty in the township of Kingston, where its stands today and where it is maintained by the National Trust. It is a structure that I am sure a lot of people in metropolitan Adelaide are familiar with. It is not unlike the one seen at Port Adelaide at the Maritime Museum.

Since that time the Australian Marine Safety Authority (AMSA) had placed an automatic light upon that lighthouse platform, which obviated the need for lighthouse keepers to live on the platform. Prior to that there had always been two lighthouse keepers on the platform who managed a watch over the light during the night hours to make sure it was kept going. A few years later the automatic light was removed from the structure and replaced with a second automatic light, which now stands in isolation on Margaret Brock Reef. The light was removed from the lighthouse platform structure in 1988, and the Australian Maritime Safety Authority commissioned an engineering report on the structure.

The report by Terry Magryn & Associates was called 'Structural assessment inspection and report on the Margaret Brock Reef aid navigation structure Cape Jaffa for Australian Maritime Safety Authority'. The report recommended that significant work be done to bring the structure up to a standard or be abandoned altogether. I think it was suggested that it be abandoned. The report recommended that it either be upgraded or abandoned because AMSA used to land a helicopter on the old lighthouse platform to maintain the new light.

The report by the engineers did not say the structure was inherently dangerous in itself but that it was not suitably strong enough after 130 years to take the weight of a landing helicopter. In March last year AMSA issued a press release saying that the Margaret Brock Reef structure was to be removed. Amongst other things, it said that AMSA had been advised to remove the structure by specialist structural engineers as it posed a serious threat to passing vehicles and people operating on or around the reef. I have looked at a copy of that engineer's report and it says no such thing. Nowhere does it say such a thing. The recommendations state:

> It is emphasised that the structure should be considered unsafe in its present state and should not be used for helicopter landings.

It continues:

> Considering the amount of work required to repair the structure, its age and inaccessibility, it is recommended the structure be abandoned and replaced with a new light structure.

That is what happened. It then goes on to say:

> As the structure is located in a marine park and is providing a valuable nesting site for gannets, consideration should be given to leaving the structure in place for their use. However, it would be important to keep people off the structure, which will become increasingly unsafe over time. The minimum measures to ensure this would be:
>
> · remove the frames on the end of the jetty which at present allow access to the structure in good weather.
>
> · signposting on the structure to highlight the danger and to keep people off.

Nowhere does the report say that the structure is posing a serious threat to passing vehicles or people operating on or around the reef. The local community—including the local council, local professional and amateur fishermen, enthusiasts and bird lovers, who would love to retain the gannet rookery—have made representations to me and the member for Mackillop in another place. As you come up through the narrow passage and access the Margaret Brock Reef, it was constructed in such a way that, although there are nine pylons, when they are perfectly lined up you see only three, and that means that you are in line with the passage through the reef. I have been out with some amateur fishing friends a number of times, and it is quite easy to navigate your way through the Margaret Brock Reef by using this method. The only reason the structure is under threat is because those who own it (AMSA) are concerned about the public liability issue. They are concerned that if anybody were to climb on it, fish near it, or get access to it, they would be at risk because they own it.

It is a very short bill, with only three clauses. The short title is the interpretation. It describes the positioning of the platform and states that it could be taken over by a state or local authority, that is:

> (a) a Minister, agency or instrumentality of the Crown; or
> (b) a council or other body vested with powers of local government.

Clause 3 protects from liability the owner of the platform. When the member for Mackillop was considering the bill, Transport SA was the owner. I know that there was considerable interest from the local community and the local council, so I suspect that it may well be the local council that ends up, technically, becoming the owner of this platform. The purpose of the bill is to remove any liability from the council. With those few words, I commend the bill to the council.

**The Hon. P. HOLLOWAY** secured the adjournment of the debate.

## CONTROLLED SUBSTANCES (SERIOUS DRUG OFFENCES) AMENDMENT 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.

**Background**

The present serious criminal offences dealing with possession, use and trafficking in illicit drugs, such as heroin, cocaine, amphetamines and cannabis, are contained in the *Controlled Substances Act 1984*. That Act closely followed the model recommended in the 1979 Report of the (Sackville) Royal Commission into the Non-Medical Use of Drugs. The Act also contains controls on all kinds of substances, of which the serious illicit drugs are only one. This linkage between the control of illicit drugs and health issues in a single Act was a pillar of the philosophy of the Royal Commission Report, and is typical of legislation of that time in other jurisdictions.

In October 1998, the Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General (MCCOC) produced a report on Serious Drug Offences. It proposed a series of simple and heavily-punished major offences dealing with commercial drug dealings, while leaving questions of possession and use to interact with the undoubted health considerations that may come into play there. The Committee argued for a national approach to serious drug offences, and stated:

> The illicit drug distribution system operates Australia wide and internationally. Australia has undertaken international obligations requiring severe criminal meas-

> ures against individuals who play a significant commercial role in the organised traffic in drugs. Though there is room for variation in legislative measures directed to the control of use and minimisation of harm to users, the arguments for uniformity in measures directed against commercial exploitation in the illicit market are clear and compelling.

At the meeting of the Council of Australian Governments (COAG) dealing with Terrorism and Multi-jurisdictional Crime held on 5 April 2002, it was agreed "to modernise the criminal law by legislating in the priority areas of model forensic procedures (during 2002), model computer offences (during 2002), model serious drug offences (during 2003)". The model serious drug offences referred to are those recommended by MCCOC. However, the drafting of these provisions has proven to be a difficult task and the time required to complete the task has been lengthened. Honourable Members may recognise that the other measures mentioned in this part of the agreement have come to Parliament

**The Proposals For Serious Drug Offences**

The core of the proposed drug offences is a familiar and simple set of structured offences. They are trafficking in a controlled drug, trafficking in a commercial quantity of a controlled drug and trafficking in a large commercial quantity of a controlled drug. The general trafficking offences are supplemented by a similarly tiered structure of offences on manufacture (manufacturing, manufacturing a commercial quantity, manufacturing a large commercial quantity) and on cultivation of controlled plants (cultivation, cultivation of a commercial quantity, cultivation of a large commercial quantity). In each case, the concept of trafficking, cultivating and manufacturing includes taking a step in the relevant process, which is in turn defined widely to include all kinds of participation in the prohibited behaviour. All have similar reverse onus provisions about intention and belief.

This kind of simple, rational and transparent structure is the principal purpose of the overhaul of serious drug offences proposed in the Bill. It sets out to replace a chaotic and ad hoc set of sentencing provisions now in s 32 of the Act. But the Bill also contains additional attractions.

There is a special set of provisions about children. They deal with selling, supplying or administering a controlled drug to a child or possessing a controlled drug intending to sell, supply or administer the drug to a child or procuring a child to commit any serious drug offence. These offences cannot be committed by a child because they are designed to protect a child from predatory adults. They are punishable by life imprisonment.

The proposed provisions contain serious offences aimed at what are commonly called precursor drugs and drug laboratories. Precursors are substances used to make controlled drugs. It is proposed to have serious offences with the (by now) familiar structure of sale of a controlled precursor, sale of a commercial quantity of a controlled precursor and sale of a large commercial quantity of a controlled precursor, each with the belief or intent that it be used to manufacture a controlled drug.

The recommended provisions also contain some advantages of a procedural nature. For example, the variation between seriousness of offences depends upon the amounts classified as commercial quantities and large commercial quantities. This also depends upon whether the quantity is expressed as being a pure amount or a "mixture". These are very technical questions. The Model Criminal Code proposal is unique in that it proposes a specification of both pure and mixed amounts, with the prosecution being able to choose either. This is an important change. There are also procedural provisions allowing the prosecution to aggregate organised repeated small transactions into one big transaction and to aggregate many repeated offences on different occasions into a single large occasion.

**The More Minor Offences**

The current more minor offences have been redrafted and put in a different place. They will now be found in Part 5 Division 4. Aside from the familiar offences of possession, consumption, use and so on, this Division contains the offences of manufacture, cultivation, supply and administration of controlled drugs—that is, behaviour that goes beyond the incidence of mere use, but where a commercial element did not exist or cannot be proven. Where these offences are the same as existing offences, the same maximum penalties apply. Where the new offence supplements a commercial offence as backup, clearly a lesser penalty is appropriate, but rather more than mere use would attract.

**Penalties**

The proposed offences and their maximum penalties may be summarised as follows:

| Offence | Maximum Penalty |
|---|---|
| Trafficking in large commercial quantity | $500 000 or life or both |
| Trafficking in commercial quantity | $200 000 or 25 years or both |
| Trafficking | $50 000 or 10 years or both |
| Manufacture of large commercial quantity for sale | $500 000 or life or both |
| Manufacture of commercial quantity for sale | $200 000 or 25 years or both |
| Manufacture for sale | $50 000 or 10 years or both |
| Sale of large commercial quantity of precursor | $200 000 or 25 years or both |
| Sale of commercial quantity of precursor | $75 000 or 15 years or both |
| Sale of precursor | $50 000 or 10 years or both |
| Manufacture of precursor with intent | $50 000 or 10 years or both |
| Cultivation of large commercial quantity for sale | $500 000 or life or both |
| Cultivation of commercial quantity for sale | $200 000 or 25 years or both |
| Cultivation for sale | $50 000 or 10 years or both |
| Sale of controlled plants (large commercial quantity) | $500 000 or life or both |
| Sale of controlled plants (commercial quantity) | $200 000 or 25 years or both |
| Sale of controlled plants | $50 000 or 10 years or both |
| Sell, supply or administer to child | $500 000 or life or both |
| Procuring a child to traffic | $500 000 or life or both |
| Supply or administration of controlled drug, possession with intent to supply | $50 000 or 10 years or both (cannabis or cannabis resin $2 000 or 2 years or both) |
| Manufacture controlled drug | $35 000 or 7 years or both |
| Cultivation of controlled plants | Sequence of penalties (cannabis separated) ranging from $500 to $2 000 or 2 years or both (unchanged) |
| Basic use and possession offences | $2 000 or 2 years or both (unchanged) |

The Bill proposes the enactment of a logical, common-sense, refined structure for the tough and effective prosecution of serious drug offences. It deserves the support of the Parliament.

**Other Miscellaneous Proposed Amendments**

The Government has taken this opportunity to include a variety of other amendments to the *Controlled Substances Act*, many of which have been proposed for some time. It should not, however, be thought that they lack virtue or are any the less important for that. These amendments are as follows:

**1. Powers of Authorised Officers (s 52)**

There are three parts to this proposal.

*Power to Enter Unlicensed Premises*

Section 52 currently provides powers to authorised officers that enable them to enforce the Act and Regulations. Under this section, the power to enter premises can only be used when a warrant has been obtained to do so except where the premises is being used for an activity that is subject to a licence, authority or permit granted under the Act. This exception allows routine inspections of such premises to be conducted by officers of the Department of Human Services (DHS) so that compliance with general requirements of the Act such as those relating to storage, record keeping and labelling of poisons and therapeutic goods can be assessed. The DHS also conducts routine inspections in other commercial premises that do not require a licence, authority or permit under the Act to operate. Such premises include pharmacies, medical surgeries, pet suppliers and hardware retailers. The Bill proposes that the current allowance for entry without a warrant in section 52(4) be extended to include any commercial premises where therapeutic goods or poisons are manufactured, stored or supplied.

*Entry under Warrant*

Section 52(11) permits an authorised officer exercising power under the Act to be 'accompanied' by such persons as necessary. In comparison, the *Summary Offences Act, 1953* allows the holder of a general search warrant to act "with assistants as he or she thinks necessary". These two provisions have been interpreted differently in practice. To enable the warrant issuing process to be streamlined while maintaining appropriate restrictions over the power to enter premises section 52 will be aligned with the *Summary Offences Act*.

*Electronic Evidence*

The Bill updates the powers provided under the Act to search, seize etc by clarifying the meaning of "documents" to include electronic documents and to include films or any audio or audiovisual record.

**2. Extension of Research Permits (s 56)**

Currently section 56 provides for the issuing of permits to manufacture, sell, supply or possess poisons, prohibited substances, therapeutic substances or therapeutic devices for the purpose of research, instruction or training. To provide legal certainty, it is proposed that section 56 be amended to provide explicitly for the issuing of a research permit for the purpose of analysis.

**3. Authority to Prescribe or Supply a Drug of Dependence (s 33)**

Section 33 requires a medical practitioner to obtain an authority before prescribing or supplying 'a drug of dependence to a person for use by that person continuously for a period exceeding 2 months'. An authority is also required to prescribe or supply to a person who is drug dependent, which is defined in section 32(2) as a person who is dependent on a drug of dependence.

An amendment to these provisions has been included to provide legal clarity and ensure that the wording reflects the intent of the legislation.

**4. Minister's Powers to Publish Information (s 58)**

Section 58 provides the Minister with power to publish information where the Minister believes on reasonable grounds that a person has obtained a prescription drug by false pretences or other unlawful means. The section only allows the release of this information for the purpose of preventing or restricting the supply of medications to the person concerned. The type of unlawful activity covered by this section includes persons seeking to be prescribed excessive amounts of a medication from a number of medical practitioners due to their own dependence on the medication or for the purpose of illegal supply to others. Other examples include the use of stolen prescription pads to obtain medications from pharmacists. The section is used to ensure that the appropriate professionals are informed of unlawful activity as soon as possible to prevent or restrict the person obtaining further medication supplies. A person that receives any information under this section of the Act is not permitted to communicate that information to any other person except as necessary to achieve the purpose for which they received the information. The Bill will expand the circumstances where information can be published in the interests of protecting public health, but this power would continue to be restricted to situations where the Minister has reasonable grounds to suspect unlawful activity.

*Expansion to other medications*

Section 58 currently applies to prescription medications. There is evidence that non-prescription medications are also obtained by unlawful means or for unlawful purposes. In order to better control the illicit use of all medications, this section will be expanded to cover all therapeutic substances.

*Lawful purchase for unlawful purposes*

The section is currently limited to persons reasonably suspected of obtaining medications under false pretences or other unlawful means. There is, however, evidence of persons lawfully obtaining drugs for unlawful use or distribution to a third party for unlawful use, which also has public health consequences. The Bill therefore expands the criteria under which the Minister can publish information to include the case where there are reasonable grounds to suspect a person has lawfully obtained a medication for unlawful purposes or to supply to a third party for unlawful purposes.

*Legal Certainty Relating to provision of information to the Police, other State and Territory Health Authorities and Professional Bodies*

It is in the public interest to be able to alert other State and Territory Health Authorities and the SA Police to the names of persons that may be seeking to unlawfully obtain or use medications. The Bill clarifies this.

**5. New Provision Relating to Licences, Authorities & Permits (s 55)**

Section 55 provides the power to grant or refuse licences, authorities or permits at the discretion of the Minister. The section also provides power to revoke licences, authorities or permits under specified conditions. There is no provision however for suspension of these instruments which may be more appropriate than revocation in a situation where a problem is in the process of being rectified. The Bill will allow suspension on the same condition as revocation.

**6. Ministerial Power to Issue Mass Media Warnings**

A new power is proposed to ensure that the public can be informed of any substandard substance or device that is used for therapeutic purposes and presents a risk to public health. This power would allow the Minister to take action in relation to products that are not covered by the Commonwealth *Therapeutic Goods Act*. Examples include where a pharmacist or a medical practitioner extemporaneously prepares a therapeutic good for a patient and most homeopathic preparations. Advertising and promotion of substances may also pose a risk to public health if, for example, inappropriate or dangerous use of a chemical is advocated. Therefore, this power is extended to allow prohibition of harmful advertising and promotion of poisons, therapeutic substance and devices.

**7. Ministerial Power to Act to Protect Public Health (s 21)**

Section 21 currently provides the power for the Minister to prohibit the sale or supply of a substance or device that should not be sold pending evaluation of its harmful properties. When a substance emerges that may be misused (notably a new designer drug) and presents a risk to the public, there is also a need to act quickly before that substance becomes a drug of choice for drug users. To protect public health, this section is expanded to allow the Minister to also temporarily prohibit the possession and administration of such a substance while inclusion in the *Prohibited Substances Regulations* is further investigated.

**8. Automatic Vending Machines (s 20)**

Section 20 of the *Controlled Substances Act*, which has not been brought into operation to date, prohibits the installation, sale or supply of a poison or therapeutic substance by means of an automatic vending machine. This section will be brought into operation. It is now restricted to all poisons plus those therapeutic substances that are prescribed in the Regulations. The provision will be amended to extend to therapeutic devices and will also cover all poisons and therapeutic substances unless they are excluded by Regulation.

**9. Certificates of Analysis (s 52)**

An amendment is proposed which allows automatic recognition of Certificates of Analysis issued by analysts appointed in other jurisdictions under corresponding legislation and provides such certificates with the same evidentiary weight as those issued in South Australia under section 52 of the Act.

**10. Ministerial Power to Require Information (s 60)**

Section 60(1) provides the Minister with power to require certain information to be provided by persons who manufacture, pack, sell,

import or advertise a substance or device. This must be done in writing and given to those affected personally or by post. This power is limited however in that such information can only be sought for the purpose of ascertaining whether the substance or device is, or ought to be one to which the Act applies. Information is also required when investigating whether current controls over a substance or device that are known to be regulated by the legislation are adequate. Information such as ingredients, wholesale purchases and sales volumes should be able to be obtained to assess whether current controls should be tightened or a different mechanism of control would be more appropriate. Section 60 is expanded to allow the Minister to also require information to be provided for the purpose of assessing whether current controls over a substance or device are adequate and appropriate.

**11. Membership of the Controlled Substances Advisory Council**

The Controlled Substances Advisory Council is constituted under Part 2 of the Act with defined membership and functions. The membership of the Council will be expanded to include a person with legal expertise.

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 *Controlled Substances Act 1984***

**4—Amendment of section 4—Interpretation**

This clause amends section 4(1) of the Act to insert various new definitions necessary for proposed new Part 5 Divisions 1 to 5, to update certain legislative references in existing definitions and to replace some of the existing definitions with new ones that are worded appropriately for the proposed new Part 5 Divisions 1 to 5. In particular it may be noted that where the Act currently refers to "a drug of dependence or a prohibited substance", this terminology is to be replaced by the new concept of a ***controlled drug*** (which is defined to include drugs of dependence and other substances declared to be controlled drugs). Other new terms that are central to the measure include those of ***controlled plant***, ***controlled precursor***, ***trafficable quantity***, ***commercial quantity*** and ***large commercial quantity***.

A new definition of ***simple possession offence*** has also been substituted which is less complex than the current definition.

The current subsection (3) is replaced consequentially to the new definition of ***controlled drug***.

Proposed new subsections (4) to (8) define the concept of "taking part" in the process of sale, manufacture or cultivation of a controlled drug or controlled plant.

**5—Amendment of section 6—The Controlled Substances Advisory Council**

This clause increases the number of members of the advisory from 9 to 10 and ensures that one member will be a legal practitioner with appropriate expertise.

**6—Amendment of section 10—Conduct of business**

This clause consequentially increases the quorum to 6 members.

**7—Amendment of section 12—Declaration of poisons, prescription drugs, drugs of dependence, controlled drugs etc**

This clause amends section 12 consequentially to the introduction of the terms ***controlled drug***, ***controlled precursor*** and ***controlled plant*** (allowing the Governor, by regulation, to declare substances to be controlled drugs, controlled precursors and controlled plants).

**8—Amendment of section 13—Manufacture and packing**

Under clause 4, a new definition of ***manufacture*** is inserted in the Act. That definition relates to the manufacture of controlled drugs and is framed very broadly for the purposes of the proposed new Part 5 Divisions 1 to 5. Under section 13, however, a person must not manufacture a poison, therapeutic substance or therapeutic device unless the person is acting in the course of certain specified professions or is the holder of a licence. Because the definition of ***manufacture*** in section 4 is unsuitable for this particular section, a definition of ***manufacture*** is inserted specifically for the purposes of this section. Because the definition inserted includes production, the word "produce" is deleted from subsection (1).

**9—Amendment of section 18—Sale, supply, administration and possession of prescription drugs**

This amendment limits the application of section 18(3) to prescription drugs other than drugs of dependence, thereby avoiding any overlap with Part 5.

**10—Insertion of section 18A**

Currently, section 33 of the principal Act (which is contained in Part 5 Division 1) imposes certain restrictions on supply of a drug of dependence by a medical practitioner or dentist. Because Part 5 Division 1 is to be replaced with the new Part 5 Divisions 1 to 5, it is necessary to move the current section 33 to another Part of the Act. In addition, certain changes are proposed to the way the provision operates. Proposed section 18A is the amended version of the current section 33.

**18A—Restriction of supply of drug of dependence in certain circumstances**

This clause provides that a medical practitioner or dentist must not prescribe a drug of dependence to a person for regular use by the person for a period exceeding 2 months (or for any other period which would mean that the person had been prescribed a drug of dependence for a period which, in total, exceeds 2 months) or to a person who the practitioner or dentist has reasonable cause to believe is dependent on drugs unless the practitioner or dentist is authorised by the Minister to so prescribe the drug or prescribes it in circumstances exempted by regulation. The current penalty for the offence is unchanged ($4 000 or 4 years imprisonment).

Subclause (2) sets out the circumstances in which a person will be regarded as being dependant on drugs for the purposes of the provision. Subclauses (3), (4) and (5) relate to applications for, and the grant of, Ministerial authorisations. Subclauses (6) and (7) provide for the grant of temporary authorisations in case of an emergency. Subclause (8) allows for revocation of an authority granted under the section.

**11—Amendment of section 20—Prohibition of automatic vending machines**

This clause amends section 20 to apply that section to poisons, therapeutic substances and therapeutic devices. The regulations may, however, specify poisons, therapeutic substances and therapeutic devices (or classes of poisons, therapeutic substances and therapeutic devices) to which the provision does not apply.

**12—Amendment of section 21—Sale, supply, possession or administration of other potentially harmful substances or devices**

Currently section 21 allows the Minister, by notice in the Gazette, to prohibit the sale or supply of substances or devices in certain circumstances. This clause amends section 21 to widen the prohibition power by allowing prohibition of sale, supply, possession or administration.

**13—Substitution of heading to Part 5**

This clause deletes the current heading to Part 5 and replaces it with the Heading "Offences relating to controlled drugs, precursors and plants".

**14—Substitution of Part 5 Division 1 and heading to Part 5 Division 2**

This clause deletes the current Part 5 Division 1, and the heading to Division 2, and replaces it with provisions as follows:

**Division 1—Preliminary**

**31—Application of Part**

This clause sets out circumstances in which the Part does not apply.

**Division 2—Commercial offences**

**Subdivision 1—Trafficking in controlled drugs**

**32—Trafficking**

This clause sets out offences of trafficking in a large commercial quantity of a controlled drug (punishable by a fine of $500 000 or imprisonment for life, or both), trafficking in a commercial quantity of a controlled drug (punishable by a fine of $200 000 or imprisonment for 25 years, or both) and trafficking in a controlled drug (punishable by a fine of

$50 000 or imprisonment for 10 years, or both). Subclause (4) provides that an offence against subclause (3) involving cannabis, cannabis resin or cannabis oil must be prosecuted and dealt with as a summary offence (but if the court is of the view that a penalty exceeding 2 years imprisonment is warranted, then sentencing must be dealt with by the District Court). Subclause (5) sets out presumptions relating to intention or belief which will apply in proceedings for an offence against the provision where it is proved that the defendant had possession of a trafficable quantity of a controlled drug.

**Subdivision 2—Manufacture of controlled drugs**

**33—Manufacture of controlled drugs for sale**

This clause sets out offences of manufacturing a large commercial quantity of a controlled drug, intending to sell it or believing that another person intends to sell it (punishable by a fine of $500 000 or imprisonment for life, or both), manufacturing a commercial quantity of a controlled drug, intending to sell it or believing that another person intends to sell it (punishable by a fine of $200 000 or imprisonment for 25 years, or both) and manufacturing a controlled drug, intending to sell it or believing that another person intends to sell it (punishable by a fine of $50 000 or imprisonment for 10 years, or both). Subclause (4) sets out presumptions relating to intention or belief which will apply in proceedings for an offence against the provision where it is proved that the defendant manufactured of a trafficable quantity of a controlled drug.

**33A—Sale, manufacture etc of controlled precursor**

This clause sets out offences of—

- selling a large commercial quantity of a controlled precursor, believing that the person to whom it is sold, or another person, intends to use to unlawfully manufacture a controlled drug (punishable by a fine of $200 000 or imprisonment for 25 years, or both);
- selling a commercial quantity of a controlled precursor, believing that the person to whom it is sold, or another person, intends to use to unlawfully manufacture a controlled drug (punishable by a fine of $75 000 or imprisonment for 15 years, or both);
- selling a controlled precursor, believing that the person to whom it is sold, or another person, intends to use to unlawfully manufacture a controlled drug (punishable by a fine of $50 000 or imprisonment for 10 years, or both);
- manufacturing a controlled precursor, intending to unlawfully manufacture a controlled drug and intending to sell the drug or believing that another person intends to sell it (punishable by a fine of $50 000 or imprisonment for 10 years, or both);
- manufacturing a controlled precursor, intending to sell the precursor to another person and believing that person or another person in tends to use it to unlawfully manufacture a controlled drug (punishable by a fine of $50 000 or imprisonment for 10 years, or both).

**Subdivision 3—Cultivation and sale of controlled plants**

**33B—Cultivation of controlled plants for sale**

This clause sets out offences of cultivating a large commercial quantity of a controlled plant, intending to sell any of them or their products or believing that another person intends to sell any of them or their products (punishable by a fine of $500 000 or imprisonment for life, or both), cultivating a commercial quantity of a controlled plant, intending to sell any of them or their products or believing that another person intends to sell any of them or their products (punishable by a fine of $200 000 or imprisonment for 25 years, or both) and cultivating a controlled plant, intending to sell it or any of its products or believing that another person intends to sell it or any of its products (punishable by a fine of $50 000 or imprisonment for 10 years, or both). Subclause (4) provides that an offence against subclause (3) must be prosecuted and dealt with as a summary offence (but if the court is of the view that a penalty exceeding 2 years imprisonment is warranted, then sentencing must be dealt with by the District Court). Subclause (5) sets out presumptions relating to intention or belief which will apply in proceedings for an offence against the provision where it is proved that the defendant cultivated a trafficable quantity of a controlled plant.

**33C—Sale of controlled plants**

This clause sets out offences of selling, or possessing intending to sell, a large commercial quantity of a controlled plant (punishable by a fine of $500 000 or imprisonment for life, or both), selling, or possessing intending to sell, a commercial quantity of a controlled plant (punishable by a fine of $200 000 or imprisonment for 25 years, or both) and selling, or possessing intending to sell, a controlled plant (punishable by a fine of $50 000 or imprisonment for 10 years, or both). Subclause (4) provides that an offence against subclause (3) must be prosecuted and dealt with as a summary offence (but if the court is of the view that a penalty exceeding 2 years imprisonment is warranted, then sentencing must be dealt with by the District Court). Subclause (5) sets out presumptions relating to intention or belief which will apply in proceedings for an offence against the provision where it is proved that the defendant had possession of a trafficable quantity of a controlled plant.

**Subdivision 4—Sale of equipment for use in connection with consumption of controlled drugs**

**33D—Sale of equipment**

This clause sets out an offence of selling or having possession of, intending to sell, a piece of equipment for use in connection with the smoking, consumption or administration of a controlled drug (punishable by a fine of $2 000 or imprisonment for 2 years or both).

**Division 3—Offences involving children**

**33E—Application of Division**

This clause provides that a child cannot be guilty of an offence against this Division but that an adult may be guilty of an offence against this Division involving a child whether or not the adult knew that person was a child (unless it is proved that the adult believed on reasonable grounds that the other person had attained 18 years of age).

**33F—Sale, supply or administration of controlled drug to child**

Under this provision it is an offence to sell, supply or administer a controlled drug to a child or to have possession of a controlled drug intending to sell, supply or administer it to a child (punishable by a fine of $500 000 or life imprisonment, or both).

**33G—Procuring child to commit offence**

This clause makes it an offence to procure a child to commit an offence against this Part (punishable by a fine of $500 000 or life imprisonment, or both).

**Division 4—Other offences**

**33H—Supply or administration of controlled drug**

This clause makes it an offence to supply or administer a controlled drug to another person or to have possession of a controlled drug intending to supply or administer the drug to another person (punishable by a fine of $50 000 or 10 years imprisonment or both or, in the case of cannabis, cannabis resin or cannabis oil, by a fine of $2 000 or imprisonment for 2 years, or both).

**33I—Manufacture of controlled drugs**

This provision makes it an offence to manufacture a controlled drug (punishable by a fine of $35 000 or imprisonment for 7 years, or both).

**33J—Cultivation of controlled plants**

This clause makes it an offence (punishable by a fine of $2 000 or imprisonment for 2 years, or both) to—

- cultivate a controlled plant (other than a cannabis plant);
- cultivate more than the prescribed number of cannabis plants; or
- cultivate a cannabis plant intending to supply or administer the plant or a product of the plant to another person.

Cultivation of not more than the prescribed number of cannabis plants is an offence punishable by a fine of $500.

**33K—Possession or consumption of controlled drug etc**

This clause makes it an offence to possess, smoke, consume or administer (or permit another to administer), a controlled drug or to have possession of equipment for use

in connection with the smoking, consumption or administration of a controlled drug, or the preparation of such a drug for smoking, consumption or administration (punishable by a fine of $2 000 or 2 years imprisonment or both or, in the case of cannabis, cannabis resin or cannabis oil, by a fine of $500).

**Division 5—General provisions relating to offences**

**33L—Interpretation**

This clause defines ***controlled substance*** for the purposes of the Division.

**33M—Aggregation of offences**

This clause allows a person to be charged with a single offence against Part 5 in respect of different batches of controlled substances if the offences were committed by the person on the same occasion or within 7 days of each other or in the course of an organised commercial activity relating to controlled substances carried on by the person and provides that, subject to section 33N, the quantity of controlled substances concerned for the purposes of that offence is the total quantity of the controlled substances in the different batches. The provision also sets out various requirements and limitations that relate to charging a suspect if offences are to be aggregated under the provision.

**33N—Offences involving more than one kind of substance**

This clause sets out the manner in which the quantity of controlled substances is to be determined for the purpose of charging a person with a single offence that relates to more than one kind of controlled substance.

**33O—Knowledge or recklessness with respect to identity or quantity**

In proceedings for an offence against Part 5 relating to a controlled substance, the prosecution must establish knowledge or recklessness with respect to certain matters.

**33P—Alternative conviction—mistake as to identity of controlled substance**

This clause provides for an alternative conviction for an equivalent or lesser offence where the defendant establishes a mistaken belief as to the identity of a controlled substance.

**33Q—Alternative verdicts**

This clause provides a general alternative verdicts provision.

**33R—No accessorial liability for certain offences**

This provision excludes the application of section 267 of the *Criminal Law Consolidation Act 1935* in relation to offences against 32, 33 and 33B (which are framed sufficiently broadly to make accessorial liability unnecessary) or in circumstances prescribed by regulation (to allow regulations to be made covering, for example, needle exchange programs).

**Division 6—Procedure in relation to simple possession offences**

**15—Repeal of sections 41 and 42**

Section 41 currently provides an offence of aiding and abetting an offence against the *Controlled Substances Act 1984*. This section is to be deleted because it is unnecessary (see section 267 of the *Criminal Law Consolidation Act 1935*).

Section 42 is to be deleted consequentially to the new Part 5 Divisions 1 to 5.

**16—Amendment of section 44—Matters to be considered when court fixes penalty**

This clause makes consequential amendments to section 44 to refer to the new defined term of ***controlled drug*** and to alter cross references to refer to the relevant new provisions of Part 5.

**17—Amendment of section 45A—Expiation of simple cannabis offences**

This clause deletes the definition of ***child*** (which is an unnecessary duplication of the definition in section 4) and substitutes a new definition of ***simple cannabis offence*** consequentially to the new provisions of Part 5 Divisions 1 to 5.

**18—Amendment of section 52—Power to search, seize etc**

This provision includes amendments to—

- clarify the meaning of the term "documents";
- ensure that authorised officers have power to take films or make audio or audiovisual record as well as being able to take photographs;
- broaden the range of premises in relation to which powers may be exercised;
- ensure that an authorised officer with a warrant may be accompanied by assistants.

**19—Amendment of section 52A—Seized property and forfeiture**

This clause makes consequential amendments to some of the terminology used in section 52A and allows a court convicting a person of an offence in relation to property destroyed in accordance with section 52A(2), to order the convicted person to pay the reasonable costs of destruction to the Commissioner of Police.

**20—Amendment of section 53—Analysis**

This clause deletes a reference to ***prohibited substance*** (which is not a term that the Act will use anymore) and replaces it with a reference to the new term of ***controlled drug***.

**21—Amendment of section 55—Licences, authorities and permits**

This clause amends section 55 to allow suspension of a licence and to alter the appeal provision so that appeals will be heard by the District Court rather than the Supreme Court.

**22—Amendment of section 56—Permits**

This provision amends section 56 to make consequential amendments to the terminology used and to clearly allow the issue of a permit allowing cultivation of a controlled plant and administration of a substance and to clarify that "analysis" is a purpose for which a permit may be issued.

**23—Amendment of section 57—Power of Minister to prohibit certain activities**

This clause amends the appeal provisions in section 57 to provide an appeal to the District Court (instead of the current appeal to the Supreme Court).

**24—Insertion of section 57A**

This clause inserts a new section in the principal Act as follows:

**57A—Warnings**

This provision allows the Minister to take such action as the Minister thinks fit to warn the public against risks or potential risks if satisfied that a poison, therapeutic substance or therapeutic device (whether or not declared as such) might be dangerous or that an advertisement or other published material relating to a poison, therapeutic substance or therapeutic device (whether or not declared as such) contains instructions or other material that might be dangerous.

**25—Amendment of section 58—Publication of information**

Currently section 58 allows the Minister to publish information to certain specified classes of persons where the Minister believes on reasonable grounds that a person has obtained or attempted to obtain a prescription drug by false pretences or other unlawful means. The amendments proposed by this clause broaden the power of the Minister so that such information may be published (to the same classes of persons) where the Minister believes on reasonable grounds that a person has a history of consuming poisons or therapeutic substances in a quantity or manner that presents a risk to the person's health or has obtained or attempted to obtain a poison, therapeutic substance or therapeutic device by false pretences or other unlawful means or for an unlawful purpose.

The provision also provides that the Minister may publish the information to a professional association prescribed by regulation whose members belong to a class of persons specified in the provision (or may publish it in any other manner the Minister thinks fit).

**26—Repeal of section 59**

The repeal of section 59 is consequential to proposed section 60A (discussed below).

**27—Amendment of section 60—Minister may require certain information to be given**

This clause amends section 60 to allow the Minister to exercise the power to require information under that section in order to ascertain whether any requirements

under this Act relating to a substance or device are appropriate and effective.

**28—Insertion of sections 60A and 60B**

This clause inserts new provisions as follows:

**60A—Confidentiality**

This provision imposes confidentiality requirements in relation to information relating to trade processes and medical records or details of medical treatment of a person.

**60B—False or misleading information**

This provision makes it an offence (punishable by a fine of $5 000) to make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided, or record kept, under this Act.

**29—Amendment of section 61—Evidentiary provisions**

This clause amends the evidentiary provisions to allow for recognition of a certificate of analysis where the analysis was carried out in accordance with a corresponding law of the Commonwealth, another State, or a Territory.

**30—Amendment of section 63—Regulations**

This clause makes consequential amendments to the terminology used in the regulation making power.

**Schedule 1—Related amendments and transitional provisions**

**Part 1—Amendment of *Correctional Services Act 1982***

**1—Amendment of section 4—Interpretation**

This clause substitutes a new definition of ***drug*** in the *Correctional Services Act 1982* so that it refers to "a prescription drug or a controlled drug".

**Part 2—Amendment of *Criminal Assets Confiscation Act 2005***

**2—Amendment of section 3—Interpretation**

This clause amends the definition of ***drug*** in the *Criminal Assets Confiscation Act 2005* so that it refers to a "controlled drug". The definition of ***serious offence*** is amended to remove paragraph (b) of the definition which refers to "serious drug offences" (because all the relevant offences in the *Controlled Substances Act 1984* will now be indictable offences and will therefore be picked up by paragraph (a) of the definition). The definition of ***serious drug offence*** is deleted consequentially to this change.

**Part 3—Amendment of *Criminal Law (Sentencing) Act 1988***

**3—Amendment of section 20A—Interpretation**

This clause substitutes a new definition of ***serious drug offence*** in section 20A of the *Criminal Law (Sentencing) Act 1988* so that it refers to an offence under Part 5 Division 2 or 3 of the *Controlled Substances Act 1984*.

**Part 4—Amendment of *Listening and Surveillance Devices Act 1972***

**4—Amendment of section 3—Interpretation**

This clause makes a consequential amendment to the definition of ***serious offence*** so that it refers to offences involving a drug or substance of a kind regulated under Part 5 of the *Controlled Substances Act 1984* punishable by imprisonment for 7 years or more (reduced from the current 10 years, in keeping with the penalties prescribed by the new Part 5 Divisions 1 to 5).

**Part 5—Transitional provision**

**5—Transitional provision**

The transitional provision provides that an amendment only applies in relation to an offence if the offence is committed on or after the commencement of the amendment.

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

## ADJOURNMENT

At 6.09 p.m. the council adjourned until Monday 7 November 2005 at 2.15 p.m.