LEGISLATIVE COUNCIL

Thursday 8 June 2006

The PRESIDENT (Hon. R.K. Sneath) took the chair at 11.02 a.m. and read prayers.

STANDING ORDERS SUSPENSION

The Hon. P. HOLLOWAY (Minister for Police): I move:

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

Motion carried.

STATUTES AMENDMENT (NEW RULES OF CIVIL PROCEDURE) BILL

Adjourned debate on second reading.

(Continued from 31 May. Page 245.)

The Hon. SANDRA KANCK: I rise to support the second reading of the bill. It is designed to ensure that the rules of court are expressed in plain English and arranged in a logical order, which the Democrats believe is a very desirable outcome. The move to use plain English in legal proceedings is part of a wider movement to have all public communications expressed in plain English. Excising gobbledygook from the language is a worthy goal. Introducing plain English to legal proceedings, however, has been a slow and painful process. I am not surprised that it has been difficult to convert the legal profession to the need to communicate in plain English. Part of the power of lawyers derives from the esoteric nature of the law, of which its use of archaic language is a significant component. I note that the move to use plain English in court proceedings has also been led by lawyers. I commend those lawyers, and I indicate support for the bill.

The Hon. D.G.E. HOOD: I also rise to support the second reading of the bill, as did the Hon. Ms Kanck. The bill seeks to amend the various acts that touch upon the terms of civil procedure in essence to make the workings of the court easier to understand for the lay person, which I applaud. Family First's perspective on the bill is that it is a good move, and that it makes the workings of the law easier for families in South Australia to understand. People encounter the courts either with or without a lawyer, and, of course, in either case, the easier the language is to understand, the less bewilderment for the user and lay person. For a long time the archaic language and concepts have alienated users and increased reliance on lawyers interpreting the court process and outcomes for their clients.

Where litigants are unrepresented, the work often falls to the judge or magistrate to explain the proceedings to them. This in turn adds to the publicised delays in our courts. Any move to streamline the process and to make it easier to understand for the lay person, such as myself, we wholeheartedly support. I do not think that these simplified rules will result in fewer people using lawyers, however, nor render lawyers redundant. It is an important move, because for unrepresented litigants, as I said, it should make self representation much easier to cope with. People represent themselves usually because they cannot afford a lawyer, and there are some who do so because rightly or wrongly they believe that the particular court matter is within their competency to handle any particular issue. I understand that this is more likely in minor civil and minor criminal proceedings, as is usually the case. Also, the availability of legal information online has contributed to a rise in self representation. I commend, in particular, the Courts Administration Authority for making its rules and information for self representing litigants available on the internet—a fairly recent innovation.

Further, proceedings can be started by filing a claim online—of which I was not aware, to be frank, until I started researching this legislation. I think that, as time goes on, these measures will continue to enable litigants to represent themselves in proceedings where either they cannot afford to or, for other reasons, choose to represent themselves. As internet take-up increases in Australia, I believe that the courts' online resources will continue to be of value to members of the public. Again, any move towards simplifying the language that is used and removing some of the complex jargon is a positive step in the right direction. I believe that self-representation will continue to increase, and I note that the Supreme Court scale fee for lawyers has enabled lawyers fees now to increase in line with the CPI index. Hence, for those who cannot afford a lawyer now, it is likely that that will continue to be the case.

I am not criticising what lawyers charge or are allowed to charge. Apparently, there are sound reasons for the present level of Supreme Court scale fees. Indeed, when I looked into this area while researching this speech, I was quite impressed by the detail that had gone into researching the fee structure that is in place. However, there are limited legal aid resources for people who cannot afford a lawyer. I also think that, for the foreseeable future, we will see more unrepresented litigants in our courts and, again for that reason, it is very pleasing to see some of the jargon and complexity taken out of the language that is used. Therefore, in the view of Family First, the process of this bill through this place can only be positive for South Australian families who are left with no choice but to represent themselves particularly and just in general for the average person on the street to understand judgments and proceedings. In principle, we support the bill and certainly the second reading.

The Hon. NICK XENOPHON: Briefly, I rise to support the bill. As members know, I have been a legal practitioner for many years, and I still am the principal of a small law firm in which, obviously, I do not have time to participate, other than in the most cursory fashion. I welcome this bill. It is right to point out (as the Hon. Dennis Hood and the Hon. Sandra Kanck did) that this will hopefully demystify the law for those who are not legally trained as lawyers by getting rid of terms such as 'ex parte', clarifying what 'of its own motion' means and 'by petition' means, for instance. They are all positive developments. However, a broader issue that this bill cannot address—and it is not a criticism of the government; I think it is incumbent on all of us to tackle this—is that of accessibility to the law to those who cannot afford legal aid and who are not wealthy enough to afford a lawyer, whether it is for a civil dispute or a criminal matter.

The whole issue of access to justice concerns me greatly. Obviously this bill is making the language of the law more accessible in terms of court procedures and court documents, and that is certainly a welcome development. I think that the challenge for this place, the parliament as a whole and the community is to have a debate about issues of access to

justice. It seems that more and more people in the middle are being squeezed out in terms of being able to afford legal representation. We know very well that, with some notable exceptions, if an individual is unrepresented in a matter and they are up against eminent QCs, they are invariably at a distinct disadvantage. That is why it is important that we look at the issue not only of the accessibility of court language but the accessibility of the courts for the majority of South Australians who simply cannot afford a lawyer, or to afford one causes them significant economic damage in both criminal and civil matters in this state.

The Hon. M.C. PARNELL: I rise very briefly to support the bill. Two fundamental aspects of our society are that we should have access to justice and access to information, including access to information about justice. As other speakers have said, when the legislation passes through this place or regulations, or the rules of court written by the judges, if they are couched in obscure language, they are not accessible to ordinary people.

I would also agree with the comments of the Hon. Mr Xenophon that access to justice is not necessarily improved simply by improving the language. Again, no criticism of this bill, but this is a good start. We would urge the government also to consider opening up the practices and the processes of the court to greater participation by people who are not legally trained. The definition of a profession is a body of people who can restrict access to its ranks, and part of that restriction of access involves couching the profession in language that is not accessible to ordinary people. I commend the government for this bill.

The Hon. S.G. WADE secured the adjournment of the debate.

CITY OF ADELAIDE (REPRESENTATION REVIEW) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 6 June. Page 322.)

The Hon. R.P. WORTLEY: Adelaide from its earliest stages of settlement was a well-planned city. The City of Adelaide has a reputation of being a clean, attractive and accessible city centre, one that takes pride in its distinctive character and parkland settings. Adelaide has a potential to thrive as a city of opportunity with our strong tradition of innovation and social reform, a vigorous art section, and we are internationally known for our festivals and events. The Adelaide City Council needs to continue this innovative social reform by delaying its election (which is due in November) for up to 12 months. The delay will allow for a review into the possibility of the council's returning to the ward system, which was abolished by the former Liberal government in 1998.

The Adelaide City Council prides itself on building a future for the growing demand of inner city living and development. The council's strategic management plan sets out a long-term vision for the future of the City of Adelaide. This is why they are working closely with government to ensure that the views and aspirations of the local community are understood.

Although in the past the City of Adelaide may have made poor investment choices, I believe that allocating sufficient time will only ensure that the review of the structure of the Adelaide City Council will be a comprehensive one. The council's request for a 12-month delay may have caused controversial discussions over wards and why it was not brought up earlier to prevent a delay in the election; however, the council must take into account residents' opinions on the running of their council. According to letters provided by ratepayers from the Adelaide City Council area, ratepayers are saying that they want to return to the ward system under which councillors represent a specific section of the city.

Section 20 of the City of Adelaide Act 1998 prevents Adelaide City Council from undertaking a review of its representation and structure until after the elections scheduled for November. I believe that it is far more desirable to have a one-year extension now to enable a change in the system than four more years of a system that is not meeting ratepayers' needs. If the bill is not passed by the end of June, there will be no opportunity to change the structure of the council until 2010. I support the Adelaide City Council bill, which proposes to delay the Adelaide City Council election that would have otherwise taken place in October and November of this year. A comprehensive review of the electoral processes will be examined, not just the question of whether wards should be reintroduced, and the extended time will allow for review of the number of councillors required to adequately represent the city. It will also give Adelaide City Council a chance to discuss any other issues it believes to be relevant to the review.

The bill does not propose the reintroduction of wards to the Adelaide City Council. There are arguments for and against wards, and some may say that the ward system is overdue; however, we cannot presume that the ward system does create a closer and more intimate understanding of council issues and that residents would receive better representation. That is why the council and residents should take this chance to review any other form of representation structure. It is important that both residents and commercial landowners have a chance to voice their views on the review of their council representation, and it takes time to adequately seek out and consider their views.

Under section 12 of the Local Government Act 1999, council must conduct and complete a review for the purpose of determining whether its community would benefit from alteration to its composition or wards. It is an opportunity for everyone to have their say. The legislation is about the structure of the Adelaide City Council; it is not about defining the structure. I support the Adelaide City Council's request to enable it to proceed with this review, and I believe that this will provide sufficient time for a comprehensive review to be completed.

The Hon. SANDRA KANCK: I think all members received a letter from the minister earlier this week pointing out the need to get this bill through quickly. I have had a briefing on the bill and will be supporting it for a couple of reasons, and these are because of things this bill is not. It is not a bill that is designed to give the members of Adelaide City Council more time in office; it is a bill that is designed to allow this review to occur. If it was simply about giving them more time in office then I would not be supporting it. Neither is it a bill that is going to foist wards back onto the electors of the City of Adelaide. It is a bill that will allow people who have a view about wards to put it to that review. My own view is that, given the size of the Adelaide City Council, there really is no need for wards, but that review will

allow people who have a view that is the same as mine and people who have a view that is different from mine to be heard. It is for those reasons, about the process, that we are supporting this bill.

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

SUPPLY BILL

Adjourned debate on second reading.
(Continued from 7 June. Page 351.)

The Hon. S.G. WADE: I rise to speak on the Supply Bill. This bill is a one-page bill, but it is a little bill with a big punch. Clause 3(1) appropriates the sum of $3 100 million from the consolidated account for the Public Service of the state—that is, $3.1 billion. In supporting this appropriation I want to express my concern in relation to the financial direction of the government. This government has shown itself to be increasingly arrogant since the election in March, and one of the scariest examples were the comments of the Hon. Russell Wortley in the debate on the Supply Bill last week. He described the Treasurer, the Hon. Kevin Foley, as one of the greatest treasurers this state has ever had. For anyone with an awareness of Australia's political history this statement has chilling echoes of Labor's adoration of Paul Keating as the world's greatest treasurer. So, what does a great Labor treasurer look like? At the end of 13 years of Labor, Paul Keating, as treasurer and prime minister, left Australia with a net government debt of $95.8 billion.

The Hon. J.M.A. Lensink: How much?

The Hon. S.G. WADE: For the benefit of honourable members, that is $95.8 billion. The Howard Liberal government has eliminated Labor's debt. Keating gave us an average mortgage rate of 12.75 per cent; after 10 years of the Liberal government that is down to 8 per cent. Labor left us with an unemployment rate of 8.2 per cent; by December 2005, under the Liberals, it was down to 5.1 per cent. If that is what Labor means by 'greatest' in treasurers then Lord spare us a great Labor treasurer. This state cannot afford it.

Let us consider the treasurer's performance thus far. During his term, Treasurer Foley has benefited from the most vibrant national economic environment in decades. The Rann government is collecting $2.3 billion more in revenue this year than in the last year of the former Liberal government. This means that, in his first term, the Treasurer has had a cumulative bonus of $6.6 billion of additional revenue over the revenue of the last Liberal government. Much of this increase comes from above-forecast receipts from the GST and a boom in property tax receipts. Despite the 2005 land tax changes, the Rann government in 2005-06 is still expecting to collect $295 million in land tax, which is more than double the $140 million collected by the last Liberal government in 2001-02.

So what has the government done with this extra revenue? We certainly have not seen $2.3 billion worth of improvements in hospitals, schools and police services. What we have seen is increasingly lax budget management by Labor: a $257 million blow-out in the redevelopment of the QEH; $51 million wasted on extensions to tramlines in North Adelaide; $70 million to $100 million wasted on opening bridges in the Treasurer's own electorate; and, over the past week, we have seen a range of cost blow-outs in transport projects. As a result of these cost pressures, aggravated by a raft of costly election promises, the state budget has been delayed until September. Former federal Treasury officer, Greg Smith, has been commissioned to find savings of up to 4 per cent across all sectors to pay for unfunded election promises—and all this was on the watch of Treasurer Foley. This is not the making of a great treasurer.

Let us remember: this is not a new government. New governments have been known to delay budgets to ensure that their budgets reflect their mandates and their new directions. This is a re-elected government, a government elected on a date which has been known for more than four years. This budget is normally delivered in May or June. A well-managed government should have been able to finalise a budget in the normal two to three-month time frame, unless, of course, its budget is in tatters; unless, of course, it is suffering from blow-outs in project costs; unless, of course, it does not know how to cope with falling revenues.

This week the Institute of Public Affairs issued its report 'Opportunity squandered: How the states have wasted their reform bonus'. It found that the Rann government had wasted much of its windfall through significant increases in Public Service numbers, Public Service wages and poor budgeting. For example, the IPA calculates that Public Service numbers increased by 17 per cent in South Australia between 1999 and 2005, well above the 11.7 per cent average for all other states and territories. The results of the IPA analysis mirror the concerns expressed by the Liberal Party. For example, in just three budgets the Rann government so poorly managed its budget that there were unbudgeted increases of more than 6 000 in the number of public servants in South Australia. I say 'mismanaged', because Labor cannot have it both ways; either the Rann Labor government's planning processes are so slack that it cannot predict how many officers it needs or its management processes are so slack that it cannot manage its work force recruitment.

The Rann government budgeted for an increase of 666 but ended up with an extra 6 909, an unbudgeted increase of 6 243 public servants in three years. It is clear that the Rann government has squandered the opportunities provided by the GST deal and the property tax boom and wasted hundreds of millions of dollars every year. All this was on the watch of the Treasurer, Mr Foley. This is not the making of a great treasurer. Now, as these revenue flows ebb, state governments need to respond to the challenge of less revenue. The signs as to how Labor is going to respond are very chilling in terms of the state Labor budgets that have already been laid down: New South Wales is budgeting for an increase in total net debt of almost $20 billion; Queensland is borrowing $17 billion; Victoria is budgeting to push up net—

An honourable member interjecting:

The PRESIDENT: Order! The Hon. Mr Wade has the floor.

The Hon. S.G. WADE:—debt from $2 billion in 2006 to $7.1 billion in 2010. In yesterday's *Australian*, Alan Wood highlighted that these budgets represent a new wave of borrowing sweeping through state Labor budgets. Borrowing is back, at least outside Canberra. Mr Wood warned:

> On Monday, federal Finance Minister Nick Minchin complained that the states were returning to deficits and debts, and hiding it by basing their fiscal targets on running operating surpluses instead of cash or net lending ones, as they used to.
>
> The problem with this approach is it justifies large borrowings to fund capital spending, even to the point where those borrowings are starting to seriously jeopardise the states' net financial worth.

In relation to the South Australian budget, we need to jealously guard our hard-won debt position. State Liberal governments reduced Labor's State Bank debt from $11.6 billion in 1993 to $3.2 billion in 2001. As at June 2005, the net financial public sector debt was $2.1 billion. All but $1.1 billion of this $9.5 billion debt reduction was achieved by Liberal treasurers. With state revenues under pressure, Labor's lax financial management could lead to a blow-out in the state's debt.

An honourable member interjecting:

The PRESIDENT: Order!

The Hon. S.G. WADE: My concerns have been further raised by comments by the Treasurer on Tuesday. On Tuesday, on 5AA, Matthew Pantelis interviewed Treasurer Kevin Foley about the upcoming state budget. The Treasurer said that the South Australian government will listen to business leaders who want to borrow up to $500 million for infrastructure projects, but will not go on an 'unsustainable spending splurge'.

There is no doubt that the infrastructure investment in this state is a pressing need going forward. In its first term the government simply relied on completing Liberal work in progress. At a time when the state should have been laying the infrastructure foundations for ongoing prosperity, the government frittered away the revenue boost. At times, debt is an appropriate source of funding for government projects, especially infrastructure projects, but I assure the council that the opposition will not allow the government to raise debt that is just a way of avoiding sound budgetary management.

I now move to the issue of funding for disability services. The Dignity for the Disabled project has made the South Australian community more aware of the challenges facing the state in the areas of disability services. South Australia has the worst record for disability funding of any state. The disability need has risen 100 per cent in the past eight years, but funding has only risen by 34 per cent. There are more than 250 people waiting on the urgent list for residential care, and 1 000 on the waiting list for respite care.

The ALP disability election policy committed to providing $22 million extra for services, accommodation and equipment for people with a disability over the next four years. Since the election, on 2 May 2006 the Minister for Family and Community Services made a ministerial statement which announced a major restructuring of agencies under his control. In that statement he said:

> In the past, disability services and housing services have been provided by the state government through a range of agencies. While each agency has been dedicated to providing support, there have been overlaps, gaps and confusion. In disability, services now provided by the Intellectual Disability Services Council, Julia Farr Services and the Independent Living Centre will be delivered by the same staff through Disability Services SA. This cut in overheads and bureaucracy in the department will leave more money for better services.

The government is seeking the agreement of the boards of IDSC, Julia Farr and the ILC to voluntarily dissolve. I do not disagree with the minister when he says that the sector suffers from overlaps, gaps and confusion, but amalgamation of the agencies was not the only response to the problem. For example, as a member of the board of Julia Farr Services from 2000 and chair of the board since 2003 to 2006, I know the minister has the power under the constitution of Julia Farr to direct the board, and the board must act in accord with government policies. The whole time I was on the board no direction was given. While I understand the proposed establishment of Disability SA will not require legislation if all the boards agree to the amalgamation, I assure the government that the opposition will hold the government accountable for the approach it has chosen. I also express my concern that the government has gone into these discussions with too rigid a position. Government bureaucrats are not the sole custodians of wisdom. The government should work constructively with the boards to ensure the model developed is the best possible for clients and staff in particular.

In terms of accountability, I will briefly outline some of the key parameters I will be looking at as a member of parliament. First, in terms of outcomes, the government claims the reform will free up money for services. The opposition will be alert to ensure that the services do increase and that all of the money raised by the rationalisation of property and other efficiencies is indeed committed to disability services and is not simply a contribution to fixing the Treasurer's budget mess. We will also be alert to ensure that the money freed up is over and above the $22 million promised by the government in the election. We will also expect improvements in outcomes in terms of the quality of the services and client choice.

Secondly, the reform needs to be assessed in terms of respecting the uniqueness of people with a disability. The Intellectual Disability Service has provided a focus on intellectual disability. Julia Farr Services focuses on people with brain injury and acquired physical and neurological conditions, and if this amalgamation goes ahead the new organisation needs to respect the specific needs of different disability communities, especially in the context of the proposal to develop a single waiting list.

Thirdly, the reform needs to be assessed in terms of its capacity to foster innovation. Julia Farr Services has a significant non-government element, and the non-government sector has a much better record for innovation and service development in disability services than does the government sector. Amalgamation must not allow the sector to be less open to new ideas. I take this opportunity to pay tribute to the work of IDSC, ILC and JFS in their current forms. The Independent Living Centre provides equipment, home modifications and adult therapy services for people with disabilities, as well as information for the general community. Julia Farr first provided services as the Home for Incurables. It was established in 1879 in an eight-roomed wooden house at Fullarton. For over 125 years Julia Farr has provided support to thousands of South Australians, particularly with acquired brain inquiry, physical or neurological disabilities.

Under the dynamic leadership of Robbie Williams, Julia Farr has started a major effort to develop community based options for its clients. I am concerned that, even if amalgamation is the best way to overcome overlaps, gaps and confusion, the government's timing may impair the momentum of reform. I specifically congratulate Julia Farr on the awards ceremony for Business Excellence Australia last night in Sydney, where Julia Farr was awarded a position as a finalist in those awards.

Since the Intellectual Disability Services Council was established in 1982 it has reshaped services for people with intellectual disability in South Australia. The closure of the Rua Rua Nursing Home and the redevelopment of the Strathmont Centre have been major elements of an impressive record of developing community living options for South Australians with an intellectual disability.

Leadership is vital, and I take this opportunity to pay tribute to Richard Bruggemann, who recently took up a post at Flinders University, following his retirement as the CEO

of IDSC. Richard's passionate pursuit of justice for people with disability, matched with his compassionate sacrificial service of clients, mark him out as an exemplar of public service.

In conclusion, I stress that, in spite of the government's commitment of $22 million over four years, and in spite of the additional resources that it tells us will be freed up through this amalgamation, I have no doubt that both of these initiatives will not meet the unmet need in the disability community. I challenge the government and the South Australian community to face the fact that, if we cannot make major strides in times of prosperity towards addressing the needs of the disabled community in South Australia, we are condemning those people to a very bleak future indeed.

The Hon. P. HOLLOWAY (Minister for Police): I believe that everyone who wanted to speak on the Supply Bill has taken advantage of the opportunity. Normally at this time of the year we would have the Appropriation Bill as well as a Supply Bill and because of that fact I recognise that you, Mr President, have given a little more latitude on this Supply Bill than would normally be the case if we had the Appropriation Bill as well. Members who have spoken on this have ranged more widely than would normally be the case.

It is important that I address some of the economic illiteracy that has come from members opposite in relation to economic performance over the past four years and the previous eight years before that. Anyone who goes back through my speeches when we were in opposition will find that I regularly pointed out that, over the course of the eight years of the former Liberal government, if one netted out asset sales from their own budget one would find that they contributed something like $2 billion additional debt over the course of the government. On recurrent spending, the former government spent $2 billion more than it raised from own source revenue, other than asset sales. It was purely the asset sales, the privatisation process of our debt. It has been shifted across to electricity customers in particular.

I suggest to those members who claim that that Liberal government over those eight years was some wonderful source of fiscal prudence that, if they add up the actual net debt of those asset sales that was contributed by the budgets over those eight years, they will see a somewhat different picture. On the other hand, over the course of the four years of the Rann government, something like $1 billion less has been spent than was raised. In other words, $1 billion was removed from state debt over the first four years of this government because of the prudent financial management of this government.

In his contribution, I think that the shadow treasurer said that the net benefit to the state from the GST over the four years of the government was $1 billion. Well, this government has reduced debt by $1 billion over that term, yet we have still been able to manage the budget.

The Hon. R.P. Wortley: And without selling assets.

The Hon. P. HOLLOWAY: Yes, without selling assets. As the Treasurer has recognised, clearly, if we are to continue to operate within our means (as we need to do), that will require some very prudent economic management in this state in the four years ahead. Of course, that is the reason why the government is currently going through a very rigorous exercise of analysing expenditure right across all facets of government. We have had the assistance of the senior commonwealth Treasury official in that process to enable us to benchmark our spending performance relative to other states so that we can be assured that our finances are in top condition.

What this government is doing is a very prudent exercise to ensure that the good financial management that we have delivered (removing $1 billion off the debt of this state just through good management and without asset sales over the first four years) can continue. The previous speaker raised the question of infrastructure, and he quoted the federal minister who had been critical of the states in relation to infrastructure. Anyone who really understands the state of the Australian economy at this moment would know that there are two great impediments to economic performance in this country: first, the shortage of skills, which reflects many years—particularly at the federal level—of a lack of investment in skills formation; and, secondly, infrastructure—essentially national infrastructure, particularly roads, ports and so on.

As I have pointed out in this chamber on numerous occasions, this state has been dudded by the commonwealth government in terms of road expenditure for many years. South Australia has nearly 8 per cent of the population of this country, it has 14 per cent of the land mass and about 12 per cent of the road transport effort, yet this state has been getting somewhere around the 3 to 5 per cent mark of commonwealth expenditure on roads. If one wants to see the contribution that should be coming to this state through commonwealth sources for roads, one must go to Queensland to see it. If one wants to see South Australia's share of road funding, one must travel to Queensland to look at it.

The Hon. R.P. Wortley: It's called pork-barrelling.

The Hon. P. HOLLOWAY: That is correct. Certainly, for many years, South Australia has been dudded of its share of road funding. I have addressed this matter of windfalls previously, and I will continue to keep addressing this matter. Members opposite are trying to paint the picture that this government is awash with funds. In his contribution to the Supply Bill, the shadow treasurer said that, over its first four years, this state government had netted $1.1 billion of extra GST revenue. As I pointed out, over that same period this state has reduced debt by more than $1 billion.

The Hon. J. Gazzola interjecting:

The Hon. P. HOLLOWAY: Yes, as well as cutting taxes, as the honourable member says, and without the assets. It is quite clear that, if our economy is to continue to grow, we do need to deal with the infrastructure problem. It is therefore imperative that the commonwealth government accepts its responsibilities in relation to that matter. With respect to windfalls, I mentioned the other day that little article tucked away in *The Advertiser*, which mentioned that the commonwealth government had just discovered an extra $20 billion worth of revenue in company tax.

The state's population share of the extra money to be contributed by taxpayers in this state would be somewhere around $1.5 billion. Now, that is a real windfall. That is where the windfall is going. The windfall is going to the commonwealth government, because this state suffers greatly from what is called (and economists have been talking about it for years) vertical fiscal imbalance. Most of the money raised through taxes—particularly income tax, company tax and the GST—goes to the commonwealth government, but the states' own source of revenue is significantly less than what the states are expected to spend on hospitals, police, education and other services.

I did want to comment on just how hypocritical members opposite have been to say that, on the one hand, this government has been lax in its spending, while at the same time over

the past four years (when they were in opposition) they were demanding that this government spend more money on all sorts of areas, and we have added them up. The main criticism they had of this government when we first came into government was that we were cutting programs. They were slamming us because this government was cutting programs. When this government brought in austerity measures, just after it came into government four years ago, it was roundly criticised by members opposite.

Every question at question time was about condemning this government because it had the fiscal prudence to go back over some of those previous programs to see whether that money could be better redirected. We had continual criticism from members opposite about that expenditure constraint, yet here they are now trying to suggest that, in some way, this government has been profligate. Of course, we have had nothing over those four years other than demands for this government to spend more money, and they are still at it to this day. On the one hand they make speeches in which they say that this government has been allegedly lax and that it is awash with money and, on the other hand, they stand up and attack this government for not spending more in other areas.

The Supply Bill before us, of course, is to supply money for the operation of this state until the period when the budget comes down on 21 September this year. In that budget the people of South Australia will see another prudent financial exercise which will get the balance right between ensuring that we are able to meet the services the people of South Australia demand from us while at the same time guaranteeing our long-term future in terms of fiscal prudence.

The Hon. Stephen Wade made a comment about opening bridges at Port Adelaide. The Hon. Mr Wade is a new member, but if he goes back five years he will see that there are plenty of comments on the record from former leaders of the Liberal Party (Rob Kerin and others), who advocated opening bridges at that time. Indeed, these people were suggesting that this state should provide opening bridges at Port Adelaide. I think we can forgive the member for his lack of knowledge on this matter, because he might have forgotten the history. However, for the record, I think it should be pointed out that, in fact, the call for opening bridges originally was made by the opposition prior to the 2002 election of this government.

There are challenges which face us in our economy and which this government will address. With respect to infrastructure, it is important that we receive our fair share of money from the commonwealth government. I hope that members opposite, instead of bleating about infrastructure issues, will do their bit with their colleagues in Canberra and insist that this state receive its fair share of road and other infrastructure funding so that the money that is ultimately contributed from this state comes back here, rather than South Australians having to go to other states to see where their fair share of money is spent. I thank members for their contribution to the Supply Bill.

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

CRIMINAL LAW CONSOLIDATION (THROWING OBJECTS AT MOVING VEHICLES) AMENDMENT BILL

In committee.

(Continued from 1 June. Page 274.)

Clause 1.

The Hon. NICK XENOPHON: I understand that the government has filed amendments that, in part, pick up on some of the concepts I have raised. I do not know whether the minister wants to outline his position so the committee can consider it. I am in his hands in that respect.

The Hon. P. HOLLOWAY: The government's position is that it will support a compromise with the Hon. Mr Xenophon in his efforts to extend the provision to cover the situation where a vehicle is not moving but is stationary because it is stopped at traffic lights or signals or there is a traffic jam, and so on. The government thinks that the amendments proposed by the honourable member go too far. The debate engendered by the honourable member and the Hon. Mr Lawson has caused the government to rethink the width of the net proposed and to develop its own amendments. Therefore, the government will support the first two amendments moved by the Hon. Mr Xenophon. These have the effect of taking the word 'moving' out of the short title and the division heading. The government will oppose Mr Xenophon's third and fourth amendments and propose two of its own. These amendments result from a rethinking of the targeting of the offence caused by the second reading debate and also from acceptance by the government of the policy behind the Hon. Mr Xenophon's amendments.

The Hon. T.J. STEPHENS: The opposition will support the government's position on this.

The Hon. NICK XENOPHON: I am grateful for the Hon. Mr Stephens' indication of the opposition's position on this. My understanding is that this is a refinement of my amendment. I think the government has picked up on the concerns that were raised during the second reading debate. I just want to ask a question of the minister before I decide whether to withdraw my amendments. As I understand it, this amendment makes it clear that the vehicle must be propelled by a motor. Does this amendment cover situations where a rock is thrown at or dropped on a parked vehicle which has its engine running and its indicator on and the vehicle is about to enter the roadway?

The Hon. P. HOLLOWAY: This issue turns on whether the vehicle is on a road or in a road-related area. Under the Road Traffic Act, 'road' means 'an area that is open to or used by the public and is developed for, or has as one of its main uses, the driving of motor vehicles.' 'Road-related area' means any of the following:

(a) an area that divides a road;
(b) a footpath or nature strip adjacent to a road;
(c) an area that is not a road and that is open to the public and designated for use by cyclists or animals;
(d) an area that is not a road and that is open to or used by the public for driving or parking vehicles;
(e) any other area that is open to or used by the public and that has been declared by regulation to be a road related area.

The Hon. NICK XENOPHON: I am grateful to the minister for that explanation. In the circumstances, I will not proceed with my amendments and I will support the government's amendments.

The Hon. R.D. LAWSON: Will the minister indicate whether the government's proposed amendment would cover a situation where someone drops a concrete block on a road in front of approaching traffic? The offence seems to be only for dropping items on vehicles.

The Hon. P. HOLLOWAY: My advice is that that is the case. That has been the case under current law and the

previously proposed law. In other words, those cases are not covered.

The Hon. R.D. LAWSON: Is it not the case that a person who drops a concrete block on a road in front of oncoming traffic would be liable to be prosecuted under section 29 of the Criminal Law Consolidation Act for an act endangering life?

The Hon. P. HOLLOWAY: That is correct.

The Hon. J.S.L. DAWKINS: I had an experience some years ago of driving underneath the rail bridge at Salisbury where young people were throwing objects off the bridge. Whether they were throwing them at vehicles is not for me to judge, but they were certainly throwing them onto the road while traffic was driving through. One object did hit my vehicle, but that is not the point. In the case of which I am aware, a stone or an object landed in front of the vehicle and then bounced up underneath the vehicle and caused the driver to lose concentration and veer off to the side. There could have been a serious accident. How will this change affect those sorts of situations?

The Hon. P. HOLLOWAY: The amendment provides for a person who throws a prescribed object at or drops a prescribed object on a moving vehicle. So, in the case to which the honourable member refers of a rock being thrown at a vehicle but which did not hit the vehicle with its first impact, you would have to establish the facts, but one would presume that the object was thrown at the vehicle and therefore it would be covered.

The Hon. R.D. LAWSON: In light of the minister's concession that this piece of legislation, much vaunted and highly publicised by the government, does not cover a situation where concrete boulders are rolled onto roads in front of approaching vehicles, that emphasises the point I made in my secondary contribution that this is a useless piece of window-dressing. I ask the minister whether he is able to answer the question I posed during my second reading contribution: namely, whether any, and if so what, charges have been laid in the past two years in respect of the throwing of rocks or objects at vehicles and what, if any, penalties have been imposed.

The Hon. P. HOLLOWAY: My advice is that the police were asked for that information but that they have not been able to provide it. Members would be aware that we have had a spate of rock throwing incidents in this state over the past few years and that in one of those incidents a motorist was seriously injured. The point is that it is incumbent upon this parliament to address what has become a serious issue. As I indicated in my second reading speech, I think that one of the important benefits of passing this legislation is that it makes it clear that this parliament recognises the dangers and risks of this behaviour, which have become too prevalent in our community, and that we intend to take action to stamp it out.

Clearly, in relation to someone in the southern suburbs, notwithstanding a significant police effort to detain that person, I do not think an arrest has been made in relation to most of these events. One would at least hope that that significant police action that was put into detecting that offence has led to the situation where we fortunately have not had any outbreaks of that prevalent behaviour which threatened the community several years ago and which appears to be on the wane—let me put it that way. As I said, that is probably a reflection of the community distaste for what has happened and the commensurate police efforts that were put in to try to arrest the person who was responsible for that behaviour. The government certainly defends its position in relation to this legislation. It will fill that niche offence that exists in this area. The fact that this behaviour was so prevalent several years ago, I think, indicates the need for this legislation.

The Hon. R.D. LAWSON: The point I make is that, if the offender who threw the rock on the vehicle which injured Mr De Witt was caught now, it would not be covered by this legislation at all, because it does not have retrospective effect, but that conduct would already be proscribed under existing laws. The endangering life provisions of the Criminal Law (Consolidation) Act would be applied to such an act, and the person would be liable for imprisonment for up to 15 years on one view of section 29. For the minister to suggest, as he now does, that this piece of legislation will somehow address that particular case is, in my view, misconceived. But, the government has said that it wants this legislation for the purpose of sending a message. I am not sure that sending a message is the purpose of the criminal law, but if the government wants to send the message—I do not know whether people are listening to it—we are not opposing it. As I said, I believe it is a useless piece of legislation.

The Hon. NICK XENOPHON: For the benefit of the committee, I clarify that, in relation to the amendments in the name of the Minister for Police, I will not proceed with my amendments Nos 3 and 4 of Xenophon 1 or, indeed, amendment No. 1 of Xenophon 2. But, in order for this to tie in together, I still need to move amendments Nos 1 and 2, which delete the word 'moving'. I move:

Page 2, line 4—Delete 'moving'

Amendment carried; clause as amended passed.

Clauses 2 to 4 passed.

Clause 5.

The Hon. NICK XENOPHON: I move:

Page 2, line 16—Delete 'moving'

I move this amendment for the reasons that I previously outlined.

Amendment carried.

The Hon. P. HOLLOWAY: I move:

Page 2, lines 18 and 19—

Delete 'A person who throws a prescribed object at, or drops a prescribed object on, a moving vehicle is guilty of an offence.' and substitute:

A person must not throw a prescribed object at, or drop a prescribed object on, a vehicle that is being driven on a road or road-related area, or being run on a busway, railway or tramway (whether, at the time the object is thrown or dropped, the vehicle is moving or stationary).

This amendment does two things. It extends the offence to vehicles that are stationary but confines it to, first, stationary and moving vehicles that are being driven and, secondly, that are being driven on a road, road-related area, busway, railway or tramway. Therefore, it will not cover a stationary vehicle in a paddock or driveway.

The Hon. R.D. LAWSON: I do not know whether the minister knows the City Bridge which is just north of Parliament House and which crosses the Torrens Lake. There is also a walkway through which vehicles (mainly council vehicles) drive on both the north and the south bank. Will the minister confirm that, if some hooligan dropped a concrete rock on a vehicle that was passing under that bridge, they would be guilty of an offence under this but, if the same rock was dropped onto a pedestrian walking under the bridge, no offence would be committed under this amendment?

The Hon. P. HOLLOWAY: It is true that this law does not apply to pedestrians and was not meant to. It is about

throwing objects at vehicles, but I am sure other offences would cover the case of pedestrians. This law is particularly targeted towards vehicles, and members would be aware that that is where we have had that problem.

The Hon. R.D. Lawson interjecting:

The Hon. P. HOLLOWAY: It is really a ridiculous comment from the Hon. Robert Lawson. He knows that this law is specifically aimed at behaviour. There appears to be a perception within our community amongst some young people that it is acceptable to throw objects such as rocks at moving vehicles. This law is specifically aimed at that behaviour. In relation to pedestrians, of course other sections of the criminal law deal with that behaviour. This law is specifically aimed at this behaviour which, as I said before, has become too prevalent in our community.

Amendment carried.

The Hon. P. HOLLOWAY: I move:

Page 3, after line 3—
Insert:
road and road-related area have the same meanings as in the Road Traffic Act 1961;
vehicle means—
(a) a vehicle that is propelled by a motor; or
(b) a vehicle that is run on a busway, railway or tramway; or
(c) a bicycle, tricycle or other similar vehicle for which the rider provides the motive force; or
(d) a vehicle that is drawn by an animal; or
(e) an animal that is being ridden by a person.

This amendment defines the terms used. The principal change here is to confine the meaning of the word 'vehicle'. The previous version simply relied on the natural meaning of the word. The government has decided that too much should not be left to litigation. It has decided to be more precise. The definition is similar but not quite identical to the definition contained in section 19A of the act. There are two reasons for the differences. The first is to clarify the status of the busway. The second is to ensure that the right of a horse is covered.

The Hon. R.D. LAWSON: Whilst on the subject of definitions, will the minister indicate whether the government has yet decided what objects are to be prescribed for the purpose of this legislation? I do not believe the minister has addressed that issue yet. I may be wrong on that.

The Hon. P. HOLLOWAY: The question really was: what kind of objects are to be prescribed? It is contemplated that there will be a list. That list will include large rocks, large pieces of wood or concrete and bricks—and, noting the recent decision in Southwell v Gallagher 2006 ACTSC 24, they are minded to consider full cans of beer or other drink. It may be necessary to exclude some items such as eggs, tomatoes, soft fruit and so on. The government is open to any suggestions that members of the chamber might like to make, either now or in the future.

Amendment carried; clause as amended passed.

Title passed.

Bill reported with amendments; committee's report adopted.

The Hon. P. HOLLOWAY (Minister for Police): I move:

That this bill be now read a third time.

The Hon. SANDRA KANCK: I realise that I am probably a lone voice in opposing this bill at the third reading, but laws to 'send a message' are sham laws. They bring parliament into disrepute, and this is one such law. The Hon. Mr Lawson referred to his second reading contribution—and I think it was a worthwhile quote—in which he said that this is a useless and unnecessary piece of legislation. The courts already have ample powers to punish people caught throwing rocks at moving cars and, as we heard a short time ago in the committee stage of this debate, section 29 of the Criminal Law Consolidation Act does that. Why has this government introduced this useless and unnecessary bill? It means that, when it is passed shortly, the minister will be able to go to the media and claim that we now have tougher laws dealing with rock throwing idiots.

I will not be party to any pretence that this bill reduces the likelihood of that happening. Preventing random acts of violence is almost impossible and we owe it to the electorate to tell them the truth. The truth is that stopping the crime is the real challenge. That is where the government is failing, and that is why it has put us through this legislative charade. I indicate that the Australian Democrats oppose the third reading of this bill.

Bill read a third time and passed.

[Sitting suspended from 12.14 to 2.17 p.m.]

TRAMLINE

A petition signed by 2 753 residents of South Australia, concerning the proposal to construct a tramline from Victoria Square to North Terrace in Adelaide and praying that the council will do its utmost to convince the state government not to proceed to construct such a tramline, and remove trees, flagpoles and median strips and create extreme congestion in Adelaide's major thoroughfare, and the retention of the existing free bus routes in that vicinity, was presented by the Hon. J.S.L. Dawkins.

GENETICALLY MODIFIED CROPS

A petition signed by 78 residents of South Australia, concerning genetically modified crops and praying that the council will amend the Genetically Modified Crops Management Act 2004 to extend South Australia's commercial GM crop ban until 2009, prohibit exemptions from the act, particularly the protection of GM canola seed, and commission state funded scientific research into GM organisms, health and the environment in close consultation with the South Australian public and other governments, was presented by the Hon. Sandra Kanck.

PAPER TABLED

The following paper was laid on the table:

By the Minister for Environment and Conservation (Hon. G.E. Gago)—

Natural Resources Management Council—Report 2004-05.

DRUG DRIVING

The Hon. CARMEL ZOLLO (Minister for Emergency Services): As tabled in the other place by the Premier, I seek leave to make a ministerial statement about drug driving.

Leave granted.

The Hon. CARMEL ZOLLO: This morning in Executive Council, Her Excellency the Governor proclaimed the necessary protocols as well as the commencement of South Australia's new laws for random roadside drug testing of drivers, which will begin on Saturday 1 July this year. We are

going to hit drug drivers hard. We will be the third jurisdiction in Australia and among the first places in the world to put these laws into place. The road toll in South Australia for this year stands at 57. At the same time last year, the road toll was 66. Over the past three years the annual road toll has averaged at about 147. This compares with the annual road toll of 226 fifteen years ago, and 339 thirty years ago.

Even though the figures are trending downwards, this is no reason to rejoice. The tragedy continues. Too many people are dying on our roads. Each death is an unbearable loss for someone's mum, dad, partner, daughter, son and extended family and friends. This government is determined to ensure that drivers get the message—that they must stop, think and act to defend their safety and the safety of others on the roads. Driving under the influence of drugs, especially cannabis and methamphetamines such as speed, has been as insidious as it has been deadly on our roads.

The most recent fatality figures from South Australia Police and the Department of Transport for 2005 show the following: a third of drivers and riders killed were above the 0.05 blood alcohol limit (many of whom were more than three times the legal limit); a third of drivers or riders who were responsible for fatal crashes previously had their licence disqualified; a quarter of drivers and riders killed were affected by cannabis or methamphetamine; 60 per cent of drivers and riders who were responsible for fatal crashes had previous driving offences such as speeding or drink driving; and a third of all those killed were not wearing a seatbelt.

We have introduced a range of tough new measures such as immediate loss of licence for those foolish enough to drive with a blood alcohol level in excess of 0.08, unrestricted mobile random breath testing and lowering speed limits, as part of our strategy to bring down the road toll. Now we also intend to bring down the full force of the law on those who put their own life and the lives of others at huge risk by drugging up and driving out. From 1 July, uniformed police specially trained in the use of these new testing procedures will be able to pull over any driver anywhere in South Australia and ask for a drug test. This will involve the driver providing a saliva sample by placing an absorbent swab in their mouth or touching it on their tongue. The sample then will be screened at the roadside, with the result determined within about five minutes. If that result tests positive, a second sample will be required—a process taking about 30 minutes.

A $700 penalty will apply to those drivers who refuse to cooperate, along with the loss of three demerit points, while subsequent refusals will lead to a licence disqualification for up to 12 months. Those drivers found with drugs in their system face a $300 expiation fee, along with the loss of three demerit points, with greater fines and loss of licence for subsequent offences. This government makes no apology for taking a hard line on drug drivers, drunk drivers, hoon drivers and those who drive at excessive speeds or who are just plain irresponsible. Apart from the devastating loss of life which causes huge emotional upheavals within families for many years, the cost to the community in terms of police, emergency services, health and rehabilitation services and so on is huge.

I am informed that in 2005 the estimated cost of road crashes in South Australia was $950 million and, of that, $759 million related to fatal and serious injury crashes. That is why, when people complain to this government that they are upset about receiving a fine for speeding or being fined, losing demerit points, losing their cars for hoon driving, or losing their licence for driving under the influence, they are whingeing to the wrong people. If people continue to break driving laws, the police will continue to enforce them, with the full support of this government.

Mr President, as you would know, this is the first state in Australia to create a new portfolio for road safety and appoint a Minister for Road Safety. We are determined to make a difference in road safety—not only to tighten up on enforcement but to balance that out with more and better education programs, better safety campaigns and better road infrastructure. With a long weekend coming up, I urge South Australians to think about their safety and the safety of others and exercise commonsense. In other words, drive with care and consideration for everyone on the road and keep safe.

QUESTION TIME

MURRAY RIVER

The Hon. D.W. RIDGWAY: I seek leave to make a brief explanation before asking the Minister for Environment and Conservation a question on the River Murray.

Leave granted.

The Hon. D.W. RIDGWAY: The minister tabled a ministerial statement made by the Minister for the River Murray, the Hon. Karlene Maywald, in another place on 1 June this year. I quote from that statement as follows:

> The Minister for Environment and Conservation (Hon. Gail Gago) and I attended the recent Murray-Darling Basin Ministerial Council in Melbourne on Friday 19 May as representatives of South Australia. I am happy to report that this council meeting was, I believe, a watershed event for the River Murray. The council meeting was marked by a new, more cooperative approach, partly fuelled by the federal government's commitment of $500 million to ensure the 500 billion litre Living Murray Initiative target was back on track to deliver by 2009; and the fact that, preceding the meeting, in-principle agreements between New South Wales, South Australia and Victoria to achieve interim permanent trade arrangements had been achieved. I am pleased to report that the council agreed to fast-track part of South Australia's 35 billion litre package of measures towards the Living Murray Initiative, which will see up to 13 billion litres of water returned to the river almost immediately.

My questions are:

1. Why are we now using the term 'billion litres', seeing as we are going through a review of the parks to fall in line with international standards, and not the term 'gigalitre', as used world wide?
2. The statement refers to 'up to 13 billion litres': exactly how much will we receive? It does not say exactly 30, but 'up to'; is it 9, is it 10?
3. It also says that the water is to be returned to the river. If it is being returned to the river, where has it been and where is it now?
4. The ministerial statement says 'almost immediately'; when will it happen?

The Hon. G.E. GAGO (Minister for Environment and Conservation): I thank the honourable member for his questions. These questions come under the auspices of the Minister for the River Murray, the Hon. Karlene Maywald, and I will refer them to the minister and bring back a reply.

The Hon. D.W. RIDGWAY: I have a supplementary question. What role did the minister then play as South Australia's representative at the meeting, or did she not understand?

The Hon. G.E. GAGO: I thank the honourable member for his supplementary question. That particular ministerial

meeting dealt largely with matters to do with the River Murray, for which the Hon. Karlene Maywald is lead minister as Minister for the River Murray. I was there in relation to other water matters. Some of those matters were dealt with at that particular meeting, but the meeting dealt predominantly with matters pertaining to the River Murray.

The Hon. D.W. RIDGWAY: I have a further supplementary question. Was the minister briefed on those particular issues to do with the River Murray?

The PRESIDENT: I do not see how that comes out of the original question.

The Hon. J.S.L. DAWKINS: I have a supplementary question. Did the minister, or her ministerial colleague, put the Nowingi toxic waste dump on the agenda of that meeting, as was not the case in September last year?

Members interjecting:

The PRESIDENT: Order!

CORRECTIONAL SERVICES, REMAND RATES

The Hon. J.M.A. LENSINK: I seek leave to make a brief explanation before asking the Minister for Correctional Services a question on remand rates.

Leave granted.

The Hon. J.M.A. LENSINK: The annual report of the Department for Correctional Services states that some 60 per cent of remandees stay in the system for fewer than 14 days and, of the prison population, some 33 per cent of prisoners were unsentenced as at 30 June 2005. A report dated May 2006 from the Australian Institute of Criminology compares remand rates for Victoria and South Australia. One of the authors of that report is Rick Sarre. The report states that remandees in South Australia are more likely to be homeless, unemployed or have some form of mental disorder, and that remandees are also more likely than sentenced prisoners to die in custody.

Chief Justice John Doyle has made several remarks that have been published in *The Advertiser* and also in the *Law Society Journal*. One of the issues that the Chief Justice has raised is that attempts by the courts to improve efficiency are limited by a lack of funding, and he has stated that he is becoming increasingly concerned about growing delays within the courts, particularly the criminal courts, because the time taken between arrest and determination of guilt or innocence is increasing. My questions for the minister are:

1. Can she confirm whether the sites of Mobilong and Port Augusta prisons have been used as places for remand sentences within the past six months?

2. What strategies is she seeking to implement to address the issue of the high level of remand in South Australia?

The Hon. CARMEL ZOLLO (Minister for Correctional Services): In relation to what the courts do, it is not a matter for me to comment but, rather, for the Attorney-General in the other place. If the courts avail themselves of remand provisions, clearly it is not something that I have any jurisdiction over. We have around 3 500 prisoners admitted to our prison system each year, with a daily average of some 1 500. The department also manages approximately 5 500 community correctional offenders annually, and it would be fair to say that, when we deprive some 3 500 people of their liberty, there are likely to be many challenges in the system. The honourable member is correct: remand provisions are used to a great extent in South Australia.

As I said, it is probably difficult for me as Minister for Correctional Services to comment on that. We manage our prisoners to the best of our ability and every prisoner is case-managed. Yatala prison is used for remand prisoners, and I am certain that the honourable member's party also did that when in government. It is a means of managing the prison population throughout our state. I will need to obtain advice whether Mobilong is used for remandees as well as Port Augusta and bring back a response.

The Hon. J.M.A. LENSINK: As a supplementary question, has the minister had any discussions with the Attorney-General in relation to the impact of the courts system on the remand rates?

The Hon. CARMEL ZOLLO: Whether the courts make remand provisions is something that the Attorney-General would need to take up with the judiciary. It is a different arm of government, part of the executive, and it is at liberty to sentence people or to make provisions in the way that it sees fit.

KAPUNDA ROAD ROYAL COMMISSION

The Hon. R.I. LUCAS (Leader of the Opposition): I seek leave to make a brief explanation before asking the Minister for Police a question about the Kapunda Road royal commission.

Leave granted.

The Hon. R.I. LUCAS: Earlier this week the minister released a media release and answered a dorothy dixer in this chamber on the issue of the Kapunda Road royal commission. In part, the minister said that SAPOL had conducted a comprehensive review of the commission's findings and, as a result, a number of changes aimed at improving the delivery of police services have been or are being implemented. The minister went on to outline the advice that he had received in relation to those particular findings of the royal commission that have been or are being implemented. My questions to the Minister for Police are:

1. Which recommendations of the royal commission have been rejected by SAPOL and are not going to be implemented by SAPOL, if any?

2. Will the minister ensure that the internal report conducted by SAPOL of SAPOL's handling of this issue will be released publicly and, if he will not, will he explain why he will not?

3. Does the minister personally support the offering of an apology to Di Gilcrist for SAPOL's handling of this issue?

The Hon. P. HOLLOWAY (Minister for Police): In relation to the recommendations of the royal commission, I think that just two, essentially, have not been implemented by SAPOL. One was that general search warrants be either replaced—so far as the law does not clearly provide for them—or supplemented by warrants to enter and search or enter and arrest, under which forceful entry can occur, obtained by an application to a magistrate, for which every officer can apply for cause shown.

I am advised that this recommendation was not supported as the Kapunda Road collision did not highlight any issues of inadequacy in relation to the issue and the overall use of the general search warrant. The issue in the Kapunda Road incident was not that a general search warrant was unavailable or unable to be used but that the vehicle was not at the location and the investigators did not consider the use of the general search warrant because of this.

The general search warrant is an important and effective investigational tool and its retention was strongly supported by the Office of the Director of Public Prosecutions. There are sufficient general search warrants issued throughout the state to allow a general search warrant holder to attend upon request of other members of SAPOL. SAPOL does not support any changes to the issue or use of the general search warrant, nor do the circumstances as outlined in the Kapunda Road royal commission substantiate the need for any changes.

Another recommendation not implemented was that consideration be given requiring SAPOL officers to audio record interviews with suspects and witnesses. I am advised that it was not considered that officers should audio record witness statements due to issues of disclosure and legislative matters involved with question and answer statements later converted into narrative form. If SAPOL members recorded all witness statements they would have to be transcribed and provided to the defence, which would prove resource intensive. There are already legislative requirements in relation to suspects for various offences where SAPOL members are legally required to video or audio record all conversations with anyone suspected of having committed a serious offence pursuant to section 74(d) of the Summary Offences Act.

In relation to those recommendations of the Kapunda Road royal commission, the reason I provided that advice to the parliament early this week was to ensure that that work had been done. I am pleased to say that the South Australia Police had themselves, concurrently with the royal commission, conducted their own very extensive research of police procedures. I notice that they were outlined on radio yesterday by the assistant commissioner, Grant Stevens. In that interview he made a number of important points and indicated that the police were very keen to ensure that their procedures were updated in every possible way, including going beyond the recommendations of the Kapunda Road royal commission.

The Hon. R.I. Lucas: Will you ensure—

The Hon. P. HOLLOWAY: Is that the particular report the honourable member wishes? I am not sure.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: The police conducted a review. I am not sure whether there was a written report in relation to that.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: If the Leader of the Opposition is talking about a report, then he should state exactly which report he wants. If he is talking about the results of the police investigation into their procedures generally, I will see whether or not that is in written form. In relation to the particularities of the Kapunda Road royal commission case and the officers involved, I would have to seek that information from the police to ascertain the situation regarding any investigation taking place.

I am aware that the Hon. Robert Lawson asked a question on this matter earlier this week, which I have referred to the police, concerning what action might be taken as far as specific police officers were concerned. In relation to the latter question, it would be appropriate—although it is a matter for the Police Commissioner—for all matters in this case to be finalised if there are ongoing investigations by police. Certainly, where there is a court case, if there are further ongoing investigations by police, that is something that would need to be established; but I will refer that to the Police Commissioner.

The Hon. R.I. LUCAS: I have a supplementary question. Is the minister refusing to answer the question as to whether he personally supports the offering of an apology to Di Gilcrist for SAPOL's handling of this issue?

The Hon. P. HOLLOWAY: I would think that any apology that is worth anything has to come from the people who need to give that apology. That is a matter for the police and I will refer it to them. It is not up to me to judge what others should do in relation to apologies. That is a matter for the police, and I will refer it to the Police Commissioner.

The Hon. NICK XENOPHON: I have a supplementary question. Given the damming findings—at least 19—of Royal Commissioner Gregory James QC into SAPOL's handling of the investigation into the death of Ian Humphrey on 30 November 2003, will the minister support an independent audit—independent of SAPOL—into the practices of Major Crash to ensure the risk of systemic failures of Major Crash is not repeated?

The Hon. P. HOLLOWAY: I can only think the Hon. Nick Xenophon must have ignored totally or not listened to the response I gave to the question earlier this week. Quite clearly, if he had be listening, he would have understood that a very comprehensive investigation was undertaken by the police. I have given a full account of what decisions the police have taken. I think the important thing now is that those recommendations and changes that SAPOL has undertaken as a result of that work be given a chance to work.

SURF LIFESAVING

The Hon. R.P. WORTLEY: I seek leave to make a brief explanation before asking the Minister for Emergency Services a question about the government's commitment to the redevelopment of surf lifesaving clubs in South Australia.

Leave granted.

The Hon. R.P. WORTLEY: I understand the government has an ongoing program to assist with the rebuilding or redevelopment of surf lifesaving club facilities. Will the minister provide the council with information about the proposed redevelopment of the North Haven Surf Lifesaving Club?

The Hon. CARMEL ZOLLO (Minister for Emergency Services): This morning I was pleased to be able to attend the North Haven Surf Lifesaving Club at North Haven to officially announce the commencement of redevelopment works of the club.

An honourable member interjecting:

The Hon. CARMEL ZOLLO: Clearly, the honourable member does not live out that way. The government is proud to continue to support Surf Lifesaving SA and the very worthwhile work it does in protecting our beach-going community. This $1.148 million redevelopment will see the club extended from approximately 400 square metres to 703 square metres to provide equipment storage facilities, a gymnasium, meeting room, administrative office and patrol, kitchen and change facilities. Construction is to be undertaken by Partek, a South Australian company. The government is contributing $633 417 to the redevelopment, with the City of Port Adelaide Enfield and North Haven Surf Lifesaving Club meeting the remainder of the redevelopment costs. The

announcement of this redevelopment is a very significant event for the club, which has been at its present site since it relocated from Taperoo beach in the summer of 1983-84. I understand that during the 2004-05 period club members provided 1 670 hours of volunteer patrols, and the provision of these facilities is essential to support this work.

This redevelopment is part of the ongoing redevelopment program funded from the Community Emergency Services Fund, and it follows on from my announcement in February this year in respect of the Brighton Surf Lifesaving Club. The arrangements in place between the government, local government and Surf Lifesaving SA for the redevelopment of Surf Lifesaving SA's 18 clubs have been particularly successful, with new clubs already opened at Christies Beach and Somerton. Both the Brighton and North Haven redevelopments are expected to be operational by the end of the year. I look forward at a later time to advising the chamber of the opening of the club for business.

AMPHETAMINE LABORATORIES

The Hon. D.G.E. HOOD: I seek leave to make a brief explanation before asking the Minister for Police a question about clandestine amphetamine laboratories.

Leave granted.

The Hon. D.G.E. HOOD: A report in Tuesday's *Australian* newspaper states as follows:

> Law enforcement agencies detected 358 clandestine amphetamine laboratories in 2004, compared with just 58 in 1996. . . Ecstasy use almost tripled in the past 13 years, with 3.4 per cent of Australians having used the drug in the previous year, while users of amphetamines increased from 2 per cent to 3.2 per cent [over the period'.
>
> The Australian Federal Police said most amphetamines were made domestically, but agencies were seeing increased imports of concentrated forms of the drug, such as ice.

I was disturbed to hear from a constituent in confidence that the so-called 'cooks' from these amphetamine laboratories recruit young people to purchase off-the-shelf medications and provide them to the cooks for breakdown into the components required to make methylamphetamine or ecstasy. In the constituent's opinion, the current laws to stop this occurring are simply not working. My questions are:

1. What is South Australia's proportion of the total number of detected amphetamine laboratories nationwide?

2. What measures are in place and/or will the government introduce to stop the supply of material to and the operation of amphetamine laboratories in South Australia?

3. What measures is the government putting in place to ensure that young people are not being co-opted into purchasing prescription medication for amphetamine production?

4. When will the government review the measures designed to prevent the abuse of prescription medication in this way?

The Hon. P. HOLLOWAY (Minister for Police): There is no doubt that the methylamphetamine drugs—that is, ice and ecstasy, in whatever form one might like to describe them—are a growing problem in this country. In fact, my colleague the Minister for Mental Health and Substance Abuse and I attended the recent meeting in Perth for ministers responsible for drug issues. One of the papers presented at that conference clearly indicated the growing consumption of these sort of drugs relative to the more traditional forms of drugs people have been using, such as cannabis. So, there is no doubt that this is certainly a growth area, although it is interesting to note that there is some information indicating that in countries such as the United Kingdom the growth drug of choice for drug users appears to be cocaine and that amphetamine use is declining, whereas in this country it is still growing. That probably reflects some of the society trends, and it probably warns us of what is likely to happen in this country in future years.

In relation to the honourable member's first question about the number of laboratories producing amphetamine drugs, I will see what information is available from SAPOL and bring back that information. In relation to the measures the government intends to take, obviously, in dealing with any drug issues, it is important that we have a cross-jurisdictional policy. In policing, it is a very important part of drug abuse, but it is by no means the only response we should be making. Clearly, there are many levels on which we need to deal with this problem.

At the recent election, the government promised to introduce a number of measures, including the following: to create a specific offence of cultivating cannabis hydroponically; to introduce a statutory requirement to report sales of hydroponic equipment; to require buyers to produce identification for any purchase of hydroponic equipment; and to ban the possession of tablet presses, drug recipes and industrial chemicals and laboratory glassware that can be used in the manufacture of illicit drugs. Quite clearly, that has particular application to amphetamines, to which the honourable member specifically referred in his questions. The government also promised to extend police powers so that police can search known drug premises, as declared by a court, without a warrant; and to legislate to ensure courts treat the manufacture, sale and distribution of amphetamines, ecstasy and similar drugs at the upper level of the penalty range, rather than the middle.

In other words, we recognise in legislation that this is a problem. We believe the courts should reflect that commensurately and also make the possession of firearms in conjunction with drug offences an aggravated feature of the drug offence which would attract a higher penalty. The removal of equipment is one way to make life hard for those who use high-tech set-ups in the area of drugs. This parliament will introduce legislation later in this term to deal with all those measures. My colleague and I are certainly aware of the growing problem in relation to these particular types of drugs.

ARMED ROBBERIES

The Hon. T.J. STEPHENS: I seek leave to make a brief explanation before asking the Minister for Police a question about armed robberies.

Leave granted.

The Hon. T.J. STEPHENS: On Wednesday 31 May the police minister informed the council of how pleased he was with the latest crime statistics. Members may be aware that a group known as the Blue Overall Bandits has struck again (the fifth time in six months), with the last armed robbery being committed at the Magill branch of Bank SA on Tuesday. Is the minister still pleased with his statistics while these robberies continue unabated, and what resources are being allocated to get on top of the Blue Overall Bandits?

The Hon. P. HOLLOWAY (Minister for Police): The government is pleased that the statistics that were released by the ABS several weeks ago do show that, overall, the crime rate has dropped by 7.3 per cent, if my memory serves me correctly, but of course there has been an increase in certain

types of crime which go against that overall reduction. It is important that the police respond to outbreaks of crime. The criminal mind is such that those disposed to commit these crimes will always try to stay one step ahead. As the police bear down upon one particular type of crime, obviously there is always the risk that these criminals will move on to other sorts of crimes, so one can always suspect that there will be a break-out. For example, in the past in relation to car thefts the police have put in considerable resources, and those efforts have led to a significant reduction in the number of car thefts, but the criminals responsible will often find a softer target.

Regarding this particular issue which involves one particular group of armed robbers, they are not the first and I guess they will not be the last, but I am sure that the police will do what they can to bring these people to justice. There is nothing which serves the interests of justice more than actually catching and locking up the people responsible for crime, but in relation to this specific gang, if the Police Commissioner has any further information, I will be happy to share it with the honourable member.

COAST PARK

The Hon. B.V. FINNIGAN: I seek leave to make an explanation before asking the Minister for Urban Development and Planning a question about the government's Coast Park initiative.

Leave granted.

The Hon. B.V. FINNIGAN: I understand that the Coast Park initiative aims to create a linear park along Adelaide's metropolitan coastline from North Haven to Sellicks Beach. I also understand that the initiative recently won a prestigious award. Will the minister provide details of this success?

The Hon. P. HOLLOWAY (Minister for Urban Development and Planning): I am delighted to provide that information for the honourable member, and I thank him for his interest in this matter. I can happily advise that the Coast Park project has won a World Environment Day award from the United Nations Association of Australia. This award is for excellence in marine and coastal management and recognises the work being done by Planning SA and the South Australian Urban Biodiversity Program in conjunction with the six relevant coastal councils to revegetate the metropolitan coastline as part of the overall Coast Park project.

As the honourable member mentioned in his question, the Coast Park initiative aims to develop a 70 kilometre linear park along the Adelaide coastline from North Haven to Sellicks Beach, including a Coast Park trail to enable people to walk, jog or cycle along the whole length of the coast unimpeded. The park is being developed in stages, in partnership with local government, with about 60 different projects across the six local council areas identified. Around half have been completed or are under way. The projects range from cycling and walking tracks to the redevelopment of some of our popular urban coastal centres, and environmental restoration.

Examples of sections completed so far include pathways and dune walks at Largs Bay, Semaphore South and West Beach, and a boardwalk over the cliffs at Hallett Cove. The revegetation work is part of the Coast Park vegetation management project, which is overseeing ongoing rehabilitation and revegetation as part of the overall management of coastal vegetation along Adelaide's foreshore. The United Nations Association selected this project as the winner ahead of several other notable major projects being carried out across Australia.

This World Environment Day award provides Australia-wide recognition, and gives focus to the Coast Park revegetation work being done by the state government. The Adelaide metropolitan coastline faces a range of management issues, including pest, plant and animal invasion, degradation of native vegetation, pedestrian access and erosion. A coordinated approach to management is being adopted to address these issues and to prevent further degradation to native vegetation, and to protect the fragile coastal environment.

Through the Coast Park initiative, the South Australian Urban Forest Biodiversity Program is producing a series of vegetation management plans to guide local councils, with the implementation of native vegetation enhancement works. Funding is then provided through grants to implement the management plans through sensitive revegetation works in a progressive way to ensure sustainability. This award is a reflection of the high standard of work and success being achieved by the Rann government, in conjunction with local councils, in urban coastal management. The award celebrates the initiative, enthusiasm and tremendous hard work being put into the project by the Urban Forest Biodiversity Program and Planning SA to create sustainable environment for the future.

WEETRA, Mr C.A.J.

The Hon. NICK XENOPHON: I seek leave to make a brief explanation before asking the Minister for Police, representing the Attorney-General, questions about the sentencing of Colin Andrew James Weetra and the criminal justice system generally.

Leave granted.

The Hon. NICK XENOPHON: Last night's Channel 10 news bulletin carried a report by journalist Gerda Jezuchowski about the sentencing of Colin Andrew James Weetra, who committed a series of offences, including stealing a motor vehicle and armed robbery. He was sentenced on 23 May 2006 in the District Court before his honour Judge Rice. In the sentencing remarks of his honour Judge Rice, he said that the circumstances of the offending were that on 9 June 2004 Weetra, with an accomplice, was involved in stealing a motor vehicle and then robbing the Brooklyn Park Post Office whilst in the possession of a tomahawk and a replica pistol.

The judge makes the comment that the penalty for stealing a motor vehicle without consent is two years, and aggravated robbery is life imprisonment. The judge goes on to make observations that Weetra did not plead guilty at the earliest reasonable opportunity. He goes on to say that the defendant is 37 years of age and has a history of prior offending, including suspended sentences for assault police, damaging property and receiving, and more importantly, in December 2001, he was sentenced in that court for assault with intent to rob, larceny from the person and robbery, involving an elderly woman. He received a three-year sentence with a non-parole period of 14 months, which sentence was suspended upon entering a $1 000 bond to be of good behaviour.

His honour decided that, in the circumstances, he would adopt the extraordinary course of suspending the defendant's sentence. In this case, the sentence was a seven-year suspended sentence with a non-parole period of four years, such sentence to be suspended upon entering into a $500 bond to be of good behaviour for two years. The judge made the

comment that this should be regarded as his very last chance, and that he did not expect that the court would offer further leniency. Further, one of the victims who contacted my office today indicates that he was not advised of the sentencing date or that this defendant was on the streets until he was contacted by the media only yesterday. My questions are:

1. Will the Attorney request an urgent report from the office of the DPP into this matter?

2. Will the Attorney urgently review sentencing laws, particularly in cases of repeat offenders who have prior convictions in respect of violent crimes?

3. Will the Attorney consider exercising his discretion under section 9 of the Director of Public Prosecutions Act 1991 (as occurred in the Nemer case) to direct an appeal be filed in such a matter, in the event that the DPP decides not to?

4. Will the Attorney request a report from the office of the DPP over the failure of one of the victims of this violent crime to be informed of the actual sentencing date and of the fact that the defendant was released as a result of the suspended sentence?

The Hon. P. HOLLOWAY (Minister for Police): The honourable member has asked a range of questions, which I will refer to the Attorney-General and bring back a response.

DNA TESTING

The Hon. R.D. LAWSON: I seek leave to make a brief explanation before asking the Minister for Police a question about DNA.

Leave granted.

The Hon. R.D. LAWSON: An increasing number of persons charged with criminal offences are being dealt with under the mental impairment provisions of the Criminal Law Consolidation Act. Under those provisions, a person who qualifies as having a mental impairment is not convicted of the criminal charge and not dealt with through the correction system, but, if the court declares the person liable to supervision, that person is so liable. That may involve immediate discharge or release into the community, or it may involve detention in the health system. Statistics show that a number of serious offenders have received the benefit of these provisions—persons charged with murder, robbery with offensive weapons, rape, stealing, endangering life, violent unarmed robbery, dealing with heroin, and the like: the whole criminal catalogue.

However, these persons, as I say, are not convicted of any criminal offence. Will the minister assure the chamber that DNA samples taken from a person at the stage when they are a suspect, but who are subsequently dealt with under the mental impairment provisions and therefore not convicted of any criminal offence, are destroyed; or, if not destroyed, what is the policy of the police in relation to these offences?

The Hon. P. HOLLOWAY (Minister for Police): I will take that question on notice. It may involve the Attorney in relation to interpreting that particular law. I will take the question on notice and bring back a reply for the honourable member. Obviously, later this year parliament will be dealing with DNA laws, as I have indicated in answer to previous questions. If there are problems in that area, obviously that is a matter which could be considered at that time.

SEAGRASSES

The Hon. J. GAZZOLA: I seek leave to make a brief explanation before asking the Minister for Environment and Conservation a question about seagrasses.

Leave granted.

The Hon. J. GAZZOLA: South Australians are becoming increasingly aware that our seagrasses are disappearing and that this has a consequence for our coast and our fishing-related industries. Seagrasses are important in stabilising sediment and therefore in reducing wave action on our coasts. They are also essential for the marine ecosystems, and I understand that 40 times more animal life occurs in seagrass than in adjacent bare sand.

The Hon. Sandra Kanck: More seagrass means more fish.

The Hon. J. GAZZOLA: Yes, that is right.

An honourable member interjecting:

The Hon. J. GAZZOLA: Yes, thank you; you have to catch them first. Seagrasses can justly be called marine forests as they play an essential role in the marine chain of life. Seagrasses are nurseries for whiting, flathead and squid—and I am sure you remember what they are, Mr President—and therefore are economically important.

The Hon. Carmel Zollo: When was the last time you caught any?

The Hon. J. GAZZOLA: Last Sunday. What is being done about the loss of seagrasses off the Adelaide coast?

The Hon. G.E. GAGO (Minister for Environment and Conservation): I thank the honourable member for his important question, and I am sure that he is grateful for all the assistance he received in giving his explanation. I am pleased to inform the council that the Department for Environment and Heritage and the South Australian Research and Development Institute have been working collaboratively over the past three years to find methods of restoring seagrasses. Seagrass, as the honourable member said in his explanation, is a very important part of the marine eco-system, and one that has been under threat for many decades. Seagrasses make a significant contribution to the nutrient cycle of marine eco-systems as well as providing important fish nursery areas and habitat for many species, and its loss therefore affects ecological processes as well as other species, including economically important fish species. Seagrass beds also provide an important buffer for our coasts by trapping sediment and keeping the sea bed shallower by about one metre. Without the seagrass cover, the sea bed becomes eroded and near-shore wave energy increases, often causing beach instability.

The restoration project I would like to talk about today is a world first in restoring seagrasses along metropolitan coasts using hessian sacking—the good old hessian bag, almost—and initial results have been very promising. The focus is on methods that enhance natural recruitment for seagrasses on the sea bed rather than transplanting seedlings, which elsewhere has caused damage to healthy beds during attempts to repair eroded beds. I am pleased to report that large numbers of seagrass seedlings have established themselves in the trial site, and I am advised that in 2005-06 the trials have been expanded to a number of locations along our metropolitan coast. The plan is to restore seagrasses over a one hectare site in 2006-07, with a view to undertaking larger restoration works over a large area if the method proves viable.

I am informed that over 5 000 hectares of seagrasses have been lost off the Adelaide metropolitan coastline over the past 50 years, due mainly to the combined effects of urban pollutants and nutrients entering the marine environment. This government has worked hard on reducing the nutrient loads flowing into the sea from drains and stormwater, and I am advised that seagrass losses are now slowing down. The 2003 State of the Environment Report stated that pollutant loads in waste water discharge into St Vincent Gulf are decreasing; however, the natural regeneration of our seagrass meadows is likely to take decades, because as seagrass meadows thin the surrounding environment becomes unstable and the seedlings are unable to implant and establish themselves effectively. This method, using hessian bags, is aimed at speeding up the recovery process. It is also cheaper and quicker, and an environmentally sustainable method of aiding seagrass recovery—unlike projects overseas that involved the plantation and transfer of seedlings. On World Oceans Day I am very proud to inform the council about this important trial.

The Hon. M.C. PARNELL: I have a supplementary question. Is it the government's target to replace all the 5 000 hectares of seagrass that were lost? If not, what is the government's targeted proportion of replacement?

The Hon. G.E. GAGO: The government will be watching the results of this trial very closely to see how effective this technique is. We will review further plantations pending the outcome of that trial.

KANGAROO ISLAND FERRY

The Hon. SANDRA KANCK: I seek leave to make an explanation before asking the Minister for Police, representing the Minister for Transport, a question about the Kangaroo Island ferry.

Leave granted.

The Hon. SANDRA KANCK: Kangaroo Island residents have expressed concerns at the high cost of ferry transport across Backstairs Passage and the negative effect this is having on virtually every aspect of island life. There is a strongly held view that the monopoly operator could be offering more efficient and cheaper services, particularly if there was competition. Faster vessel turnaround times are being achieved by larger, more efficient vessels elsewhere but, because of the slow turnaround at Penneshaw, the current operator has exclusive access to the berth. However, it is believed that a 15 to 20-minute window would be more than adequate to meet maritime safety requirements. My questions to the minister are:

1. Are there any plans or proposals under consideration by the minister or his department to extend the current contract past its original expiry date?

2. Has the minister or his department considered a review of the 60-minute fairway exclusion time and, if so, is there scope for further development of other roll-on, roll-off berth facilities? If so, would the government facilitate its development under the same terms as that of the current contract?

3. Are there plans to implement any of the Brown and Root report findings? If so, which of them and when?

4. What were the outcomes of the Hassell review conducted into the Cape Jervis and Penneshaw facilities and are there any plans to implement any of the findings? If so, which and when?

5. Who owns the current mooring structures and what are the rights of access over the current operator's seabed lease?

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

GULFVIEW HEIGHTS

The Hon. J.S.L. DAWKINS: I seek leave to make a brief explanation before asking the Minister for Road Safety a question about traffic congestion at Gulfview Heights.

Leave granted.

The Hon. J.S.L. DAWKINS: I have become increasingly aware of community frustration about traffic congestion at the junction of Wynn Vale Drive and Bridge Road at Gulfview Heights. This junction is used extensively by residents of Gulfview Heights and by many other people travelling to Golden Grove and local schools in the area. Many residents have said that existing traffic controls at this junction are inadequate for the large amount of traffic that uses the junction, particularly at peak times. During peak hour, traffic builds up on both Wynn Vale Drive and Bridge Road. Drivers wanting to turn left onto Bridge Road have a poor line of sight due to vehicles waiting to turn right from Wynn Vale Drive. As a result, traffic clears slowly and on numerous occasions there are near misses due to the poor line of sight.

In addition, vehicles attempting to turn right onto Wynn Vale Drive reduce the movement of vehicles travelling north to one lane as there is a right-turn lane at the junction. Many residents have expressed their concern that a serious accident will occur if action is not taken to improve the junction. I wrote to the Minister for Transport (Hon. Pat Conlon) in August last year as a result of this community concern. While the Department for Transport, Energy and Infrastructure subsequently conducted a review of traffic conditions, it has determined that no action is necessary.

In almost identical letters to me on 17 November 2005 and 2 January this year, transport parliamentary secretary Michael O'Brien indicated that this site is considered to be operating satisfactorily in its present layout at this time. Any resident of Gulfview Heights or neighbouring suburbs who use these roads every day can testify that this junction is not operating satisfactorily in its present layout. My questions are:

1. Will the minister investigate the current layout of the junction from a road safety perspective?

2. Will she consider the installation of traffic signals at this potentially dangerous junction?

The Hon. CARMEL ZOLLO (Minister for Road Safety): The honourable member has raised a matter that clearly has a history going back a year or so, at least. I need to take advice from the department and see exactly what it has done in the past and whether any further reviews or investigations can take place, and whether they are eligible for something like Black Spot funding. I really do need to take some advice from the department and bring back a response for the honourable member.

WINTER DEMAND MANAGEMENT STRATEGY

The Hon. G.E. GAGO (Minister for Environment and Conservation): I lay on the table a ministerial statement on winter demand management strategy made today by the Minister for Health in another place.

FILM INDUSTRY

The Hon. I.K. HUNTER: I seek leave to make a brief explanation before asking the Minister Assisting the Minister for Multicultural Affairs a question about the South Australian film industry.

Leave granted.

The Hon. I.K. HUNTER: The South Australian government has a significant investment in the South Australian Film Corporation. Does the film corporation ensure that South Australia's cultural diversity is appreciated through the production of its films?

The Hon. CARMEL ZOLLO (Minister Assisting the Minister for Multicultural Affairs): I thank the honourable member for his brief explanation and important question. The South Australian government has been providing substantial support for the film industry through the South Australian Film Corporation for many years. Members may also recall that in 2002 the Premier of South Australia launched the Adelaide Film Festival's investment fund, which has been providing even more support to our local industry. The Adelaide Film Festival not only showcases the best of international screen culture but also invests in new and innovative Australian works for premiere at the biennial Adelaide event. This new initiative is already bearing fruit, as has been demonstrated through the recent success of the film *Ten Canoes* at the Cannes Film Festival.

The Adelaide Film Festival has announced the first eight projects commissioned by the festival investment fund to be screened at the 2007 festival. The film *Lucky Miles* is one of these projects and is scheduled to premiere at the Adelaide Film Festival next year. *Lucky Miles* is the story of three men—one from Cambodia, one from Indonesia and one from Iraq—who become lost in the Australian desert searching for western-style democracy amongst the stones of the Pilbara. This feature film has been described as a gentle comedy about difference, distance and dud maps. Filming for *Lucky Miles* will occur in several locations around South Australia and will involve actors from relevant ethnic communities.

Council members will be pleased to know that this South Australian initiative is providing additional opportunities for members of those communities. As the Minister Assisting the Minister for Multicultural Affairs I am delighted to inform the council that the producer of the film at the South Australian Film Corporation has been working with Multicultural SA to ensure that members of the communities are aware of the opportunities to be involved in this exciting production. It is important that collectively stories about Australia reflect our cultural diversity. The medium of art is one that can cross all cultures and this film will, in its own way, help us better understand who we are whilst also entertaining us. I am sure members of the council welcome this initiative and look forward to seeing the film at its premiere at next year's Adelaide Film Festival.

CLARE AMBULANCE CENTRE

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning a question about the Clare ambulance centre.

Leave granted.

The Hon. CAROLINE SCHAEFER: I will quote in part from an article that appeared in *The Argus*, the local newspaper in Clare, last week as follows:

> The state government's Development Assessment Commission has given approval for a new South Australian ambulance centre to be built on the Clare hospital grounds in front of Kara House.

As members would know, Kara House is the nursing home aged care facility attached to the hospital at Clare. It continues:

> The progress of the new centre went under the community's radar when building approval was taken out of the local panel's hands, because it will be on Crown land. The Clare and Gilbert Valleys Council Development Assessment Panel's initial view on the matter was that it was not happy with the proximity of the new ambulance depot to Kara House (adjacent to the Clare Hospital) and it being in a residential street.
>
> Although the SA Ambulance project manager Phillip Scadding said, earlier this year, the panel's comments would be taken on board, minimal changes have been made to the location of the building. The history of the development began when the council negotiated with the state government, through the Clare Hospital last year, to purchase a block of land abutting New Road [which is a different position] to co-locate the CFS, SES and SA Ambulance services. SA Ambulance found it would not have enough space on the development and chose to look for an alternative site.

I have since received correspondence from a number of Clare citizens. Again, I will quote randomly from one of those letters. The letter states:

> Many members of the Clare community are concerned at the manner in which the SA Ambulance Service were granted permission to erect a new facility on hospital grounds against the wishes of the local residents and against the recommendations of the local council—our elected representatives. This organisation (SA Ambulance) claims to be a semi-government entity and by-passed the local council to change the decision originally given against it. . . The people of Clare are hurt and disappointed that the democratic procedures and discussions so necessary for community welfare have been circumvented. . . We were not even advised of the impending judgment. We are concerned this will happen again and so gradually erode the decisions that affect our destiny and our town will be run by those who do not live here.

My questions are:

1. Why did the Development Assessment Commission ride roughshod over community wishes?
2. Why was there no public consultation?
3. Has the title of this Crown land been transferred; and, if so, to whom?
4. Will there be any public announcement explaining the Development Assessment Commission's and/or government's actions?
5. Do the people of Clare have any right of appeal over this decision?

The Hon. P. HOLLOWAY (Minister for Urban Development and Planning): Those questions involve a particular decision, apparently made by the independent Development Assessment Commission. I will seek advice from the department. I am not sure whether or not it was a Crown development; and that may explain why it went to the DAC. I will obtain the information and bring back a response.

ADELAIDE HILLS

The Hon. R.P. WORTLEY: My question is to the Minister for Urban Development and Planning. Will the minister provide details of changes to planning rules relating to wineries in the Adelaide Hills?

The Hon. P. HOLLOWAY (Minister for Urban Development and Planning): I can announce to the chamber that the government has approved new planning rules to allow controlled growth of best practice wineries, cellar doors and associated restaurants in the Adelaide Hills and surround-

ing areas. The new rules are aimed at boosting the local Adelaide Hills economy and contributing to the further development of South Australia as the wine state and a wine tourism destination. The changes will see more wineries allowed under strict conditions within the Mount Lofty Ranges watershed area. They follow extensive environmental and economic studies and stakeholder and industry consultation conducted over the past four years, and a formal public consultation process conducted last year through the release of a draft plan amendment. Until now only 10 wineries have been allowed in the watershed area. Eight are already established and two more were provided for as part of a 2001 decision but are not yet established. They are able to expand subject to siting and design parameters.

Under the changes, further new wineries will be allowed subject to stringent conditions, including size restrictions; the need for winemaking, bottling and storage facilities to be in enclosed buildings; and for strict waste water and spill measures to be in place. The changes will be implemented by amending policy in the development plans of nine affected councils: the Adelaide Hills, Alexandrina, a small part of the Barossa, Mount Barker, Onkaparinga, Playford, Tea Tree Gully, Victor Harbor and Yankalilla. The hills face zone is not affected by these changes. The key points of the changes include:

- a consistent set of rules based on the Adelaide Hills wine region, irrespective of council boundaries;
- new wineries and cellar doors to be allowed in the Adelaide Hills;
- stringent controls placed on the establishment of any wineries in the watershed area, including size restrictions, the need for winemaking, bottling and storage facilities to be enclosed in buildings, and for waste water and spill measures to be in place;
- size, siting and other strict conditions to also apply to any ancillary development, such as cellar doors and restaurants;
- the proposed conditions follow a comprehensive independent risk assessment conducted for the EPA and overseen by CSIRO Land and Water;
- other state government and local council rules and licence requirements outside the planning system also apply, such as the need to acquire water licences, meet building and fire regulations, meet liquor licensing requirements, and meet EPA standards and other regulations;
- winery development expected to result from this process would be smaller, boutique wineries.

Further information about the changes, the PAR process and the consultation conducted can be obtained from the Planning SA web site.

REPLY TO QUESTION

COUNTRY FIRE SERVICE

In reply to **Hon. J.S.L. DAWKINS** (10 May).

The Hon. CARMEL ZOLLO: I advise that: A total of nine paid CFS personnel are employed in Region 2. This includes three staff who are employed in a part time capacity.

SUPERANNUATION (ADMINISTERED SCHEMES) AMENDMENT BILL

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

The Hon. P. HOLLOWAY (Minister for Police): I move:

That this bill be now read a second time.

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

Leave granted.

This Bill seeks to establish the legislative framework that will enable a superannuation scheme that is wholly or substantially funded by money provided by the South Australian Government, to have its administrative functions transferred to Super SA which is the administrative branch of the Department of Treasury and Finance specialising in the administration of the government's mainstream superannuation schemes. The legislation will also enable the trustees of these 'qualifying schemes', as they are described in the Bill, to elect to have the assets of the superannuation fund invested and managed by the Superannuation Funds Management Corporation of South Australia (known as Funds SA), and the responsibility for the fund and scheme taken over by the South Australian Superannuation Board (often referred to as the Super SA Board).

The principal provisions contained in this Bill, that is those that will establish the legislative framework for dealing with schemes that become 'administered schemes', will amend the *Superannuation Act 1988*. The 'administered schemes' provisions will be contained in a new schedule–Schedule 3–to be inserted into the *Superannuation Act*. The Bill also seeks to make some consequential amendments to the *Superannuation Funds Management Corporation of South Australia Act 1995*, as a result of the arrangements proposed in the Bill. The Bill also contains some minor technical or operational amendments to the *Superannuation Act*.

The legislative framework to be established by this Bill will enable any 'qualifying scheme' to be declared by the Minister as being a superannuation scheme:

- taken to be established under the *Superannuation Act*;
- administered by Super SA;
- with Funds SA as its fund manager; or
- the Trustee of which is the South Australian Superannuation Board.

A 'qualifying scheme' is defined in the legislation to be one where the operations of the employer of the members of the scheme are wholly or substantially funded by money provided by the Government of the State, an agency or instrumentality of the Crown, or some other public authority prescribed by regulations.

There is already one superannuation scheme that has indicated to the Government that it wishes to transfer its administrative functions to Super SA, and have the trustee responsibilities transferred to the South Australian Superannuation Board. The scheme is the South Australian Ambulance Service Superannuation Scheme. Whilst the SA Ambulance Service Scheme is the only scheme at this stage where the trustees have already made a decision about wishing to have the scheme transferred to the government administrator as soon as possible, it is likely that trustees responsible for other schemes will consider taking similar action.

The trustees of the SA Ambulance Service Superannuation Scheme and the SA Ambulance Service Board have already made a decision to hand over the responsibility of administering the scheme because of the ever increasing complexity in dealing with superannuation by trustees who are not full time superannuation professionals. The ever increasing costs of administering a scheme in the Commonwealth regulated environment has also had an impact on the trustees' decision.

The South Australian Superannuation Board and Super SA administer the State Pension Scheme, State Lump Sum Scheme, and the Triple S Scheme, which provide superannuation benefits for government employees. The South Australian Superannuation Board and Super SA have developed considerable expertise in scheme administration, and have a scale of operation that enables extremely competitive superannuation services to be provided to scheme members. It is expected that by moving the administration of the SA Ambulance Service Superannuation Scheme over to Super SA and the South Australian Superannuation Board, there will be a considerable reduction in the taxpayer money currently spent on

administering the scheme.

The Bill provides for the possible staged or phased transition of a 'qualifying scheme' in moving over to be administered by Super SA and the South Australian Superannuation Board. The reason for this is to provide the maximum flexibility in handling the transition. For example, the current plan is to have the SA Ambulance Service Superannuation Scheme administered by Super SA as from 1 July 2006. With the planned transfer to Super SA of a scheme with around 1000 members on 1 July 2006, Super SA would not have the resources necessary to handle the transfer of any other large scheme at the same time. However, a scheme may still wish to have a declaration made by the Minister in terms of clause 2 of Schedule 3 under the Bill, declaring that as from 1 July 2006, the scheme and its associated fund will be a fund and scheme established under *Superannuation Act*. Whilst a declaration in these terms will not in itself transfer the administration of the scheme to Super SA nor the Superannuation Board, it will bring immediate benefits in that the scheme will be an 'exempt public sector scheme' in terms of the *Superannuation Industry (Supervision) Act 1993* (Cth). As an 'exempt public sector fund', the trustees will not have to be licensed in terms of the *Superannuation Industry (Supervision) Act*, and will not have to pay the high fees associated with being licensed. One of the conditions of a scheme or fund being declared as being established under this legislation, is that it will be required to be audited by the Auditor-General.

The extent of the transfer will be a matter to be determined by the relevant trustee board in conjunction with the Minister. The trustees are of course bound by their trust law responsibilities to always act in the best interests of scheme members and to operate within the provisions of the trust deed and rules of the particular scheme. Accordingly, a board of trustees will always seek to ensure that their members and the employer support being declared an administered scheme before seeking such a declaration from the Minister.

The Bill will also establish a facility for the transfer of the scheme assets to Funds SA, the manager of State Government superannuation investments, so that Funds SA can manage the scheme assets. The transfer of the fund assets to Funds SA will be subject to a decision of the relevant trustee.

In line with the proposal that Super SA be able to provide the full range of administrative services to any scheme that is transferred to it, the Bill also provides the legislative power, subject to the Minister's approval, for Super SA to provide death and disability insurance arrangements for members of an administered scheme. Super SA already has established insurance arrangements, which includes an insurance pool for members of the Triple S Scheme. Any proposed insurance arrangement for an administered scheme under this legislation would however, not necessarily be part of the established Triple S insurance pool, and in any case, would need to take into account the actuarial experience of the particular scheme.

The Bill will require Super SA to maintain proper financial accounts in respect of each scheme that is declared by the Minister to be administered or managed by Super SA. Any administered scheme will be required to have its financial accounts and operations audited by the Auditor General on an annual basis. The legislation also requires Super SA to submit an annual report to the Minister on the operation of the legislation in relation to any administered scheme. The report will be required to be tabled in the Parliament.

The Bill also provides for some minor technical amendments to be made to the *Superannuation Act*. In particular, some amendments are being made to the provisions of Section 56 of the Act, which was intended to give the SA Superannuation Board the power to resolve any doubt or difficulty that arises in the application of the Act to particular circumstances. There have been difficulties for the Board in using the Section 56 as originally intended as the Crown Solicitor has advised that the provision does not give the Board any powers to deal with a matter in a manner that may cause conflict with an express provision of the Act. The proposed amendments to Section 56 will address the current technical and legal issues associated with the current provision. The new provisions will enable the Board to address issues and particular circumstances that may arise and are not dealt with in the Act, and also extend a time limit or waive a procedural step under the Act in certain circumstances. A further minor amendment is being made to the confidentiality provisions of the Section 55 of the Act to make it clear that information of a personal or private nature is also protected by the confidentiality provisions.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

This clause is formal.

2—Amendment provisions

This clause is formal.

Part 2—Amendment of *Superannuation Act 1988*

3—Amendment of section 4—Interpretation

A number of definitions in section 4 of the *Superannuation Act 1988* are amended so that the defined terms do not include administered schemes or members of administered schemes.

4—Amendment of section 20B—Payment of benefits

Section 20B, which says that benefits or entitlements under the Act must be paid out of the Consolidated Account, is amended so that it does not apply in relation to administered schemes.

5—Amendment of section 43AB—Purpose of Part

Section 43AB provides that the purpose of Part 5A of the Act is to facilitate the division under the *Family Law Act 1975* of the Commonwealth of superannuation interests between spouses who have separated. The section as amended by this clause will make it clear that the purpose does not extend to interests arising under administered schemes.

6—Amendment of section 55—Confidentiality

This clause amends the confidentiality provision of the *Superannuation Act 1988* to take into account the addition to the Act of Schedule 3 (Administered schemes). The section presently prohibits the divulgence of information as to the entitlements or benefits of any person under the Act. An additional amendment expands this prohibition to include information of a personal or private nature.

7—Amendment of section 56—Resolution of difficulties

Section 56 provides that the South Australian Superannuation Board may give directions to resolve any doubt or difficulty that arises in the application of the Act to particular circumstances and that the Act will apply subject to such a direction. The first amendment made by this clause gives the Board the power to give such a direction where the provisions of the Act do not address particular circumstances. A direction made by the Board under the provision will have effect according to its terms.

This clause also inserts a new subsection that allows the Board to extend a time limit or waive compliance with a procedural step. New subsection (3) lists matters that the Board should have regard to in determining whether to extend a time limit or waive compliance with a procedural step.

8—Amendment of section 59—Regulations

This clause amends section 59, which provides for the making of regulations, so that a regulation may provide that a specified provision of the Act does not apply in prescribed circumstances. Such a regulation may be expressed to be subject to conditions.

9—Amendment of Schedule 1A—Provisions relating to other public sector superannuation schemes

Clause 1 of Schedule 1A provides that the Governor may make regulations in respect of certain matters pertaining to public sector superannuation schemes. This clause substitutes a new subclause (2), removing the existing requirement in clause 1(2)(b) that the Governor may not make a regulation under subclause (1) unless the relevant employer is one of a specified group of employers.

10—Insertion of Schedule 3

Clause 10 inserts a new Schedule. Schedule 3 provides for administration under the Act of certain superannuation schemes.

Clause 1 provides definitions of a number of terms used in Schedule 3. A ***superannuation scheme*** is a public sector or private sector scheme that is established for the purpose of providing superannuation or retirement benefits. Schemes established under another part of the *Superannuation Act 1988* or under another Act are excluded from the definition. ***Super SA*** is the agency or body designated from time to time by the Minister by notice in the Gazette as being the entity primarily involved in assisting in the administration of public sector superannuation schemes within South Australia. An ***administered scheme*** is, for the purposes of Schedule 3, a superannuation scheme that is within the ambit of a declaration under clause 2.

Clause 2 provides that the Minister may, by notice in the Gazette, declare that Schedule 3 applies to, or in relation to, a superannuation scheme in one or more of the following respects:

- that the superannuation scheme and its associated fund will be a scheme and fund established under the Act;
- that the superannuation scheme will be administered by Super SA;
- that the superannuation fund will be invested and managed by Funds SA;
- that the superannuation scheme and its associated fund will have the South Australian Superannuation Board (***the Board***) as its trustee.

A declaration may not be made by the Minister unless the superannuation scheme is a qualifying scheme and the Minister is acting on the basis of an application by the trustee of the scheme. A superannuation scheme is a ***qualifying scheme*** if the operations of the employer of the members of the scheme are wholly or substantially funded by money provided by the Government, an agency or instrumentality of the Crown or a prescribed authority.

An application made by the trustee of a scheme must be made in a manner and form determined by the Minister. If the trustee of the scheme is a body corporate with three or more directors, the application must be made pursuant to a special resolution of the directors. If the trustee of the scheme has three or more trustees, the application must be made pursuant to a special resolution of the trustees.

A declaration that a superannuation scheme and its associated fund will be taken to be established under the Act has the effect of establishing a new scheme in place of the scheme to which the declaration relates. The new scheme has the same assets, the same trustee or trustees and the same members and benefits (subject to other provisions of Schedule 3 and future variations or changes in membership).

Under **clause 3**, each administered scheme is to have a trust deed and a set of rules. The trust deed and rules will be contained in instruments recognised by the Minister by notice in the Gazette. A trust deed or rules may be varied in accordance with the terms of the deed or rules.

Clause 4 provides that after a declaration has been made by the Minister under clause 2, the trustee of the relevant superannuation fund may, by instrument in writing, transfer any assets of the scheme to Super SA so that the assets may be administered or managed under Schedule 3. A monetary asset received under this clause must be paid into a fund established for the purposes of the administered scheme under Part 3 of the Schedule.

Clause 5 provides that the Superannuation Funds Management Corporation of South Australia (***the Corporation***) must for which it is to be the fund manager establish a fund for the purposes of an administered scheme. The assets of a fund established under the clause must be held for the benefit of the relevant superannuation scheme and the beneficiaries of that scheme, and will not belong to the Crown.

A fund will be subject to management of the Corporation. The trustee of the scheme will be responsible for setting risk/return objectives and the Corporation will be responsible for strategic asset allocation policies. Any disagreements will be determined by the Minister. The Corporation may enter into transactions affecting the fund for the purposes of investment or for purposes incidental, ancillary or otherwise related to investment. However, the Corporation must not act in a manner that is inconsistent with any determination of the trustee of the relevant superannuation fund with respect to the management, control or investment of the fund.

Superannuation SA must pay into a fund established under the clause all contributions received for the purposes of the relevant superannuation scheme. All interest and accretions arising from the investment of the fund must be paid into the fund. All benefits paid under the relevant superannuation scheme must be paid from the fund.

The Corporation is required to pay from a fund established under the clause administrative costs and other expenses related to the management and investment of the fund by the Corporation and administrative charges payable under clause 11 (Fees).

The Corporation is also required to determine the value of a fund established under the clause at the end of each financial year.

Clause 6 provides that the Corporation must, at the request of the trustee of an administered scheme, divide a fund established for the purposes of the scheme into two or more distinct divisions, and further divide a distinct division into subdivisions. Different divisions or subdivisions of a fund may be invested in different ways, and different rates of return may apply to different divisions or subdivisions.

Clause 7 provides that Super SA may establish and maintain contribution accounts in the names of members of an administered scheme and in the name of the employer of the members of the scheme. Super SA may credit and debit contribution accounts in accordance with the terms of the relevant superannuation scheme or otherwise to reflect the operation of Schedule 3. Super SA may also provide for rates of return to be reflected in contribution accounts on the basis of a determination of the trustee of the scheme.

Clause 8 provides that Super SA may establish and maintain arrangements that provide members of one or more administered schemes with death, disability or other forms of insurance.

The terms and conditions of insurance established under this provision may be included in the rules of an administered scheme or prescribed by regulation.

The clause also provides that Super SA may, in establishing and maintaining insurance—

- establish a pool of funds or other assets that relate to more than one administered scheme;
- invest any funds or other assets as it thinks fit;
- enter into insurance or re-insurance arrangements with other entities;
- establish arrangements, provide or offer benefits, or set premiums or other terms or conditions, that vary between different administered schemes, or different classes of members of administered schemes;
- undertake any activity through the Minister (as a body corporate), the Board, the Superannuation Funds Management Corporation of South Australia, or any other entity determined by Super SA after consultation with the Minister;
- take such other action that is necessary or expedient for the purposes of providing insurance.

Under **clause 9**, Super SA is required to do the following in respect of each financial year and in relation to each administered scheme:

- maintain proper accounts of amounts paid to Super SA for the purposes of the scheme;
- maintain proper accounts of payments to, on behalf of, or in respect of, members of the scheme;
- maintain proper accounts of any other associated receipts or payments;
- prepare financial statements in relation to those receipts and payments.

The Auditor-General will audit the accounts and financial statements prepared by Super SA, and the accounts of other administered schemes, on an annual basis, or will be able to arrange for an auditor to act in his or her place. The clause also provides that the Auditor-General may, at any other time, audit the accounts and financial statements of Super SA under Schedule 3, or of an administered scheme within the scope of Schedule 3.

Clause 10 requires Super SA to provide a report on the operation of Schedule 3 in relation to any administered scheme declared under clause 2 to be a scheme that will be administered or managed by Super SA. A report is to be prepared in conjunction with each annual report of the Board under the Act and must include the following:

- a copy of any accounts or financial statements that are required to be audited under Schedule 3 in respect of each relevant scheme for the financial year to which the annual report relates;
- if a fund established under Part 3 Division 1 of Schedule 3 has been in existence in respect of any part of that financial year—a copy of the audited accounts and financial statements for that fund provided by the Corporation.

The trustee of an administered scheme that is within the ambit of a declaration under clause 2 that does no more than declare that the superannuation scheme and its associated fund will be taken to be established under the *Superannuation Act 1988* must, on or before 31 October in each year, furnish to the Minister the trustee's annual report for the scheme for the financial year ending on 30 June in that year.

The Minister must have copies of any report received under this provision laid before both Houses of Parliament within six sitting days after receiving the report.

The provision also requires Super SA to report in accordance with any requirements imposed on Super SA under the rules of an administered scheme, or under the regulations.

Clause 11 provides that the Minister may establish and impose an administrative charge in connection with Super SA acting as manager of an administered scheme. Also, the Board may, after consultation with the Minister, establish and impose an administrative charge in connection with the Board acting as trustee of an administered scheme.

The Minister or the Board may—

- fix different charges with respect to different funds or different circumstances;
- recover charges imposed under clause 11 from any fund of an administered scheme or, if the trust deed of the administered scheme so provides, from any employer of any members of an administered scheme;
- arrange for contribution accounts to be debited to reflect charges (if any) imposed under clause 11;
- vary charges from time to time.

Clause 12 provides that the Minister may, by notice in the Gazette, revoke a declaration relating to an administered scheme, and may transfer the assets of any relevant fund in order to give effect to this change in circumstances.

Under **clause 13**, no stamp duty is payable in respect of a transfer of assets connected with, or arising out of, the operation of Schedule 3. There is no obligation under the *Stamp Duties Act 1923* to lodge a statement or return relating to a transfer of assets connected with, or arising out of, the operation of Schedule 3, or to include in a statement or return a record or information relating to such a matter.

Clause 14 provides for the making of regulations of a saving or transitional nature in relation to a declaration by the Minister under Schedule 3. Such regulations may modify the provisions of the Schedule in their application to a particular scheme and may operate prospectively or retrospectively from a date specified in the regulation.

Schedule 1—Related amendments and transitional provision

Part 1—Amendment of *Superannuation Funds Management Corporation of South Australia Act 1995*

1—Amendment of section 3—Interpretation

This amendment to section 3 of the *Superannuation Funds Management Corporation of South Australia Act 1995* substitutes a new definition of ***the funds***. The new definition refers to "the funds (if any) established by the Corporation for the purposes of Schedule 3 of the *Superannuation Act 1988*".

2—Amendment of section 5—Functions of the Corporation

This clause amends section 5 to provide that it is a function of the Corporation to invest and manage funds established by the Corporation for the purposes of the operation of any Act in accordance with strategies formulated by the Corporation.

3—Insertion of section 20B

New section 20B provides that the Corporation must prepare a plan in respect of the investment and management of any fund established by the Corporation for the purposes of Schedule 3 of the *Superannuation Act 1988*. The Corporation must consult with the trustee of the relevant superannuation scheme when preparing a plan, or when preparing an amendment to a plan.

4—Amendment of section 26—Accounts

This clause amends section 26 of the Act to require the Corporation to keep proper accounts of receipts and payments in relation to each fund established by the Corporation for the purposes of Schedule 3 of the *Superannuation Act 1988* and must prepare separate financial statements in respect of each fund in respect of each financial year.

Part 2—Transitional provision

The transitional provision applies in relation to proposed new section 56(2) and (3) of the *Superannuation Act 1988*, inserted by clause 7. Under section 56(2), the Board will have the power to extend a time limit or waive compliance with a procedural step. In determining whether to do so, the Board should have regard to certain matters listed in section 56(3). As a consequence of this transitional provision, section 56(2) and (3) are not to apply with respect to a matter where a relevant time limit expired, or a procedural step was required to be taken, before the commencement of the transitional provision unless the Board is satisfied in a particular case that the failure to comply with the time limit or procedural step was attributable to a person's physical or mental disability.

The Hon. D.W. RIDGWAY secured the adjournment of the debate.

STATUTES AMENDMENT (ROAD TRANSPORT COMPLIANCE AND ENFORCEMENT) BILL

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

The Hon. P. HOLLOWAY (Minister for Police): I move:

That this bill be now read a second time.

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

Leave granted.

The *Statutes Amendment (Road Transport Compliance and Enforcement) Bill 2006* introduces model national legislation into South Australia through amendments to the *Road Traffic Act 1961* and the *Motor Vehicles Act 1959* and makes consequential amendments to the *Summary Offences Act 1953*.

Over the last five years industry, traffic police and transport agencies across Australia have been working under the leadership of the National Transport Commission (NTC) to develop model national legislation which will make the road transport industry safer and, through uniformity, promote some greater efficiency. The Australian Transport Council, comprising Transport Ministers from around the country, approved the model legislation in November 2003. It has been implemented in New South Wales and Victoria already. Other jurisdictions will follow in 2006.

In the highly competitive road transport industry, commercial pressures can significantly impact on road safety. With road freight expected to double over the next twenty years, it is likely these commercial pressures will increase. The new legislation focuses on achieving better safety outcomes in the heavy vehicle industry by improving compliance with road transport laws – and improving the ability of police, transport inspectors and the courts to enforce the law when it is breached.

The Department for Transport, Energy and Infrastructure ("the Department") has been an active participant in the development of the new legislation. In 2002-2003 it consulted with stakeholders through over 25 metropolitan and regional information sessions and distributed 1 500 information kits across the State.

This consultation has helped to ensure that the legislation is relevant to South Australia, and balances business needs with the community's concerns about improving road safety. The legislation represents sensible reform that will achieve real results in improving road safety across the heavy vehicle industry.

Recognising that jurisdictions have different criminal justice policies, the national model legislation was designed with 'essential' and 'desirable only' provisions. Jurisdictions are obliged to implement all the essential elements and the desirable elements if they match the jurisdictions' existing criminal justice framework. Importantly, South Australia will be adopting all desirable and essential elements. The Government's view is that the benefits of the reform to South Australia will be maximised if the national model is implemented in full.

Chain of responsibility

The legislation recognises that the conduct of drivers on the road is often controlled or influenced by the actions, inactions or demands of customers and other parties off the road. Commercial pressures from off-road parties, for example, can lead to deliberate or inadvertent breaches of the law.

A key feature of the legislation is the 'chain of responsibility' provisions that will ensure that all players in the road freight industry who have control over activities affecting compliance with heavy vehicle laws share responsibility for breaches of those laws. To this extent, the legislation will have an impact that will reach beyond road transport operators and drivers.

For example, manufacturers, primary producers, shipping agents or importers who consign or receive goods by road transport could be jointly liable with the heavy vehicle operator or driver if they know the heavy vehicle is overloaded, or ought to know that, particularly if profiting because of the overloading, and fail to take reasonable steps to prevent the overloading.

The application of the chain of responsibility principle in this Bill is more comprehensive than in other State legislation. It imposes more robust obligations through the reasonable steps defence, and is backed up by a broad suite of stronger enforcement powers, better evidentiary tools and an improved range of sanctions and penalties.

These new provisions will form the basis not only of a chain of responsibility for mass, dimension and load restraint laws contained in this Bill but also for future chain of responsibility provisions relating to other areas of heavy vehicle regulation such as speeding, vehicle maintenance and design, and fatigue management. The NTC, in collaboration with state transport agencies, is already in the process of developing similar chain of responsibility provisions in these areas of law.

Reasonable steps defence

The reasonable steps defence is the principal defence provided in the legislation. To avoid being held liable for mass, dimension and load restraint breaches, all parties in the transport supply chain must demonstrate that they have taken reasonable steps to ensure their business operations have not caused or contributed to road safety breaches. The aim is for everyone who uses or is involved in road transport services to take responsibility for ensuring safety on the road. It is not intended to be an onerous burden, but it will mean taking reasonable steps to ensure that the law is obeyed. Given that drivers and operators are in a better position to be aware of the load on their vehicles, the availability of this defence for drivers and operators is limited.

Critically for the road transport industry in South Australia, this Bill includes the reasonable steps defence for drivers and road transport operators for minor breaches. This Government recognises that minor breaches should be considered in the context of the move to the new Austroads measurement adjustments which allow less margin for error than the current weighing tolerances. Viewed in this context, the inclusion of the reasonable steps for minor breaches should be accepted as a fair approach.

This is a significant issue for the road transport industry and the Government has had input and support from industry peak bodies such as the SA Road Transport Association throughout the development of this reform.

Categorisation of offences

The Bill provides for mass, dimension and load restraint offences to be categorised based upon risk to safety, public amenity and infrastructure. Under the legislation these offences may be categorised as 'minor', 'substantial' or 'severe' – with the penalties escalating according to the risk category of the breach.

A grossly overloaded vehicle, for example, is likely to cause more significant damage to road infrastructure and, in the event of a crash, is a significantly greater safety risk than a complying vehicle. Risk-based categorisation recognises that one size does not fit all.

Industry codes of practice

Consistent with the national laws, the Bill includes provisions allowing for the registration of industry codes of practice. Compliance with an industry code of practice is one way for businesses to demonstrate that they have met the reasonable steps defence.

The Government's view is that the legislative obligations on all parties in the chain of responsibility should not be overly onerous, but be capable of integration into normal business practices. Those businesses making an effort to address safety and compliance within their operations should be supported by allowing for industry codes of practice to be developed and recognised in the law. Registration of an industry code of practice gives appropriate recognition to industry for efforts made to take reasonable steps that will address safety and compliance with heavy vehicle laws.

Enforcement powers

Supporting the new chain of responsibility provisions is a suite of enforcement powers developed to provide police and transport inspectors with the ability to conduct investigations, obtain evidence of offending and address non-compliant or unsafe behaviour as soon as it is detected on the road.

The national model legislation applies these powers to heavy vehicles (vehicles with gross mass over 4.5 tonnes). However, the policy allows the enforcement powers to apply to light vehicles at the discretion of a jurisdiction. The general enforcement powers in the national model legislation cover matters such as stopping a vehicle, search and entry powers, powers to request name and address and powers to require reasonable assistance from drivers. This represents a comprehensive attempt to codify enforcement officer powers in road transport law along best practice lines.

A number of these powers exist in the South Australian legislation already and are applicable to both light and heavy vehicles and their drivers. For example, the power to stop and direct vehicles and the power to ask for details to identify the driver of a vehicle.

The Government's aim in this Bill has been to ensure that the enforcement powers for light and heavy vehicle drivers are collected together and made uniform where appropriate. This approach has been supported by SA Police.

Additional administrative and court-imposed sanctions

The Bill also provides for a wider range of administrative sanctions and court orders to deal with these offences. For example, instead of issuing an expiation notice, police officers and inspectors will be able to issue an improvement notice requiring an operator, driver or other party in the chain of responsibility to make improvements to equipment, facilities, practices or processes within a specified period. Alternatively, instead of prosecuting an offender, a formal warning may be issued for minor risk breaches where the person was unaware of the breach and it is appropriate to deal with the breach in that way.

Additionally, courts will be able to choose from a wider range of penalty options as an alternative or in addition to fines. Courts may impose any of the following:

1 a compensation order—requiring parties in the chain to pay for the cost of repair of damaged road infrastructure;

2 a commercial benefits penalty – allowing any party who has made a commercial benefit from a breach of mass, dimension or load restraint laws to be fined up to three times the amount of profit made;

3 suspension, cancellation or disqualification orders – which affect licence or vehicle registration for systematic or persistent offenders against the road laws;

4 supervisory intervention and prohibition orders – intervening in a business to address systematic or persistent offending or, if this does not work, prohibiting parties from involvement in road transport if they are a persistent offender against the road laws.

The Bill does not apply the chain of responsibility provisions to light vehicles. Also, some of the penalty options are not appropriate for application to light vehicles and have been applied only to heavy vehicles. The penalty options limited to heavy vehicles include improvement notices, commercial benefit penalties, supervisory intervention orders and prohibition orders.

Penalty levels

The nationally developed model proposes indicative penalties for offences. These were set at quite significant levels, including a five times corporate multiplier for mass, dimension and load restraint offences. Penalties in the Bill have been set at levels consistent with levels prevailing in South Australian legislation generally and the Road Traffic and Motor Vehicles Acts in particular. Penalties for bodies corporate are set higher, as in the model legislation.

In addition, the Bill increases the current expiation limit that can be set by regulation for South Australian road law offences from $350 under the Road Traffic Act and $310 under the Motor Vehicles Act to $750 and increases the default maximum penalty under the Road Traffic Act from $1 250 to $2 500.

The offences relating to breaches of mass, dimension and load restraint will apply to drivers and operators of both light and heavy vehicles, as they currently do. Current penalties are calculated on the basis of a dollar amount per kilogram over the allowable limit. If the vehicle is grossly overmass the penalty will be higher than if it is less heavily loaded. With the introduction of risk categories and penalties calculated on the basis of the percentage of overload, the penalties are likely to be higher than current penalties depending on the category of risk the breach falls into. There will be different penalties applying to light and heavy vehicles for these offences so that light vehicles will not be subject to the same level of penalty as heavy

vehicles in relation to mass, dimension and load restraint offences. It is also proposed that these offences will be expiable.

Consequential amendments to Summary Offences Act

The Bill transfers several police powers that relate to roads and vehicles but are unrelated to road traffic regulation or road safety from the Road Traffic Act to the Summary Offences Act. These are the power to search premises where a vehicle has been stolen or used without the owner's consent and the power to question a person to establish the identity of the driver of a vehicle, currently in sections 37 and 38 of the Road Traffic Act. The Summary Offences Act is the appropriate place to locate general police investigation powers. The relocation of the provisions enables the national model to be implemented more consistently in South Australia.

Implementation of legislation

This Government will conduct an intensive communication campaign immediately prior to and following commencement of the new legislation. During implementation, the Government will work closely with the transport industry, South Australian businesses and other parties who may be affected by the chain of responsibility provisions, to ensure a smooth transition to the new heavy vehicle mass, dimension and load restraint requirements. The Department has already consulted widely during the development of the national model legislation and also conducted detailed market research involving a wide array of business groups and industry sectors to ensure that information about the legislation is accessible and relevant to affected businesses.

The Department has also worked with the NTC to develop an extensive national communications strategy supporting implementation of the legislation.

Additionally the NTC has prepared guidelines and other materials that support the implementation of the legislation. This includes a series of enforcement guidelines for mass, dimension and load restraint which will assist enforcement officers in determining breaches and assessing the risk category of those breaches. This will assist in minimising confusion and inconsistency in on-road enforcement operations for the heavy vehicle industry. These guidelines will apply new Austroads measurement adjustments to replace the existing enforcement tolerances that were developed over a decade ago. The Government is intending to participate with other jurisdictions in implementing the new measurement adjustments for mass breaches on a common national implementation date of 31 March 2006.

Guidelines have also been developed to assist enforcement officers in conducting investigations along the chain of responsibility – to identify where and how enforcement action should be taken and against whom. The Government is providing resources for the development of training programs for enforcement officers to ensure there is consistent interpretation of breaches and application of penalties under the new legislation. To this end, a new investigations team has already been established in the Department and will take the lead in conducting chain of responsibility investigations once the Bill is implemented. The new team will work closely with police, workplace inspectors and equivalent interstate investigation units in conducting investigations and undertaking enforcement action. The intelligence-gathering capability of this new team will be significantly enhanced by the Department's new Safe-T-Cam initiative and the exchange of heavy vehicle enforcement information with the NSW Roads and Traffic Authority under that system.

In time, it is intended that procedures for the improved exchange of enforcement information with other jurisdictions will be developed at a national level that will be similar to those we are currently piloting with NSW.

I commend the Bill to the House.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Road Traffic Act 1961* (temporary powers related to drink driving and drug driving)

4—Insertion of section 47EAB

This clause inserts new section 47EAB, temporarily empowering police to direct a person whom they suspect of being unfit to drive a vehicle due to the consumption of alcohol or a drug to vacate a vehicle, not to drive a vehicle and to immobilise the vehicle, and give similar directions related to preventing the person from driving the vehicle, and securing the same. Section 47EAB will operate only until clause 16 of this measure comes into operation, at which point it will be repealed and the temporary power will be subsumed by the broader powers conferred under clause 14 of this measure.

Part 3—Amendment of *Road Traffic Act 1961*

5—Amendment of section 5—Interpretation

This clause proposes numerous definitional changes.

Attention is drawn to the new definitions of more general significance:

Australian road law is defined as a road law or a corresponding road law.

Road law is defined as the *Road Traffic Act 1961*, the *Motor Vehicles Act 1959* or rules or regulations under either of the Acts.

Corresponding road law is defined as a law declared under the regulations to be a corresponding road law, or if a law is not so declared for a particular jurisdiction, a road law, or applicable road law, as defined in the law of that jurisdiction that is declared under the regulations to correspond to the *Road Traffic Act 1961*.

6—Substitution of section 8A

Current section 8A is a defunct provision—exemptions are now provided for by regulation rather than by proclamation.

8—Driver's base

9—Associates

Proposed new sections 8 and 9 are also definitional provisions.

10—Act in addition to and not in derogation of other Acts

A new provision is inserted to make it clear that the principal Act is in addition to and does not derogate from other Acts.

7—Amendment of section 16—Roads under care etc of Commissioner of Highways

8—Amendment of section 17—Installation etc of traffic control devices

9—Amendment of section 18—Direction as to installation etc of traffic control devices

10—Amendment of section 19—Cost of traffic control devices and duty to maintain

11—Amendment of section 19A—Recovery of cost of installing certain traffic control devices

12—Amendment of section 21—Offences relating to traffic control devices

13—Amendment of section 31—Action to deal with false devices or hazards to traffic

Clauses 7 to 13 each make changes that are consequential only on the adoption of the new term ***road authority*** from the model uniform draft. The new term as defined is the same, in effect, as the current term (***Authority***):

- an authority, person or body that is responsible for the care, control or management of a road; or
- any person or body prescribed by the regulations for the purposes of this definition, in relation to specified roads or specified classes of roads.

14—Substitution of Part 2 Divisions 4 and 5

Part 2 Divisions 4 and 5 of the *Road Traffic Act 1961* deal with inspectors and the powers of police and inspectors. These Divisions are replaced by provisions based closely on provisions from the model uniform draft.

Division 4—Enforcement officers for Australian road laws

35—Authorised officers

The Minister is empowered to appoint authorised officers. An authorised person as defined in the *Local Government Act 1999* is to be an authorised officer for the purposes of enforcing particular provisions of the *Road Traffic Act 1961* prescribed by regulation, or exercising particular powers prescribed by regulation, in the area of the council concerned. Ferry operators are to be authorised officers. An authorised officer as defined in a corresponding road law may also be appointed as an authorised officer.

36—Exercise of powers by authorised officers

Conditions and limitations may be imposed by the Minister on the exercise of powers by authorised officers.

37—Exercise of powers by police officers

A police officer is to have the powers conferred on police officers by a road law in addition to the officer's powers under other Acts or at law.

38—Identification cards

This provision deals with the issuing of identification cards.

39—Production of identification

This provision deals with the production of identification by authorised officers and police officers when exercising powers under the *Road Traffic Act 1961*.

40—Return of identification cards

This clause provides that it is an offence (unless there is a reasonable excuse) for an authorised officer to fail to return an identification card to the Minister when requested to do so, attracting a maximum fine of $2 500.

40A—Reciprocal powers of officers

This clause provides that the Minister may enter into an agreement with a Minister of another jurisdiction in relation to the exercise of powers conferred on each jurisdiction's police officers or authorised officers under a corresponding law of the other jurisdiction.

Hence, an authorised officer or police officer of this State may, in this State or in the other jurisdiction, exercise powers conferred on authorised officers or police officers of the other jurisdiction under the corresponding law of the other jurisdiction.

The clause also sets out procedural matters relating to such an agreement.

40B—Registrar may exercise powers of authorised officers

The Registrar of Motor Vehicles is to have the powers of an authorised officer under a road law.

Division 5—General enforcement powers for Australian road laws

Subdivision 1—Interpretation

40C—Meaning of qualified, fit or authorised to drive or run engine

This clause sets out definitions of certain terms used in the Division.

A person is defined as being qualified to drive a vehicle (or to run its engine) if the person holds a driver's licence of the appropriate class to drive it that is not suspended, and is not otherwise prevented under a law from driving it at the relevant time.

A person is defined as being fit to drive a vehicle (or to run its engine) if the person is apparently physically and mentally fit to drive the vehicle, is not apparently affected by alcohol or other drug or both, has not at the time been found to have (and there are not any reasonable grounds to suspect that the person has) the prescribed concentration of alcohol in his or her blood, and has not at the time been found to have (and there are not any reasonable grounds to suspect that the person has) a prescribed drug in his or her oral fluid or blood.

A person is defined as being authorised to drive, or run the engine of, a vehicle if the person is its operator or has the authority of the operator to do so. This is so regardless of whether or not the person is qualified to drive the vehicle or run its engine.

40D—Meaning of unattended vehicle and driver of disconnected trailer

This clause provides that a vehicle is unattended in the following circumstances:

- if the authorised officer or police officer concerned is present at the scene and, after a reasonable inspection and enquiry by the officer, there does not appear to be a person in, on or in the vicinity of, the vehicle who appears to be the driver of the vehicle;
- if the authorised officer or police officer concerned is not actually present at the scene but can inspect the scene (eg, by camera or some other means of surveillance) and, after a reasonable inspection by the officer, there does not appear to be a person in, on or in the vicinity of, the vehicle who appears to be the driver of the vehicle;
- if the driver is in, or in the vicinity of, the vehicle and the officer believes on reasonable grounds that the person is either not qualified, fit or authorised to drive the vehicle, or is unwilling to do so, or is subject to a direction under proposed section 40K in relation to the vehicle.

This clause also provides that, in relation to a trailer that is no longer connected to a towing vehicle, the driver of the trailer is the last driver of the towing vehicle to which the trailer was, or apparently was, last connected.

40E—Meaning of broken down vehicle

This clause defines what broken down means for the purposes of the Division.

In relation to a vehicle, it means that it is not possible to drive the vehicle because it is disabled through damage, mechanical failure, lack of fuel or any similar reason.

In relation to a trailer, it means that the trailer is not connected to a towing vehicle, whether or not the trailer is also disabled through damage, mechanical power or any similar reason.

In relation to a combination, it means that it is not possible to drive the combination because the combination or a vehicle comprised in the combination is disabled through damage, mechanical failure, lack of fuel or any similar reason.

In relation to any other type of vehicle, it means that the vehicle is not connected to a towing vehicle or an animal by which it could be drawn, or that it is not possible to tow or draw the vehicle because it is disabled through damage, mechanical failure or any similar reason.

40F—Meaning of compliance purposes

This clause provides that, for the purposes of the Division, a power is exercised for compliance purposes in relation to a person if the power is exercised for one of the reasons set out in the clause, namely:

- to find out whether the Australian road laws or an approved road transport compliance scheme are being complied with by that or any other person; or
- to investigate a breach or suspected breach of an Australian road law or an approved road transport compliance scheme by that or any other person; or
- to investigate an accident in which that person or any other person has been involved.

Subdivision 2—Directions to stop, move or leave vehicles

40G—Application of Subdivision

This clause provides that Subdivision 2 applies to a vehicle that is on a road, in or on premises occupied or owned by a public authority, or in or on premises where an officer is lawfully present after entry under Subdivision 4.

Subdivision 2 also applies to the driver of a vehicle who is apparently in, on or in the vicinity of the vehicle.

40H—Direction to stop vehicle to enable exercise of other powers

This clause provides that an authorised officer or police officer may, for the purpose of or in connection with exercising other powers under a road law, give certain directions. They include directing the driver of a vehicle to stop, or directing the driver or other person not to move the vehicle or interfere with it, any equipment in it, or its load.

A direction is overridden by a later inconsistent direction, and may be terminated by an officer.

It is an offence for a person subject to such a direction to contravene it, attracting a maximum penalty of $5 000.

40I—Direction to move vehicle to enable exercise of other powers

This clause provides that an authorised officer or police officer may for the purpose of or in connection with the exercise of other powers under the principal Act, direct the driver or operator of a vehicle to move it or cause it to be moved to the nearest suitable location that is within the prescribed distance and specified by the officer. The prescribed distance is a 30km radius of certain points. A suitable location is defined as meaning a location that the officer concerned believes on reasonable grounds to be a suitable location.

Contravention of this proposed section attracts a maximum penalty of a fine of between $5 000 and $10 000 for an offence relating to determining whether there has been a breach of a mass limit, or a maximum $5 000 fine in any other case (and the minimum penalty under this section cannot be mitigated or reduced). These penalties are the same as the penalties for the corresponding offence in current section 152 of the Act (which is to be removed).

It is a defence to an offence if the defendant establishes that it was not possible to move the vehicle concerned because it was broken down, and that the breakdown occurred for a physical reason beyond the driver's or operator's control, and that the breakdown could not be readily rectified in a way that would enable the direction to be complied with within a reasonable time.

40J—Direction to move vehicle if danger or obstruction

This clause provides that, if an authorised officer or police officer believes on reasonable grounds that a vehicle on a road is—

· causing serious harm, or creating an imminent risk of serious harm, to public safety, the environment or road infrastructure; or

· causing or likely to cause an obstruction to traffic or any event lawfully authorised to be held on the road; or

· obstructing or hindering, or likely to obstruct or hinder, vehicles from entering or leaving land adjacent to the road,

the officer may direct the driver or operator of the vehicle to move it, or cause it to be moved, or do anything else reasonably required by the officer, or to cause anything else reasonably required by the officer to be done (or both) to avoid the harm or obstruction.

It is an offence for a person subject to such a direction to contravene it, attracting a maximum penalty of $5 000.

The same defence as for proposed section 40I applies in this case.

40K—Direction to leave vehicle

This proposed section applies in the case of a driver who fails to comply with a direction given by an authorised officer or police officer under another provision of this Subdivision, or if an authorised officer or police officer believes on reasonable grounds that the driver of a vehicle is not qualified, is not fit or is not authorised to drive the vehicle.

In such a case, the officer may direct the driver to vacate the driver's seat, leave the vehicle, not to occupy the driver's seat until permitted to do so by an authorised officer or police officer, or not to enter the vehicle until permitted to do so by an authorised officer or police officer, or more than one of these. The officer may also direct any other person to leave the vehicle, or not to enter the vehicle until permitted to do so by an authorised officer or police officer, or both.

A police officer (but not an authorised officer) may, if the officer believes on reasonable grounds that the driver is not fit to drive the vehicle because of the consumption of alcohol or a drug, direct the driver to secure the vehicle and surrender to the officer all keys to the vehicle that are in the person's immediate possession or in the vehicle. The officer may also immobilise the vehicle, and direct the driver not to drive any other vehicle until permitted to do so by a police officer.

It is an offence for a person subject to such a direction to contravene it, attracting a maximum penalty of $5 000.

The provision also sets out procedures relating to the recovery of keys or components taken under the provision.

40L—Manner of giving directions under Subdivision

This proposed section provides that a direction under this proposed Subdivision may be given to a driver orally or by means of a sign or signal (electronic or otherwise), or in any other manner.

In the case of an operator of a vehicle, a direction may be given to an operator orally or by telephone, facsimile, electronic mail or radio, or in any other manner.

40M—Moving unattended vehicle to enable exercise of other powers

This clause provides that an authorised officer or police officer may move a vehicle, or authorise another person to move the vehicle, in certain circumstances. To do so, the officer must believe on reasonable grounds that the vehicle is unattended on a road, must be seeking to exercise other powers under the principal Act and must believe on reasonable grounds that the vehicle should be moved to enable or to facilitate the exercise of those powers.

In exercising this power, the officer or authorised person may use reasonable force to open unlocked doors and other unlocked panels and objects, to gain access to the vehicle (or its engine or other mechanical components) to enable the vehicle to be moved, or enable the vehicle to be towed.

Subdivision 3—Power to move or remove unattended or broken down vehicles

40N—Removing unattended or broken down vehicle if danger or obstruction

This clause provides that, if an authorised officer or police officer believes on reasonable grounds that a vehicle is unattended or broken down on a bridge, culvert or freeway, or that a vehicle on a road is—

· causing serious harm, or creating an imminent risk of serious harm, to public safety, the environment or road infrastructure; or

· causing or likely to cause an obstruction to traffic or any event lawfully authorised to be held on the road; or

· obstructing or hindering, or likely to obstruct or hinder, vehicles from entering or leaving land adjacent to the road,

the officer may remove the vehicle or authorise another person to remove it.

In order to do so, the officer may (using reasonable force to the extent necessary) enter the vehicle, or authorise another person to enter it, or, in the case of a vehicle that is a combination, separate any or all of the vehicles forming part of the combination, or authorise another person to separate them. An officer or authorised person may use reasonable force to enter or remove the vehicle.

The clause also sets out procedural matters relating to such entry and removal.

In this proposed section, an authorised officer includes a person authorised by the Minister for the purposes of this section (in relation to a vehicle on a freeway) and an officer of a council (in relation to a vehicle on a road within the area of the council).

40O—Operator's authorisation not required for driving under Subdivision

This clause provides that it is immaterial that the officer or person driving a vehicle under the authority of this proposed Subdivision is not authorised to drive it.

40P—Notice of removal of vehicle and disposal of vehicle if unclaimed

This clause provides that, in the case where a vehicle is removed to a convenient place under proposed section 40N, the person who removed the vehicle must ensure that the owner of the vehicle is notified of the removal of the vehicle and of the place to which the vehicle was removed.

Such a notice must be written, and served either on the owner personally, or sent by registered post to the owner's last-known residential address. Alternatively, the notification may be made by public notice published in a newspaper circulating generally in the State within 14 days after the removal of the vehicle.

If the owner of the vehicle does not, within 1 month after service or publication of the notice relating to the removal of the vehicle, take possession of the vehicle and pay the listed expenses, the relevant authority must offer the vehicle for sale by public auction. However, if the vehicle does not sell at auction, or the relevant authority believes that the proceeds of the sale of the vehicle would be unlikely to exceed the costs incurred in selling the vehicle, the relevant authority may dispose of the vehicle in such manner as it thinks fit. Who is the relevant authority is defined in the proposed section.

This clause also sets out what must happen to the proceeds of the sale of the vehicle.

Subdivision 4—Powers of inspection and search

40Q—Power to inspect vehicle on road or certain official premises

This clause provides that the proposed section applies to a vehicle (whether unattended or not) located at a place on a road, or in or on premises occupied or owned by a public authority.

In relation to such a vehicle, an authorised officer or police officer may inspect a vehicle for compliance purposes (defined in proposed section 40F). To this end, the officer may enter the vehicle. The consent of the of the driver etc is not needed, and the powers under this section can be

exercised at any time. The clause sets out examples of what an officer can do under the proposed section.

Whilst the proposed section does not authorise the use of force, an officer may nevertheless open unlocked doors etc, inspect anything that has been opened or otherwise accessed through the exercise of a power under proposed Subdivision 3, and move (but not remove) anything that is not locked up or sealed.

40R—Power to search vehicle on road or certain official premises

This clause provides that the proposed section applies to a vehicle (whether unattended or not) located at a place on a road, or in or on premises occupied or owned by a public authority.

In relation to such a vehicle, an authorised officer or police officer may search (rather than inspect) a vehicle for compliance purposes. The power may be exercised if he or she believes on reasonable grounds that the vehicle has been used, is being used, or is likely to be used, in the commission of an Australian road law offence or in the commission of a breach of an approved road transport compliance scheme. Alternatively, the power may be exercised if he or she believes on reasonable grounds that the vehicle has been or may have been involved in an accident. Such belief may be formed during or after an inspection (not a search under this proposed section), or independently of an inspection.

To this end, the officer may enter the vehicle. The consent of the of the driver etc is not needed, and the powers under this section can be exercised at any time. The clause sets out examples of what an officer can do under the proposed section, including seizing and removing any records, devices or other things from the vehicle that the officer believes on reasonable grounds provide, or may on further inspection provide, evidence of an Australian road law offence or a breach of an approved road transport compliance scheme.

Unlike proposed section 40Q, an officer may use reasonable force in the exercise of powers under this proposed section.

40S—Power to inspect premises

This clause provides that an authorised officer or police officer may enter and inspect certain premises (and any vehicle at the premises) for compliance purposes. Those premises include—

· premises at or from which a responsible person carries on business, or that are occupied by a responsible person in connection with such a business, or that are a registered office of a responsible person; and

· the garage address of a vehicle; and

· the base of the driver or drivers of a vehicle; and

· premises where records required to be kept under an Australian road law or under an approved road transport compliance scheme are located or where any such records are required to be located.

Such an inspection may be made at any time with the consent of the occupier, or without such consent if the premises are business premises and the search takes place during the usual business hours applicable to the premises.

However, the proposed section does not authorise, without consent, the entry or inspection of residential premises, or premises that are apparently unattended unless the officer believes on reasonable grounds that the premises are not unattended.

The clause also sets out what can be done under this power. Whilst the proposed section does not authorise the use of force, an officer may nevertheless open unlocked doors etc, inspect anything that has been opened or otherwise accessed through the exercise of a power under proposed Subdivision 3, and move (but not remove) anything that is not locked up or sealed.

40T—Power to search premises

This clause provides that an authorised officer or police officer may enter and search (rather than inspect) certain premises (and any vehicle at the premises) for compliance purposes. Those premises include—

· premises at or from which a responsible person carries on business, or that are occupied by a responsible person in connection with such a business, or that are a registered office of a responsible person; and

· the garage address of a vehicle; and

· the base of the driver or drivers of a vehicle; and

· premises where records required to be kept under an Australian road law or under an approved road transport compliance scheme are located or where any such records are required to be located; and

· premises where the officer concerned believes on reasonable grounds that—

· a vehicle is or has been located; or

· transport documentation or journey documentation is located.

Such search may be undertaken if the officer believes on reasonable grounds that either there may be records, devices or other things that may provide evidence of an Australian road law offence or of the commission of a breach of an approved road transport compliance scheme at the premises, or that a vehicle connected with the premises has been or may have been involved in an accident. What constitutes being "connected with the premises" is defined.

Proposed subsection (7) sets out the times when such a search may be undertaken, and whether a particular type of search requires a warrant under the principal Act (for obtaining warrants see proposed section 41B).

However, the proposed section does not authorise, without a warrant or consent, the entry or inspection of residential premises, or premises that are apparently unattended unless the officer believes on reasonable grounds that the premises are not unattended.

The provision sets out examples of what an officer can do under the proposed section, including seizing and removing any records, devices or other things from the vehicle that the officer believes on reasonable grounds provide, or may on further inspection provide, evidence of an Australian road law offence or a breach of an approved road transport compliance scheme.

An officer may use reasonable force in the exercise of powers under this proposed section.

40U—Residential purposes

This clause provides that, for the purposes of this proposed Subdivision, premises are, or any part of premises is, taken not to be used for residential purposes merely because temporary or casual sleeping or other accommodation is provided there for drivers of vehicles.

Subdivision 5—Other directions

40V—Direction to give name and other personal details

This clause provides that an authorised officer or police officer may direct a natural person to give his or her personal details (including providing evidence if it is suspected the details given are false or misleading) if the officer suspects on reasonable grounds that the person—

· is or may be a responsible person; or

· has committed or is committing or is about to commit an Australian road law offence; or

· may be able to assist in the investigation of an Australian road law offence or a suspected Australian road law offence; or

· is or may be the driver or other person in charge of a vehicle that has been or may have been involved in an accident.

It is an offence attracting a maximum penalty of $5 000 if the person contravenes the direction, gives false or misleading details or produces false or misleading evidence. However, this does not apply if the person has a reasonable excuse.

It is a defence (in relation to a failure to state a business address) if the person charged establishes that he or she did not have a business address, or that his or her business address was not connected (directly or indirectly) with road transport involving vehicles.

40W—Direction to produce records, devices or other things

This clause provides that an authorised officer or police officer may, for compliance purposes, direct any responsible person (a new definition is added, see clause 4 of the Bill) to

produce the records or devices etc listed in proposed subclause (1).

The officer may inspect records etc produced under the direction, or make copies of or take extracts from them, and may seize and remove them if he or she believes on reasonable grounds they may on further inspection provide evidence of an Australian road law offence.

It is an offence attracting a maximum penalty of $5 000 if the person contravenes a direction. However, this does not apply if the person has a reasonable excuse.

40X—Direction to provide information

This clause provides that an authorised officer or police officer may, for compliance purposes, direct a responsible person to provide information to the officer about a vehicle or any load or equipment carried or intended to be carried by a vehicle. Proposed subsection (2) gives examples of what such a direction might require.

It is an offence attracting a maximum penalty of $10 000 if the person contravenes the direction or gives false or misleading information. However, this does not apply if the person has a reasonable excuse.

The proposed section also provides defences to the offence, namely where the person establishes that he or she did not know and could not be reasonably expected to know or ascertain the required information, and also (in relation to a failure to state a business address) the person did not have a business address, or that the business address was not connected (directly or indirectly) with road transport involving vehicles.

40Y—Direction to provide reasonable assistance for powers of inspection and search

This clause enables an authorised officer or police officer to direct a responsible person to provide assistance to the officer to enable the officer effectively to exercise a power under proposed Subdivision 4. Proposed subsection (2) gives examples of the sort of assistance contemplated by the provision. However, whilst the proposed section authorises a direction to run a vehicle's engine, it does not authorise the driving of the vehicle.

Such a direction can only be given in relation to a power under Subdivision 4 (defined as the ***principal power***) while the principal power can lawfully be exercised, and the direction ceases to be operative if the principal power ceases to be exercisable.

It is an offence attracting a maximum penalty of $10 000 if the person contravenes a direction. However, this does not apply if the direction is unreasonable, or if the direction or its subject-matter is outside the scope of the business or other activities of the person.

The proposed provision also allows the officer to run the engine of a vehicle, or authorise any other person to do so, if the responsible person fails to comply with the direction to do so.

40Z—Provisions relating to running engine

This clause provides that an authorised person (being a responsible person to whom a direction is given by an officer under proposed section 40Y, an officer authorised by proposed section 40Y(7) or a person authorised by an officer under that proposed subsection to run the engine of a vehicle) may run the engine even though the person is not qualified to drive the vehicle, if the officer believes on reasonable grounds that there is no other person in, on or in the vicinity of the vehicle who is more capable of running the engine than the authorised person and who is fit and willing to run the engine. The authorised person may use reasonable force to run the engine and is, in running the engine under this proposed section, exempt from any other road law to the extent that the other law would require him or her to be licensed or otherwise authorised to do so.

41—Manner of giving directions under Subdivision

This clause provides that a direction under this proposed Subdivision may be given orally, in writing or in any other manner. The proposed section also permits a direction not given in person to be sent or transmitted by post, telephone, facsimile, electronic mail, radio or in any other manner.

41A—Directions to state when to be complied with

This clause provides that if a direction under this proposed Subdivision is given orally, it must state whether it is to be complied with then and there or within a specified period. Similarly, if it is given in writing, a direction under this proposed Subdivision must state the period within which it is to be complied with.

Subdivision 6—Warrants

41B—Warrants

This clause provides that the proposed section applies if an authorised officer or police officer believes on reasonable grounds that either—

- there may be at particular premises, then or within the next 72 hours, records, devices or other things that may provide evidence of an Australian road law offence; or
- a vehicle has been or may have been involved in an accident and the vehicle is or has been located at particular premises, or particular premises are or may be otherwise connected (directly or indirectly) with the vehicle or any part of its equipment or load.

In such a case, the officer may (personally or by telephone) apply to a magistrate for a warrant to enter and search the premises under proposed section 40T, and the magistrate may then issue the warrant if satisfied that it is reasonably required in the circumstances.

The proposed section sets out procedural matters related to the warrant.

Subdivision 7—Other provisions regarding inspections and searches

41C—Use of assistants and equipment

This clause provides that an authorised officer or police officer may exercise powers under this Division with the aid of such assistants and equipment as the officer considers reasonably necessary in the circumstances. Proposed subsection (2) also permits an assistant authorised and supervised by the officer to exercise a power under the proposed Division, but only if the officer considers that it is reasonably necessary.

41D—Use of equipment to examine or process things

This clause permits an authorised officer or police officer exercising a power under this Division to bring to, or onto, a vehicle or premises any equipment reasonably necessary for the examination or processing of things. If it is not practicable to examine or process the things at the vehicle or premises, or if occupier of the vehicle or premises consents in writing, the things may be moved to another place so that the examination or processing can occur. The officer, or an assistant, may operate equipment already in, on or at the vehicle or premises to carry out the examination or processing of the thing if he or she believes it to be suitable, and the examination or processing can be carried out without damage to the equipment or the thing.

41E—Use or seizure of electronic equipment

This clause permits the operation of equipment found in, on or at the vehicle or premises to access information on a storage device found during an examination. The proposed section sets out what can be done with the information or storage device or equipment, and is subject to the limitation that the officer must believe that the operation or seizure of the equipment can be carried out without damage to the equipment.

Subdivision 8—Other provisions regarding seizure

41F—Receipt for and access to seized material

This clause provides that, if a record, device or other thing is seized and removed under this Division, the authorised officer or police officer concerned must give a receipt to the person from whom it is seized and removed, and, if practicable, allow the person who would normally be entitled to possession of it reasonable access to it.

41G—Embargo notices

This clause provides that an authorised officer or police officer may issue an embargo notice in relation to a record, device or other thing under this Division that cannot, or cannot readily, be physically seized and removed.

An embargo notice is a notice forbidding the movement, sale, leasing, transfer, deletion of information from or other dealing with the record, device or other thing, or any part of it, without the written consent of the officer, the Minister or the Commissioner of Police. The provision sets out procedural matters related to embargo notices.

It is an offence attracting a maximum penalty of $10 000 if a person who knows an embargo notice relates to a record, device or other thing, and he or she does anything that is forbidden by the notice (or instructs another person to do anything forbidden by the notice, or forbidden for the person to do).

Finally, the provision provides that a sale, lease or transfer or other dealing with a record, device or other thing, or part of it, in contravention of this section is void.

Subdivision 9—Miscellaneous

41H—Power to use force against persons to be exercised only by police officers

This clause provides that a provision of this Division that authorises a person to use reasonable force does not authorise a person who is not a police officer to use force against a person.

41I—Various powers may be exercised on same occasion

This clause is intended to make it clear that an authorised officer or police officer may exercise various powers under road laws on the same occasion, whether the exercise of the powers is for the same purpose or different purposes and whether the opportunity to exercise one power arises only as a result of the exercise of another power.

41J—Restoring vehicle or premises to original condition after action taken

This clause requires that, if an authorised officer or police officer or an authorised person takes certain action in relation to a vehicle etc under the proposed Division that (because of an unreasonable exercise of the power or an unauthorised use of force) results in damage to the vehicle or premises, the officer must take reasonable steps to return the vehicle etc to the condition it was in immediately before the action was take.

41K—Self-incrimination

This clause displaces the privilege against self-incrimination, providing that it is not an excuse for a person to refuse or fail to provide or produce any information, document, record, device or other thing in compliance with a direction under the proposed Division on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.

However, the fact that the person produced a document etc (as distinct from the contents of the document etc), or if the direction was not to produce a document, any information provided in compliance with the direction is not admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty (other than proceedings in respect of the making of a false or misleading statement).

41L—Providing evidence to other authorities

This clause provides if a record, device or other thing is seized under this Act, or if any information is obtained under this Act, it may be given to any appropriate public authority. This extends to a public authority in another jurisdiction. Prior to doing so, the public authority concerned must be consulted.

41M—Obstructing or hindering authorised officers or police officers

This clause provides that it is an offence to obstruct or hinder an authorised officer or police officer who is exercising a power under a road law. The maximum penalty for the offence is a fine of $10 000.

41N—Impersonating authorised officers

This clause provides that it is an offence to impersonate an authorised officer, the maximum penalty for the offence being a fine of $10 000.

41O—Division not to affect other powers

This clause provides that the proposed Division does not derogate from any other law that confers powers on an authorised officer or police officer.

Part 2A—Mutual recognition and corresponding road laws

41P—Effect of administrative actions of authorities of other jurisdictions

The effect of this provision is that an administrative action (of an administrative authority) under or in connection with a corresponding road law has the same effect in this State as it has in the other jurisdiction. An administrative action is defined to mean an action of an administrative nature, as in force from time to time, but the provision only applies to administrative actions of the kinds prescribed by the regulations. The provision is limited by proposed subsection (3) in the case where—

- the action is incapable of having effect in or in relation to this State or that place; or
- the terms of the action expressly provide that the action does not extend or apply to or in relation to this State or that place; or
- the terms of the action expressly provide that the action has effect only in the other jurisdiction or a specified place in the other jurisdiction.

41Q—Effect of court orders of other jurisdictions

This clause provides that an order of a prescribed kind of a court or tribunal of another jurisdiction under or in connection with a corresponding road law has the same effect in this State as it has in the other jurisdiction. This provision is limited in the same terms as proposed section 41P.

15—Repeal of Part 3 Division 1

Part 3 Division 1 consists of sections 41 and 42. These provisions relate to police or inspector powers and are to be deleted in view of the provisions of the model uniform draft. The corresponding new provisions are proposed new sections 40G to 40J and 40V to 40X. Existing sections 33(7) and (8) and 34(2) should also be noted. These provisions are unaffected by this Bill and contain police directions powers that relate to the closure of roads for events or emergency aircraft use.

16—Repeal of section 47EAB

This clause repeals section 47EAB, itself inserted by clause 4 of this Bill.

17—Repeal of section 86

Section 86 (Removal of vehicles causing danger or obstruction) is removed in view of proposed new sections 40N to 40P .

18—Repeal of section 106

Section 106 (Damage to roads and works) is deleted. The subject matter is now to be dealt with in section 107 (see the next clause) and proposed new Part 4C (General compensation orders).

19—Amendment of section 107—Damage to road infrastructure

Section 107 currently contains an offence relating to causing particular harm to a road surface. A new general provision is added to prohibit a person from removing or interfering with road infrastructure or damaging it in any way other than through reasonable use. A definition of the term ***road infrastructure*** is to be added to section 5 of the *Road Traffic Act 1961* drawn from the model uniform draft.

20—Repeal of section 110AAD

Section 110AAD (Power to enter and inspect records etc) provides special police and inspector powers relating to the driving hours regulations. The section is removed and instead the general powers in proposed new sections 40S to 40Y will be relied on.

21—Repeal of section 112

Section 112 (Offences relating to vehicle standards, safety maintenance and emission control systems) is deleted. The subject matter is now to be dealt with in proposed new Part 4 Division 3A (Provisions relating to breaches of vehicle standards or maintenance requirements) (see clause 24).

22—Repeal of section 114

Section 114 (Offences relating to mass and loading requirements) is deleted. The subject matter is now to be dealt with in proposed new Part 4 Division 3B (Provisions relating to breaches of mass, dimension and load restraint requirements) (see clause 24).

23—Amendment of section 115—Standard form conditions for oversize or overmass vehicle exemptions

This clause makes a drafting correction. Subsection (7), which is deleted by the clause, defines ***vehicle*** to include a combination. The definition is redundant given that section 5(1) of the *Road Traffic Act 1961* currently defines ***vehicle*** to include a combination.

24—Insertion of Part 4 Divisions 3A and 3B

Division 3A—Provisions relating to breaches of vehicle standards or maintenance requirements

116—Meaning of breach of vehicle standards or maintenance requirement

Breach of a vehicle standards or maintenance requirement—such a breach occurs if—

- a vehicle is driven on a road; and
- the vehicle—
- has not been maintained in a safe condition; or
- has not been maintained with an emission control system fitted to it of each kind that was fitted to it when it was built and in a condition that ensures that each emission control system fitted to it continues operating essentially in accordance with the system's original design; or
- does not comply with the requirements of section 162A of the *Road Traffic Act 1961* (Seat belts and child restraints).

117—Liability of driver

It will be an offence with a maximum penalty of $2 500 to drive a vehicle in breach of a vehicle standards or maintenance requirement. A new defence is added where a person—

- did not cause or contribute to the condition of the vehicle and had no responsibility for or control over the maintenance of the vehicle at any relevant time; and
- did not know and could not reasonably be expected to have known of the condition of the vehicle; and
- could not reasonably be expected to have sought to ascertain whether there were or were likely to be deficiencies in the vehicle.

118—Liability of operator

A person will commit an offence with a maximum penalty of $2 500 if—

- there is a breach of a vehicle standards or maintenance requirement; and
- the person is the operator of the vehicle concerned.

There will be a defence where the person establishes that the vehicle was being used at the relevant time by—

- another person not entitled (whether by express or implied authority or otherwise) to use it, other than an employee or agent of the person; or
- by an employee of the person who was acting at the relevant time outside the scope of the employment; or
- by an agent of the person who was acting at the relevant time outside the scope of the agency.

Division 3B—Provisions relating to breaches of mass, dimension and load restraint requirements

Subdivision 1—Preliminary

119—Meaning of breach of mass, dimension or load restraint requirement

Breach of a mass, dimension or load restraint requirement—such a breach occurs if—

- a vehicle is driven on a road (whether in this State or another jurisdiction); and
- the vehicle does not comply with a mass, dimension or load restraint requirement.

Breach of a mass, dimension or load restraint requirement in this State—such a breach occurs if—

- a vehicle is driven on a road in this State; and
- the vehicle does not comply with a mass, dimension or load restraint requirement that is a law of this State.

Breach of a mass, dimension or load restraint requirement in another jurisdiction—such a breach occurs if—

- a vehicle is driven on a road in another jurisdiction; and
- the vehicle does not comply with a mass, dimension or load restraint requirement that is a law of the other jurisdiction.

120—Meaning of minor, substantial or severe risk breaches

The regulations are to contain provisions categorising breaches of mass, dimension or load restraint requirements into minor, substantial or severe risk breaches.

Subdivision 2—Reasonable steps defence

121—Reasonable steps defence

A person will have the ***reasonable steps defence*** for an offence if the person establishes that—

- the person did not know, and could not reasonably be expected to have known, of the contravention concerned; and
- either—
- the person had taken all reasonable steps to prevent the contravention; or
- there were no steps that the person could reasonably be expected to have taken to prevent the contravention.

Certain factors are set out to which a court must have regard in deciding whether a person has the defence.

If the person establishes that the person had complied with all relevant standards and procedures under a registered industry code of practice (see proposed new section 174F) with respect to matters to which the breach relates, proof of compliance will constitute prima facie evidence that the person charged had taken reasonable steps to prevent the contravention.

122—Reasonable steps defence—reliance on container weight declaration

In establishing the defence, a person may rely on the weight stated in a relevant container weight declaration, unless it is established that the person knew or ought reasonably to have known that—

- the stated weight was lower than the actual weight; or
- the distributed weight of the container and its contents, together with—
- the mass or location of any other load in or on the vehicle; or
- the mass of the vehicle or any part of it,

would cause one or more breaches of mass limits.

Subdivision 3—Liability for breaches of mass, dimension or load restraint requirements

123—Liability of driver

It will be an offence to drive a vehicle in breach of a mass, dimension or load restraint requirement in this State.

The reasonable steps defence will apply to a minor risk breach. The reasonable steps defence will also apply to a substantial risk breach or a severe risk breach but only so far as it relates to reliance on the weight stated in a container weight declaration.

124—Liability of operator

A person will commit an offence if—

- there is a breach of a mass, dimension or load restraint requirement; and
- the person is the operator of the vehicle concerned.

The offence will apply to—

- a breach of a mass, dimension or load restraint requirement in this State; or
- a breach of a mass, dimension or load restraint requirement in another jurisdiction if the journey of the vehicle during which the breach occurs resulted from action taken by the person as the operator of the vehicle in this State.

The reasonable steps defence will apply to a minor risk breach. The reasonable steps defence will also apply to a substantial risk breach or a severe risk breach but only so far as it relates to reliance on the weight stated in a container weight declaration.

It will also be a defence if the person charged establishes that the vehicle was being used at the relevant time by—

- another person not entitled (whether by express or implied authority or otherwise) to use it, other than an employee or agent of the person; or
- by an employee of the person who was acting at the relevant time outside the scope of the employment; or
- by an agent of the person who was acting at the relevant time outside the scope of the agency.

125—Liability of consignor

This provision applies only to the transport of goods by a heavy vehicle by road.

A person will commit an offence if—

- there is a breach of a mass, dimension or load restraint requirement; and

· the person is the consignor of any goods that are in or on the vehicle concerned.

The offence will apply to—

· a breach of a mass, dimension or load restraint requirement in this State; or

· a breach of a mass, dimension or load restraint requirement in another jurisdiction if the person is the consignor of the goods—

· because of action taken by the person in this State; or

· because the person had possession of, or control over, the goods in this State immediately before their transport by road.

A person will also commit an offence if—

· the weight of a freight container containing goods consigned for road transport exceeds the maximum gross weight as marked on the container or on the container's safety approval plate; and

· the person is the consignor of any of the goods contained in the freight container.

The latter offence will apply to—

· the transport of the freight container in this State; or

· the transport of the freight container in another jurisdiction if the person is the consignor of the goods—

· because of action taken by the person in this State; or

· because the person had possession of, or control over, the goods in this State immediately before their transport by road.

The reasonable steps defence will apply to an offence under this clause.

Proceedings for such an offence may be commenced at any time within 2 years after the date of the alleged commission of the offence or, with the authorisation of the Attorney-General, at any later time within 3 years after the date of the alleged commission of the offence.

126—Liability of packer

This provision applies only to the transport of goods by a heavy vehicle by road.

A person will commit an offence if—

· there is a breach of a mass, dimension or load restraint requirement; and

· the person is the packer of any goods that are in or on the vehicle concerned.

The offence will apply to—

· a breach of a mass, dimension or load restraint requirement in this State; or

· a breach of a mass, dimension or load restraint requirement in another jurisdiction if the person is the packer of the goods because of action taken by the person in this State.

A person will also commit an offence if—

· the weight of a freight container containing goods consigned for road transport exceeds the maximum gross weight as marked on the container or on the container's safety approval plate; and

· the person is the packer of any of the goods contained in the freight container.

The latter offence will apply to—

· the transport of the freight container in this State; or

· the transport of the freight container in another jurisdiction if the person is the packer of the goods because of action taken by the person in this State.

The reasonable steps defence will apply to an offence under this clause.

Proceedings for such an offence may be commenced at any time within 2 years after the date of the alleged commission of the offence or, with the authorisation of the Attorney-General, at any later time within 3 years after the date of the alleged commission of the offence.

127—Liability of loader

This provision applies only to the transport of goods by a heavy vehicle by road.

A person will commit an offence if—

· there is a breach of a mass, dimension or load restraint requirement; and

· the person is the loader of any goods that are in or on the vehicle concerned.

The offence will apply to—

· a breach of a mass, dimension or load restraint requirement in this State; or

· a breach of a mass, dimension or load restraint requirement in another jurisdiction if the person is the loader of the goods because of action taken by the person in this State.

The reasonable steps defence will apply to an offence under this clause.

Proceedings for such an offence may be commenced at any time within 2 years after the date of the alleged commission of the offence or, with the authorisation of the Attorney-General, at any later time within 3 years after the date of the alleged commission of the offence.

128—Liability of consignee

This provision applies only to the transport of goods by a heavy vehicle by road.

A person will commit an offence if—

· there is a breach of a mass, dimension or load restraint requirement; and

· the person is the consignee of any goods that are in or on the vehicle concerned; and

· the person engaged in conduct that resulted or was likely to result in inducing or rewarding the breach; and

· the person intended or was reckless or negligent as to whether there would be that result.

The offence will apply to—

· a breach of a mass, dimension or load restraint requirement in this State; or

· a breach of a mass, dimension or load restraint requirement in another jurisdiction if the person engaged in conduct in this State that resulted or was likely to result in inducing or rewarding the breach.

The reasonable steps defence will apply to an offence under this clause.

Proceedings for such an offence may be commenced at any time within 2 years after the date of the alleged commission of the offence or, with the authorisation of the Attorney-General, at any later time within 3 years after the date of the alleged commission of the offence.

129—Penalties for offences against Subdivision

The penalty for an offence against this Subdivision involving a heavy vehicle will be as follows:

Offence	Penalty if first offence by natural person against provision concerned	Penalty if subsequent offence by natural person against provision concerned	Penalty if first offence by body corporate against provision concerned	Penalty if subsequent offence by body corporate against provision concerned
Offence involving minor risk breach of mass, dimension or load restraint requirement (not being offence against section 128)	Maximum $1 250	Maximum $2 500; minimum $300	Maximum $5 000	Maximum $10 000; minimum $300

Offence	Penalty if first offence by natural person against provision concerned	Penalty if subsequent offence by natural person against provision concerned	Penalty if first offence by body corporate against provision concerned	Penalty if subsequent offence by body corporate against provision concerned
Offence involving substantial risk breach of mass, dimension or load restraint (not being offence against section 128)	Maximum $2 500	Maximum $5 000; minimum $600	Maximum $10 000	Maximum $20 000; minimum $600
Offence involving severe risk breach of mass limit (not being offence against section 128)	Maximum $5 000 plus maximum $500 for each additional 1% over 120% overload	Maximum $10 000 plus maximum $1 000 for each additional 1% over 120% overload; minimum $2 000 plus minimum $200 for each additional 1% over 120% overload	Maximum $20 000 plus maximum $2 500 for each additional 1% over 120% overload	Maximum $50 000 plus maximum $5 000 for each additional 1% over 120% overload; minimum $2 000 plus minimum $200 for each additional 1% over 120% overload
Any other offence involving severe risk breach of mass, dimension or load restraint requirement (not being offence against section 128)	Maximum $5 000	Maximum $10 000; minimum $2 000	Maximum $20 000	Maximum $50 000; minimum $2 000
Offence against section 125(4), 126(4) or 128	Maximum $5 000	Maximum $10 000; minimum $2 000	Maximum $20 000	Maximum $50 000; minimum $2 000

The penalty for an offence against this Subdivision involving a vehicle other than a heavy vehicle will be—

- in the case of an offence involving a minor risk breach of a mass, dimension or load restraint requirement—a maximum penalty of $750; or
- in the case of an offence involving a substantial risk breach of a mass, dimension or load restraint requirement—a maximum penalty of $1 250; or
- in the case of an offence involving a severe risk breach of a mass, dimension or load restraint requirement—a maximum penalty of $2 500.

Subdivision 4—Sanctions

130—Matters to be taken into consideration by courts

Certain matters set out in the provision will be required to be take into consideration by the courts in determining the sanctions (including the level of fine) that are to be imposed in respect of breaches of mass, dimension or load restraint requirements.

Subdivision 5—Container weight declarations

131—Application of Subdivision

This Subdivision applies to the transport of a freight container by a heavy vehicle by road.

A ***freight container*** is defined (by a new definition being added to section 5 of the *Road Traffic Act 1961*) as —

- a re-usable container of the kind referred to in Australian/New Zealand Standard AS/NZS 3711.1:2000, *Freight containers—Classification, dimensions and ratings*, that is designed for repeated use for the transport of goods by one or more modes of transport; or
- a re-usable container of the same or a similar design and construction though of different dimensions; or
- a container of a kind prescribed by the regulations,

but as not including anything excluded by the regulations.

132—Meaning of "responsible entity

A ***responsible entity***, in relation to a freight container, is—

- a person who consigned the container for transport by a heavy vehicle by road in this State; or
- a person who, on behalf of the consignor, arranged for the transport of the container by a heavy vehicle by road in this State; or
- a person who physically offered the container for transport by a heavy vehicle by road in this State.

133—Container weight declarations

A ***container weight declaration*** for a freight container is a declaration that states or purports to state the weight of the freight container and its contents. It may be comprised in one or more documents or other formats, including in electronic form or wholly or partly in a placard attached or affixed to the freight container.

134—Complying container weight declarations

This provision sets out the requirements for a complying container weight declaration.

135—Duty of responsible entity

A responsible entity that offers a freight container to an operator of a heavy vehicle for transport in this State must ensure that the operator or driver of the vehicle is provided, before the start of the transport of the freight container in this State, with a complying container weight declaration relating to the freight container.

The maximum penalty for a breach of this provision will be:

- if the offender is a natural person—$5 000;
- if the offender is a body corporate—$20 000.

The reasonable steps defence will apply to an offence under this clause.

136—Duty of operator

The same penalty will apply if an operator of a heavy vehicle transporting a freight container fails to ensure that—

- the driver of the vehicle is provided, before the start of the driver's journey, with a complying container weight declaration relating to the freight container; or
- if the freight container is to be transported by another road or rail carrier, the other carrier is provided with a complying container weight declaration relating to the freight container (or with the prescribed particulars contained in the declaration) by the time the other carrier receives the freight container.

The reasonable steps defence will apply to an offence under this clause.

137—Duty of driver

A person who drives a heavy vehicle loaded with a freight container on a road in this State will commit an offence if the person fails to have the relevant container weight declaration or to keep it in or about the vehicle or readily accessible from the vehicle during the course of the

journey in this State. A maximum penalty of $5 000 is fixed for this offence.

The reasonable steps defence will apply to an offence under this clause.

138—Liability of consignee—knowledge of matters relating to container weight declaration

Proposed new section 128 provides that a consignee of goods will commit an offence if—

- there is a breach of a mass, dimension or load restraint requirement; and
- the person engaged in conduct that resulted or was likely to result in inducing or rewarding the breach; and
- the person intended or was reckless or negligent as to whether there would be that result.

Under this provision, a consignee of goods will be taken to have intended that result if—

- the conduct concerned related to a freight container; and
- the person knew or ought reasonably to have known that—
- a container weight declaration for the container was not provided as required; or
- a container weight declaration provided for the container contained information about the weight of the container and its contents that was false or misleading in a material particular.

Subdivision 6—Recovery of losses resulting from non-provision of or inaccurate container weight declarations

139—Recovery of losses for non-provision of container weight declaration

This provision is to apply if—

- a container weight declaration has not been provided as required; and
- a person suffered loss as a result of the non-provision of the declaration.

The person will have a right to recover from the responsible entity for the freight container for losses such as—

- any loss incurred from delays in the delivery of the freight container or any goods contained in it or of other goods;
- any loss incurred from spoliation of or damage to the goods;
- any loss incurred from the need to provide another vehicle, and any loss incurred from any delay in the provision of another vehicle;
- any costs or expenses incurred in weighing the freight container or any of its contents or both.

140—Recovery of losses for provision of inaccurate container weight declaration

This provision is to apply if—

- a container weight declaration has been provided as required; and
- the declaration contains information about a freight container—
- that is false or misleading in a material particular by understating the weight of the container; or
- that is otherwise false or misleading in a material particular by indicating that the weight of the container is lower than its actual weight; and
- a breach of a mass limit occurred as a result of the reliance, by an operator or driver of a vehicle, on the information in the declaration when transporting the container by road (whether or not enforcement action has been or may be taken in relation to the breach); and
- the operator or driver of the vehicle—
- had at the time a reasonable belief that the vehicle concerned was not in breach of a mass limit; and
- did not know, and ought not reasonably to have known, at the time that the minimum weight stated in the declaration was lower than the actual weight of the container; and
- a person suffered loss as a result of the provision of the declaration.

The person will have a right to recover from the responsible entity for the freight container for losses such as—

- any fine, expiation fee, infringement penalty or other penalty imposed on the plaintiff under an Australian road law;
- any fine, expiation fee, infringement penalty or other penalty imposed on an agent or employee of the plaintiff under an Australian road law and reimbursed by the plaintiff;
- any loss incurred from delays in the delivery of the freight container or any goods contained in it or of other goods;
- any loss incurred from spoliation of, or damage to, the goods;
- any loss incurred from the need to provide another vehicle, and any loss incurred from any delay in the provision of another vehicle;
- any costs or expenses incurred in weighing the freight container or any of its contents or both.

141—Recovery of amount by responsible entity

This provision is to apply if an order under the preceding clause has been made or is being sought against a responsible entity for payment of the monetary value of any loss incurred by a person.

The responsible entity has a right to recover from a person who provided the responsible entity with all or any of the information that was false or misleading, so much of the monetary value paid or payable by the responsible entity under the order as is attributable to that information.

142—Assessment of monetary value or attributable amount

This provision deals with the assessment by a court of the monetary value of losses or amounts recoverable under preceding provisions.

143—Costs

This provision deals with the recovery of costs and expenses in proceedings under preceding provisions.

Subdivision 7—Transport documentation

144—False or misleading transport documentation: liability of consignor, packer, loader, receiver and others

This provision is to apply if—

- goods are consigned for transport by a heavy vehicle by road; and
- all or any part of the transport by road occurs or is to occur in this State.

A range of persons may commit offences under this provision if the transport documentation relating to the consignment is false or misleading in a material particular relating to the mass, dimension or load restraint of any or all of the goods.

Transport documentation is defined (by a new definition being added to section 5 of the *Road Traffic Act 1961*) as —

- any contractual documentation directly or indirectly associated with—
- a transaction for or relating to the actual or proposed transport of goods or passengers by road or any previous transport of the goods or passengers by any mode; or
- goods or passengers themselves so far as the documentation is relevant to their actual or proposed transport; or
- any associated documentation—
- contemplated in the contractual documentation; or
- required by law, or customarily provided, in connection with the contractual documentation or with the transaction,

whether the documentation is in paper, electronic or any other form, and whether or not the documentation has been transmitted physically, electronically or in any other manner, and includes (for example) an invoice, vendor declaration, delivery order, consignment note, load manifest, export receival advice, bill of lading, contract of carriage, sea carriage document, or container weight declaration, relating to the goods or passengers.

The maximum penalty for an offence under this clause will be:

- if the offender is a natural person—$5 000;
- if the offender is a body corporate—$20 000.

The reasonable steps defence will apply to an offence under this clause.

25—Substitution of sections 148 to 156

A group of current provisions of the *Road Traffic Act 1961* under the heading "Enforcement powers" is to be removed:

- section 148 (Determination of mass)
- section 149 (Measurement of distance between axles)
- section 152 (Directions to driver)
- section 153 (Determining unladen mass)
- section 154 (Measurement of loads etc)
- section 156 (Unloading of excess mass).

The provisions will be replaced by various of the general enforcement powers in proposed new Part 2 Division 5 and the following enforcement powers that relate specifically to vehicle standards or maintenance requirements or mass, dimension or load restraint requirements.

Subdivision 1—Defect notices relating to breaches of vehicle standards or maintenance requirements

26—Amendment and redesignation of section 160—Defect notices

The amendments to this section are consequential only. The section is renumbered as section 145.

27—Insertion of Subdivision 2

Subdivision 2—Formal warnings relating to breaches of mass, dimension or load restraint requirements

146—Formal warnings

147—Withdrawal of formal warnings

Provision is made for the issuing and withdrawal of formal warnings relating to breaches of mass, dimension or load restraint requirements.

Subdivision 3—Directions powers relating to breaches of mass, dimension or load restraint requirements

148—Directions power if minor risk breach

149—Directions power if substantial risk breach

150—Directions power if severe risk breach

Various directions powers are conferred on authorised officers and police officers to deal with breaches of mass, dimension or load restraint requirements. The powers involve varying degrees of intervention depending on whether a detected breach is a minor risk breach, substantial risk breach or severe risk breach. Rules are set out governing an officer's discretion as to whether a journey may be continued, or whether the breach must be rectified and, if so, where it must be rectified.

151—Authorisation to continue journey if minor risk breach

Under this provision an authorised officer or police officer may authorise the driver of a vehicle to continue its journey (unconditionally or conditionally) where—

- the vehicle is found to be the subject of one or more minor risk breaches of mass, dimension or load restraint requirements; and
- the vehicle is not or is no longer the subject of a substantial risk breach or a severe risk breach; and
- the driver is not or is no longer the subject of a direction for the rectification of the minor risk breach or any of the minor risk breaches.

152—Operation of directions in relation to combinations

This provision makes it clear that nothing in this Subdivision prevents a component vehicle of a combination from being separately driven or moved if—

- the component vehicle is not itself the subject of a breach of a mass, dimension or load restraint requirement; and
- it is not otherwise unlawful for the component vehicle to be driven or moved.

153—Directions and authorisations to be in writing

A direction or authorisation under this Subdivision is to be in writing, except—

- in the case of a direction to move a vehicle, where the moving is carried out in the presence of, or under the supervision of, an authorised officer or police officer; or
- in other circumstances prescribed by the regulations.

154—Application of Subdivision in relation to other directions

This Subdivision is to apply to a vehicle regardless of whether or not the vehicle is, has been or becomes the subject of a direction under Part 2 Division 5 and is not to limit or prevent the exercise of powers under Part 2 Division 5.

28—Amendment of section 161A—Driving of certain vehicles subject to Ministerial approval

Section 161A requires the Minister's approval for the use on roads of certain vehicles prescribed by regulation. The use of oversize and overmass vehicles, for example, requires the Minister's approval. This clause proposes an amendment designed to make it clear that such an approval may be conditional.

29—Amendment of section 162A—Seat belts and child restraints

The offence provision in section 162A, subsection (2), is deleted. The deletion is consequential on the inclusion within the definition of ***breach of a vehicle standards or maintenance requirement*** (see proposed new section 116) of failure to comply with the requirements of this section.

30—Amendment of section 163GA—Maintenance records

Subsections (4) to (8) of section 163GA (which contain inspection powers) are deleted. The deletion is consequential on the proposed general enforcement powers in new Part 2 Division 5.

31—Repeal of section 163H

The proposed deletion of section 163H (Prohibition against hindering an inspector) is also consequential on the proposed general enforcement provisions of new Part 2 Division 5.

32—Amendment of section 163I—Evidentiary

This amendment is also consequential on the proposed general enforcement provisions of new Part 2 Division 5.

33—Substitution of section 163KA

Section 163KA is a general offence provision for Part 4A of the *Road Traffic Act 1961*. The provision is to be removed and instead the general offence provision contained in section 164A of the Act will be relied on. The provision is to be replaced by the following new Part:

Part 4B—Special provisions relating to heavy vehicle offences

Division 1—Improvement notices

163L—Definition

This clause defines approved officer as meaning an authorised officer, or an authorised officer of a class, for the time being nominated by the Minister as an approved officer for the purposes of proposed Division 1 of this proposed Part.

163M—Improvement notices

This clause provides that, if an approved officer is of the opinion that a person has contravened, is contravening or is likely to contravene a provision of an Australian road law and the contravention or likely contravention involves a heavy vehicle, he or she may serve on the person an improvement notice requiring the person to remedy the contravention or likely contravention, or the matters or activities occasioning the contravention or likely contravention, within the period specified in the notice. Such a period must be at least 7 days after the notice is served on the person, although the approved officer may specify a shorter period if satisfied that it is reasonably practicable for the person to comply with the notice by the end of the shorter period.

The provision also sets out procedural matters related to an improvement notice.

163N—Contravention of improvement notice

This clause provides that it is an offence (unless the person has a reasonable excuse) for a person subject to an improvement notice to contravene a requirement of the notice, attracting a maximum fine of $10 000.

Proposed subsection (3) provides a defence to a charge under the section, namely where the person charged establish-

es that the contravention etc was remedied within the period specified in the notice, albeit by a method different from that specified in the notice.

163O—Amendment of improvement notices

This clause provides that an improvement notice may be amended by an approved officer, and sets out procedures relating to how such an amendment may be effected.

163P—Cancellation of improvement notices

This clause provides that an improvement notice may be cancelled by the Minister or an approved officer, with notice of such cancellation needing to be served on the person affected.

163Q—Clearance certificates

This clause provides that an approved officer may issue a clearance certificate to the effect that all or any specified requirements of an improvement notice have been complied with.

Accordingly, a requirement of an improvement notice ceases to be operative on receipt, by the person on whom the notice was served, of a clearance certificate to the effect that all, or that that specified requirement has been complied with.

163R—Review of notice

This clause provides that a person on whom an improvement notice or a notice of an amendment of an improvement notice has been served under the proposed Division may, within 28 days (or such later time as the Minister may allow), apply to the Minister for a review of the notice.

If an application is made, the operation of the notice is stayed pending the determination of the application and any subsequent appeal relating to the notice.

A review must be determined within 28 days of the application being lodged with the Minister, and if it is not, the Minister is taken to have confirmed the notice.

163S—Appeal to District Court

This clause provides that an applicant for a review under the proposed Division who is not satisfied with the decision of the Minister on the review may appeal to the Administrative and Disciplinary Division of the District Court against the decision.

This clause also sets out procedures related to the appeal.

Division 2—Sanctions for heavy vehicle offences

163T—Sanctions imposed by courts

This clause provides that a court that finds a person guilty of an offence that involves a heavy vehicle may impose one or more of the sanctions provided for in the principal Act. The provisions sets out matters related to the imposition of sanctions, including the need to consider the combined effect of the sanctions when imposing more than one.

163U—Commercial benefits penalty orders

This clause provides a court that finds a person guilty of an offence that involves a heavy vehicle may make an order requiring the person to pay a fine not exceeding 3 times the amount estimated by the court to be the gross commercial benefit that was received or receivable by the person (or an associate of the person) from the commission of the offence. Where a journey was interrupted or not commenced because of action taken by an authorised officer or police officer in connection with the commission of the offence, the amount is the amount that would have been received or receivable from the commission of the offence had the journey been completed.

The clause sets out the factors that may be taken into account in estimating the gross commercial benefit that was or would have been received or receivable from the commission of the offence.

163V—Supervisory intervention orders

This clause provides that a court that finds a person guilty of an offence that involves a heavy vehicle may, if the court considers the person to be a systematic or persistent offender against the Australian road laws, make an order requiring the person (at the person's own expense and for a specified period not exceeding 1 year) to do any or all of the things set out in proposed subsection (1), being things that are generally intended to improve, or provide for the monitoring of, the person's compliance with road laws.

The provision sets out procedural matters relating to the court's powers under the proposed section, including a power to revoke or amend an order under the section on the application of the Minister, or of the person (but in that case only if the court is satisfied that there has been a change of circumstances warranting revocation or amendment).

163W—Contravention of supervisory intervention order

This clause provides that it is an offence for a person subject to requirement in a supervisory intervention order to contravene the requirement, attracting a maximum fine of $10 000.

163X—Prohibition orders

This clause provides that a court that finds a person guilty of an offence that involves a heavy vehicle may, if the court considers the person to be a systematic or persistent offender against the Australian road laws, make an order prohibiting the person, for a specified period, from having a specified role or responsibilities associated with road transport.

However, such an order cannot prohibit the person from driving or registering a vehicle.

The court may only make an order if it is satisfied that the person should not continue the things the subject of the proposed order, and that a supervisory intervention order is not appropriate. The provision sets out matters the court must have regard to in determining whether to make a prohibition order.

The court may revoke or amend an order on the application of the Minister, or of the person (but in that case only if the court is satisfied that there has been a change of circumstances warranting revocation or amendment).

163Y—Contravention of prohibition order

This clause provides that it is an offence for a person subject to a requirement in a prohibition order to contravene the requirement, attracting a maximum fine of $10 000.

Division 3—Criminal responsibility in relation to organisations and employers

163Z—Application of Division limited to heavy vehicle offences

This clause provides that the proposed Division applies in relation to an offence that involves a heavy vehicle.

163ZA—Liability of directors, managers and partners

This clause provides for the liability of directors and managers in the case where a body corporate, and partners in the case where a partnership, commits an offence under the principal Act (without affecting the liability of the body corporate or other person who actually committed the offence).

It is a defence to a charge for an offence arising under the proposed section if the defendant establishes that he or she was not in a position to influence the conduct involved in the actual offence, or, being in such a position, took all reasonable steps to prevent the commission of the actual offence.

163ZB—Vicarious responsibility

This clause sets out standard matters relating to proving vicarious liability on the part of a body corporate or employer.

Part 4C—General compensation orders

163ZC—Compensation orders for damage to road infrastructure

This clause provides that a court that finds a person guilty of an offence may make a compensation order requiring the offender to pay a road authority such amount by way of compensation as the court thinks fit for damage to any road infrastructure that the road authority has incurred or is likely to incur in consequence of the offence.

The provision sets out procedural matters relating to such an order.

163ZD—Assessment of compensation

This clause provides that, in making a compensation order under proposed section 163ZC, the court may assess the amount of compensation in such manner as it considers appropriate, including (for example) the estimated cost of remedying the damage. The clause also sets out examples of the type of matters the court may take into account in assessing the amount of compensation, including certain evidentiary certificates issued by the road authority.

163ZE—Service of certificates

This clause sets out matters relating to the service of certificates referred to in proposed section 163ZD, including

the need to serve a certificate to be used in proceedings on the defendant at least 28 working days before the day on which the matter is set down for hearing.

The clause allows the defendant to challenge a statement in such a certificate, but he or she must serve a notice in writing on the road authority at least 14 working days before the day on which the matter is set down for hearing specifying the matters that are intended to be challenged. The clause also sets out procedural matters related to such a challenge.

163ZF—Limits on amount of compensation

This clause provides that, in relation to the making of a compensation order, the court must limit the amount of the compensation payable if the court is satisfied that other factors not connected with the commission of the offence also contributed to the damage.

The maximum amount of compensation cannot is limited by the monetary jurisdictional limit of the court in civil proceedings.

The court may not include in the order amounts for personal injury or death, loss of income or damage to any property that is not part of the road infrastructure.

163ZG—Costs

This clause provides that the court has the same power to award costs in relation to proceedings for a compensation order as it has in relation to civil proceedings, and the relevant provisions of laws applying to such costs apply (with any necessary adaptations) to costs under the proposed provision.

163ZH—Relationship with orders or awards of other courts and tribunals

This clause provides that a compensation order may not be made if another court or tribunal has awarded compensatory damages or compensation in civil proceedings in respect of the damage based on the same or similar facts.

If a court purports to make a compensation order in those circumstances it is void to the extent that it covers the same matters as those covered by the other award, and any payments made under the order to the extent to which it is void must be repaid by the road authority.

However, the making of a compensation order does not prevent another court or tribunal from afterwards awarding damages or compensation in civil proceedings in respect of the damage based on the same or similar facts, but the court or tribunal must take the order into account when awarding damages or compensation.

34—Amendment of section 164A—Offences and penalties

Section 164A provides for a general offence for breaches of the Act, or conditions of permits or exemptions, where no other penalty is fixed. This clause applies this provision also to breaches of conditions of approvals (as in section 161A). The clause increases the maximum penalty from $1 250 to $2 500.

35—Amendment of section 165—False statements

The maximum fine for an offence of making a false or misleading statement in furnishing information, or compiling a record, under the Act is increased to $10 000, a penalty consistent with penalty levels adopted in proposed new Part 2 Division 5. [Section 165 is to be brought into the Act by an amendment contained in the Transport Portfolio legislation.]

36—Substitution of section 166

Section 166 provides a defence for an employee to an offence of driving a vehicle with a defect if the employee—

- drove the vehicle, or caused it to stand, under the express instructions of the employer; and
- was not aware that the vehicle did not comply with the requirement or had, before the time of the alleged offence, called the attention of the employer to the fact that the vehicle did not comply with the requirement.

The section is to be deleted and instead the general defence for a driver of a vehicle with a defect set out in proposed new section 117 will apply.

The section is to be replaced by the following new section:

166—Double jeopardy

The provision makes it clear that a person may be punished only once in relation to the same contravention of a particular provision of the Act, even if the person is liable in more than one capacity.

However, it goes on to provide that a person may be punished for more than one contravention of a requirement if the contraventions relate to different parts of the same vehicle.

37—Amendment of section 168—Power of court to make orders relating to licences or registration

Section 168 applies where a court convicts a person of—

- an offence against the *Road Traffic Act 1961* relating to motor vehicles; or
- an offence (under the *Road Traffic Act 1961* or any other Act or law) in the commission of which a motor vehicle was used or the commission of which was facilitated by the use of a motor vehicle.

The orders that the court may make are expanded to include (in addition to an order for disqualification from holding or obtaining a driver's licence)—

- an order that a driver's licence held by the person be modified for a period fixed by the court or until further order;
- an order that the registration of the motor vehicle concerned under the *Motor Vehicles Act 1959* be suspended for a period fixed by the court or until further order, or be cancelled;
- an order that the person, and any associate of the person, be disqualified from obtaining registration of the motor vehicle concerned as owner or operator under the *Motor Vehicles Act 1959* for a period fixed by the court or until further order.

38—Amendment of section 173A—Defence relating to registered owner or operator

The amendments to section 173A are consequential only on the inclusion in section 5 of the Act of new definitions of ***operator***, ***registered operator***, ***owner*** and ***registered owner***.

39—Insertion of section 173AB

173AB—Further defences

Further defences are added for the purposes of the Act. It will be a defence to a charge for an offence against the Act if the person charged establishes that the conduct constituting the offence was—

- authorised or excused by or under a law; or
- done in compliance with a direction given by an authorised officer or police officer or an Australian Authority or a delegate of an Australian Authority; or
- done in response to circumstances of emergency.

The emergency defence will apply only if the person charged reasonably believed that—

- circumstances of emergency existed; and
- committing the offence was the only reasonable way to deal with the emergency; and
- the conduct was a reasonable response to the emergency.

40—Insertion of section 174AB

174AB—Marking of tyres for parking purposes

This provision effectively repeats current section 38A which is in the portion of the Act to be replaced by the new uniform enforcement provisions.

An authorised officer is empowered to place an erasable mark on a tyre of a vehicle in the course of enforcing laws relating to the parking of vehicles.

It will be an offence if a person erases such a mark without proper authority.

41—Insertion of sections 174F to 174K

174F—Industry codes of practice

Provision is made for the Minister to register industry codes of practice. Under section 121, proof that a person has complied with all relevant standards and procedures under a registered industry code of practice with respect to matters to which a breach of a mass, dimension or load restraint requirement relates will constitute prima facie evidence that the person has taken reasonable steps to prevent the breach for the purpose of establishing the reasonable steps defence.

174G—Dismissal or other victimisation of employee or contractor assisting with or reporting breaches

Under this provision, it will be an offence if an employer dismisses an employee or contractor, injures an employee or contractor in his or her employment or alters an employee's or contractor's position to his or her detriment because the employee or contractor—

- has assisted or has given any information to a public agency in respect of a breach or alleged breach of an Australian road law; or
- has made a complaint about a breach or alleged breach of an Australian road law to the employer, a fellow employee or fellow contractor, a trade union or a public agency.

Further, an employer or prospective employer is not, for similar reasons, to refuse or deliberately omit to offer employment to a prospective employee or prospective contractor or treat a prospective employee or prospective contractor less favourably than another prospective employee or prospective contractor would be treated in relation to the terms on which employment is offered .

If a person is found guilty of an offence under this provision, the court may make an order for damages, reinstatement or employment in favour of the person against whom the offence was committed.

174H—False or misleading information provided between responsible persons

A person will be guilty of an offence if—

- the person is a responsible person and provides information to another responsible person; and
- the person does so knowing that the information is false or misleading in a material particular or being reckless as to whether the information is false or misleading in a material particular; and
- the material particular in which the information is alleged to be false or misleading relates to an ingredient of an Australian road law offence that is or could be committed by the other or any other responsible person if that other person relies or were to rely on the material particular.

Responsible person is defined in a new definition added to section 5 of the Act as an owner, driver or operator of a vehicle or some other person with any of various specified connections with a vehicle.

174I—Amendment or revocation of directions or conditions

General provision is made for the amendment or revocation of directions or conditions given or imposed under the Act by authorised officers or police officers.

174J—Minister may provide information to corresponding Authorities

It is made clear that the Minister may provide information to a corresponding Authority about any action taken by the Minister under any road law or any information obtained under the Act.

174K—Contracting out prohibited

A term of any contract or agreement that purports to—

- exclude, limit or modify the operation of this Act or of any provision of this Act; or
- require the payment or reimbursement by a person of all or part of any penalty that another has been ordered to pay under this Act,

is void to the extent that it would otherwise have that effect.

A person will commit an offence if the person requires or proposes that another agree to such a term.

42—Amendment of section 175—Evidence

Consequential amendments are made to the evidentiary provisions.

43—Amendment of section 176—Regulations and rules

The maximum penalty for an offence against the regulations or rules is increased from $1 250 to $2 500. The maximum expiation fee for alleged offences under the Act is increased from $350 to $750.

44—Amendments relating to members of police force

General amendments are made to the Act to change references to members of the police force to references to police officers.

45—Amendments relating to inspectors

Similarly, general amendments are made to the Act to change references to inspectors to references to authorised officers.

Part 4—Amendment of *Motor Vehicles Act 1959*

46—Amendment of section 5—Interpretation

Definitional changes are made to reflect the change from inspectors appointed under the *Motor Vehicles Act 1959* to authorised officers appointed under the *Road Traffic Act 1961*.

47—Amendment of section 7—Registrar and officers

These amendments are also consequential on the change from inspectors appointed under the *Motor Vehicles Act 1959* to authorised officers appointed under the *Road Traffic Act 1961*.

48—Amendment of section 47C—Return or recovery of number plates

49—Amendment of section 52—Return or destruction of registration labels

The amendments to sections 47C and 52 are each consequential on the inclusion in the *Road Traffic Act 1961* of a general provision making it an offence to hinder, etc, an authorised officer. The new enforcement powers to be added to the *Road Traffic Act 1961* will be exercisable for the purposes of matters under either that Act or the *Motor Vehicles Act 1959*.

50—Insertion of sections 55B and 55C

New provisions are inserted consequential on the model Bill provision for a court convicting a person of a motor vehicle offence to be able to make an order—

- suspending or cancelling the registration of a motor vehicle; or
- disqualifying a person from registering a motor vehicle.

55B—Notice to be given to Registrar

If a court makes such an order, the proper officer of the court must notify the Registrar in writing of the date of the order, the nature of the order (including the period of any disqualification) and short particulars of the grounds on which the order was made.

55C—Action following disqualification or suspension outside State

If a person is disqualified from registering a motor vehicle in another State or Territory of the Commonwealth, the Registrar must—

- if the motor vehicle is registered in the name of the person as the operator of the vehicle under the *Motor Vehicles Act 1959*, cancel the registration of the motor vehicle;
- refuse to register the motor vehicle in the name of the person as owner or operator during the period of disqualification.

If an order is made in another State or Territory of the Commonwealth that the registration of a motor vehicle be suspended, the Registrar must, if the motor vehicle is registered in the name of the person as the operator of the vehicle under the *Motor Vehicles Act 1959*, suspend the registration of the motor vehicle.

51—Amendment of section 83—Action following disqualification etc outside State

52—Amendment of section 93—Notice to be given to Registrar

Amendments are made to sections 83 and 93 consequential on the model Bill provision for a court convicting a person of a motor vehicle offence to be able to make an order modifying a person's driver's licence.

53—Amendment of section 96—Duty to produce licence or permit

The penalty for an offence of failing to produce a licence or permit when required to do so by a police officer is increased from $250 to $1 250.

An amendment is made consequential on the change from inspectors appointed under the *Motor Vehicles Act 1959* to authorised officers appointed under the *Road Traffic Act 1961*.

54—Amendment of section 97—Duty to produce licence or permit at court

A drafting correction is made.

The penalty for an offence of failing to produce a licence at court when required to do so is increased from $250 to $1 250.

55—Amendment of section 97A—Visiting motorists

An amendment is made consequential on the change from inspectors appointed under the *Motor Vehicles Act 1959* to authorised officers appointed under the *Road Traffic Act 1961*.

The penalty for an offence by a visiting motorist of failing to carry and produce a licence when required to do so by a police officer or authorised officer is increased from $250 to $1 250.

56—Amendment of section 98AAA—Duty to carry licence when driving heavy vehicle

The application of this provision is extended from vehicles with a GVM greater than 8 tonnes to all heavy vehicles as defined, that is, with a GVM greater than 4.5 tonnes.

The penalty for an offence by the driver of a heavy vehicle of failing to carry and produce a licence when required to do so by a police officer is increased from $750 to $$1 250.

An amendment is made consequential on the change from inspectors appointed under the *Motor Vehicles Act 1959* to authorised officers appointed under the *Road Traffic Act 1961*.

57—Amendment of section 98AAB—Duty to carry probationary licence, provisional licence or learner's permit

The penalty for an offence by the holder of a probationary licence, provisional licence or learner's permit of failing to carry and produce a licence when required to do so by a police officer is increased from $250 to $1 250.

58—Repeal of section 98C

The repeal of this provision is consequential on the change from inspectors appointed under the *Motor Vehicles Act 1959* to authorised officers appointed under the *Road Traffic Act 1961*.

59—Amendment of section 98P—Investigation powers

This clause removes provisions relating to towtrucks and inspectors that are no longer required in view of the new enforcement powers that are to be added to the *Road Traffic Act 1961* and will be exercisable for the purposes of matters under either that Act or the *Motor Vehicles Act 1959*.

60—Amendment of section 139BA—Power to require production of licence etc

The penalty for an offence of failing to produce a licence when required to do so under section 139BA is increased from $750 to $1 250.

61—Amendment of section 139D—Confidentiality

The exceptions to the confidentiality requirement are widened so that there will also be authority for disclosure to a public authority of any jurisdiction for law enforcement purposes or to a prescribed public authority of any jurisdiction.

62—Repeal of section 139F

The repeal of this section is consequential on the inclusion in the *Road Traffic Act 1961* of a general provision making it an offence to hinder, etc, an authorised officer.

63—Insertion of section 143B

143B—General defences

Further general defences are added for the purposes of the *Motor Vehicles Act 1959* Act that match those proposed to be added to the *Road Traffic Act 1961* (see clause 39 above). It will be a defence to a charge for an offence against the Act if the person charged establishes that the conduct constituting the offence was—

- authorised or excused by or under a law; or
- done in compliance with a direction given by an authorised officer or police officer or an Australian Authority or a delegate of an Australian Authority; or
- done in response to circumstances of emergency.

The emergency defence will apply only if the person charged reasonably believed that—

- circumstances of emergency existed; and
- committing the offence was the only reasonable way to deal with the emergency; and
- the conduct was a reasonable response to the emergency.

64—Amendment of section 145—Regulations

The maximum expiation fee allowed for alleged offences under the Act is increased from $310 to $750.

65—Amendments relating to members of police force

General amendments are made to the Act to change references to members of the police force to references to police officers.

66—Amendments relating to inspectors

Similarly, general amendments are made to the Act to change references to inspectors to references to authorised officers.

Part 5—Amendment of *Summary Offences Act 1953*

67—Insertion of section 68A

68A—Power to search land for stolen vehicles etc

A new provision is added to the *Summary Offences Act 1953* that preserves the power to be found in current section 37 of the *Road Traffic Act 1961* for a police officer to enter land or premises where he or she has reasonable cause to suspect that there is a vehicle that has been stolen or used without the consent of the owner, and then search for the vehicle, and, if it is found, examine it.

68—Amendment of section 74A—Power to require name and name and other personal details

The power under section 74A of the *Summary Offences Act 1953* to require full name and address is widened so that all or any of a person's personal details may be required.

Personal details of a person is defined to mean—

- the person's full name; and
- the person's date of birth; and
- the address of where the person is living; and
- the address of where the person usually lives; and
- the person's business address.

A police officer who has required a person to state all or any of the person's personal details will be required to comply with a request to identify himself or herself, by—

- producing his or her police identification; or
- stating orally or in writing his or her surname, rank and identification number.

This latter requirement has been made to match the similar requirement to be included in the *Road Traffic Act 1961*.

69—Insertion of section 74AB

74AB—Questions as to identity of drivers etc

A new provision is added to the *Summary Offences Act 1953* that is based on current section 38 of the *Road Traffic Act 1961*. Under the provision, a police officer may ask a person questions for the purpose of obtaining information that may lead to the identification of the person who was driving, or was the owner of, a vehicle on a particular occasion or at a particular time.

A person who refuses or fails, without reasonable excuse, to answer such a question, or gives an answer that is false or misleading in a material particular, will be guilty of an offence and liable to a maximum penalty of $1 250 or imprisonment for 3 months.

A police officer who has asked a person such a question will be required to comply with a request to identify himself or herself, by—

- producing his or her police identification; or
- stating orally or in writing his or her surname, rank and identification number.

The Hon. D.W. RIDGWAY secured the adjournment of the debate.

DEVELOPMENT (PANELS) AMENDMENT BILL

In committee.

Clauses 1 to 8 passed.

Clause 9.

The Hon. NICK XENOPHON: I move:

Page 4, lines 30 to 39, page 5, lines 1 to 34—Delete subclause (5) and substitute:

(5) Section 34(12)—Delete subsection (12) and substitute:

(12) A regional development assessment panel may exclude the public from attendance during so much of a meeting as is necessary to receive, discuss or consider in confidence any of the following information or matters:

(a) information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);

(b) information the disclosure of which—

(i) could reasonably be expected to confer a commercial advantage on a person, or to prejudice the commercial position of a person; and

(ii) would, on balance, be contrary to the public interest;

(c) information the disclosure of which would reveal a trade secret;

(d) commercial information of a confidential nature (not being a trade secret) the disclosure of which—

(i) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and

(ii) would, on balance, be contrary to the public interest;

(e) matters affecting the safety or security of any person or property;

(f) information the disclosure of which could reasonably be expected to prejudice the maintenance of law, including by affecting (or potentially affecting) the prevention, detection or investigation of a criminal offence, or the right to a fair trial;

(g) matters that must be considered in confidence in order to ensure that the panel does not breach any law, order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty;

(h) legal advice;

(i) information relating to actual litigation, or litigation that the panel believes on reasonable grounds will take place;

(j) information the disclosure of which—

(i) would divulge information provided on a confidential basis by or to a Minister of the Crown, or another public authority or official (not being an employee of a council, or a person engaged by a council); and

(ii) would, on balance, be contrary to the public interest.

As I indicated in my second reading contribution, this amendment relates to opening up the decision-making process to the public. This amendment is couched in a negative way in that it sets out the circumstances in which the public may be excluded from attendance at meetings, and it lists certain exceptions, including: unreasonable disclosure of information concerning the personal affairs of any person; matters which could prejudice a person commercially and which, on balance, would be contrary to the public interest because they would reveal a trade secret; commercial information of a confidential nature that could prejudice the commercial position of a person; and other matters such as the safety or security of any person or property.

My amendment sets out what I consider to be reasonable categories for exemption. Should this amendment be carried, it will mean that, unless these exemptions are met and unless there are fairly significant or extraordinary circumstances, the panels should conduct their decision-making processes (including voting) in public. I think this is important. The fact that some councils do so already and others do not is unsatisfactory and unfair. I believe there should be transparency and accountability in both the decision-making process and the actual decision made by these development panels. The exemptions (as drafted) I believe strike a reasonable and fair balance to ensure accountability as a matter of course so that it is the rule rather than the exception.

The Hon. P. HOLLOWAY: This amendment prohibits a regional development assessment panel from giving consideration to a decision on an application in private after it has heard all the submissions in public. This is achieved in the honourable member's amendment by deleting section 34(12)(b). All the other provisions in his amendment are identical to those in the bill. The government does not support this amendment. We support the retention of the existing provisions in the act which enable individual panels to hold their deliberations on an application in private so as to promote open and frank discussion between panel members.

Having the option to deliberate in private is, I would suggest, akin to a jury retiring to consider its verdict after hearing the evidence in public. While everyone should be able to hear all the evidence, after the evidence is heard we believe it is appropriate that the panels should be able to have open and frank discussions in private in the same way as a jury considers its verdict in private after hearing all the facts in public. That is why we do not support the amendment.

The Hon. D.W. RIDGWAY: I rise on behalf of the Liberal opposition to indicate that the opposition does not support the Hon. Nick Xenophon's amendment for similar reasons to those outlined by the minister. We think it is appropriate for development assessment panels to be able to retire and deliberate in private in order to be able to have frank and open discussions without fear or favour.

The Hon. SANDRA KANCK: The Democrats support the amendment. This amendment does not preclude members of the panel from finishing a hearing once the evidence has been taken, going down to the local coffee shop to have a chat and then coming back and in an open forum making clear why and how it came to its decision. It is a bit like here in this place. We are lobbied by different groups, and we do not anticipate that everyone should be part of that process, but when we come back into this chamber and make a decision, we explain it to everyone in the chamber. It is all on the record and accountable. It is because of that openness and accountability that the Democrats will be supporting this amendment.

The Hon. M.C. PARNELL: I also support the amendment. I had some disquiet about whether the personal affairs of dead people was a valid ground for going behind closed doors, but it is not a die in the ditch issue for us. I can understand why people say that the deliberations in private are frank and fearless, but my experience is that it is very common for decision-makers to take irrelevant considerations into account, and that is never put on the record, and it is never known. I think it creates a better quality of decision-making. The decision-maker is obliged to consider collectively its views in public, so I am supporting the amendment.

The Hon. A.L. EVANS: Family First supports the amendment. We believe in openness, and we believe that in this case it will be for the good.

The committee divided on the amendment:

AYES (5)

Evans, A. L.	Hood, D.
Kanck, S. M.	Parnell, M.
Xenophon, N. (teller)	

NOES (16)

Bressington, A.	Dawkins, J. S. L.
Finnigan, B. V.	Gago, G. E.
Gazzola, J. M.	Holloway, P. (teller)
Hunter, I.	Lawson, R. D.

NOES (cont.)

Lensink, J. M. A.	Lucas, R. I.
Ridgway, D. W.	Schaefer, C. V.
Stephens, T. J.	Wade, S. G.
Wortley, R.	Zollo, C.

Majority of 11 for the noes.

Amendment thus negatived.

The Hon. M.C. PARNELL: I move:

Page 6, line 12—Delete 'A' and substitute:
Subject to subsection (24a), a

The purpose of this amendment is to require that certain types of development application should be dealt with by a panel, whether it is the council development assessment panel or a regional development assessment panel, rather than by an individual officer under delegated authority. As the bill currently stands, there is no guidance of any kind for councils as to who should be the actual decision maker in different situations. The bill requires the council to establish the panel and it mandates the composition of that panel, but it does not direct what the panel should do. It would be possible, for example, for a council that is unhappy with its panel, particularly if the minister has exercised rights of veto for the membership or the chairperson, to give that panel very little work to do.

The purpose of this amendment is to ensure that development applications requiring an extra level of scrutiny are referred to panels rather than to delegated officers. In reality, it is the council planning officers who will do most of the work. They will be the ones who will be looking at the detail, the correspondence and the submissions, but they will then be making recommendations to a panel rather than making the decision themselves. The types of developments that this amendment envisages should go to the panel are, in the first instance, the types of development that already have to go to outside bodies either for their concurrence or for advice. For example, if someone wants to build a dwelling in a coastal zone, that must be referred to the Coast Protection Board. That is the regime that is established by schedule 8 of the development regulations.

If someone wants to build a polluting factory, it must be referred to the Environment Protection Authority. If someone wants to build a supermarket on a main road, it must be referred to the commissioner of highways. I will not go through all the categories of referral under schedule 8, but the point of this amendment is to say that, if a type of development is important enough that it is not just left to the council—it has to go to another body either for their advice or for their concurrence—it is similarly important enough for it to be dealt with by a full panel rather than by an individual officer under delegation.

The panel members will have the ability to quiz the relevant officer who has the effective control of the matter within a council, and panel members will be able to ask, 'What did the Coast Protection Board have to say about building a house on the sand dune near Streaky Bay? Was the Coast Protection Board happy with it? Were they for it or against it?

An honourable member interjecting:

The Hon. M.C. PARNELL: Perhaps they did not ask, but if they did ask I think that it makes sense for there to be a larger group scrutiny rather than just an individual officer deciding that they disregard or accept that advice. One part of my amendment also refers to the bikie fortresses. Those types of applications have to go to the police so, similarly, if it is important enough to be going to the police then it should be going to a full panel. Other categories that this amendment proposes should go before the panels are category 2 and 3 applications. In plain language that means that those applications that have to be advertised either to the neighbours or to the general community through the newspaper should go to the panels. Mostly they do, because if you have advertised in the paper and you are going to have a hearing then it is the panel that is going to hear those submissions.

However, many councils take the view that if there have not been any submissions then they will just delegate it to staff to deal with. This amendment says that all category 2 and 3 developments should be dealt with by the panel. Certainly, their task might be easier if there were no representations; nevertheless, I say that the panel should be kept as the decision-maker rather than it being under delegated authority. The last category of the types of development application that need to go to the panels is a catch-all provision that enables the government to provide additional direction through regulation. Finally, I point out that the over-riding purpose of this amendment is to make the development assessment process more open and transparent.

The Hon. P. HOLLOWAY: The government cannot support these amendments. At the outset I indicate that we will use this one as a test amendment, and I assume the honourable member is happy with that. We will talk to his series of amendments and use this as the test case. These amendments would lead to thousands of applications currently being properly considered by delegated staff. This would result in considerable delays and costs to applicants as well as increased costs to councils. A case in point is that of a category 1 house application. I point out, for the benefit of honourable members, that category 1 involves no notification, category 2 cases require neighbours to be notified, and in category 3 cases neighbours are notified in addition to the requirement for advertisements in the paper.

A category 1 (no notification) house application that abutted an arterial road would need to be considered by the council development assessment panel. In this case the only reason for the referral to the Commissioner of Highways would be to ensure that the property had appropriate access and egress. The provisions in the act and in the bill do not prevent a delegate from referring the matter back to the CDAP if more complex issues arise during assessment so, if something arises, the option is there for the delegate to refer it back to the panel. While on the surface the amendment appears to have merit, in practice we do not believe that it is workable. The data provided by councils for the first quarter of 2006 indicate that some 8 755 decisions were made under delegation, with 557 made by the CDAP. The transfer of a significant proportion of these decisions back to the CDAP simply is not practical.

The Hon. D.W. RIDGWAY: I rise to indicate that the Liberal opposition will not be supporting the Hon. Mark Parnell's amendment. For reasons similar to those outlined by the minister, we think that the existing provisions, the way that development assessment panels currently operate, and the powers of delegation are sufficient at this stage.

The Hon. SANDRA KANCK: I indicate Democrat support for the amendment. I think it a sensible one and well reasoned. If a development has to be passed to another authority to look at, it just makes sense that it needs to be properly considered.

The Hon. NICK XENOPHON: For similar reasons to those of the Hon. Sandra Kanck, I support this amendment.

Amendment negatived.

The Hon. M.C. PARNELL: I move:

Page 7, after line 5—Insert:

(27) A council must—

(a) establish a policy relating to the basis upon which it will make the various delegations required by subsection (23); and

(b) ensure that a copy of that policy is available—

(i) for inspection at the principal office of the council during ordinary office hours; and

(ii) for inspection on the Internet.

This might be a little less contentious than my previous amendment, although it follows the same theme. It follows from the fact that the bill does not give any direction to councils as to when they should delegate and neither does it require councils to have a considered policy on what types of decisions should be delegated and to which decision-making body. Whether it is an oversight or not I am not sure, but the act as it stands in section 56A provides that a council, in establishing a development assessment panel, must determine the extent to which it will delegate its powers and functions and the reporting requirements as well.

That has gone from the act with these amendments, so my amendment seeks first to require that the council should have a policy on what to delegate to whom and when and, secondly, it should tell us what that policy is. It can do that by making it available. I should say that this is what most councils do: councils all have policies on what they are to delegate. You cannot get thousands of development applications into your office without having a policy as to who should be dealing with them. However, these policies are not always available to the public and I think it is a simple matter of accountability. My amendment does not seek to set any particular delegation's policy in concrete. Councils can change it as and when they want. However, it does require them to have one and to tell the community what it is.

The Hon. P. HOLLOWAY: On face value this appears to be a sensible measure and the government is happy to support it. I understand that the LGA has not had a chance to examine it in detail, but it would appear that most councils would have their delegation policy available for inspection. On that basis, we will accept that. If there is any headache drawn to our attention between the houses I suppose we can look at it. Certainly, it appears to be a sensible measure and on that basis we will be happy to support it.

The Hon. D.W. RIDGWAY: I keep saying this, but for similar reasons as outlined by the minister the opposition will be happy to support this on the basis that we think most councils operate pretty much as the Hon. Mark Parnell outlined. If something unforeseen arises, we can deal with it between the houses.

The Hon. NICK XENOPHON: I support the amendment. I note that councils have to provide policies in relation to rating practices and the like. If they change the basis of rating, they have to have policies in place for that. It is not onerous on councils. Given that this is such a fundamental role of local government, I believe that it is a sensible amendment and hope that it gets through both houses.

Amendment carried; clause as amended passed.

New clause 9A.

The Hon. NICK XENOPHON: I move:

Page 7, after line 5—Insert:

9A—Amendment of section 38—Public notice and consultation

Section 38—after subsection (16) insert:

(17) Subject to subsection (18), a person is entitled, on application to the relevant authority—

(a) to inspect (without charge); or

(b) on payment of a fee (specified by the relevant authority to cover its costs), to obtain a copy of,

any written representation made to a relevant authority under this section.

(18) A relevant authority may decline to provide a written representation, or part of a written representation, under subsection (17) if—

(a) the representation relates to a matter dealt with by the relevant authority on a confidential basis under this act and the relevant authority resolves that details of the representation should also be kept confidential; or

(b) the representation falls within a class of documents excluded from the ambit of subsection (17) by the regulations.

This relates to the issue of public notice and consultation. It simply requires that a person can inspect without charge—or, depending on whether it is necessary, obtain by the payment of a fee specified by any relevant authority—a copy of any written representation made to the relevant authority under this section. It gives some outs in terms of whether or not such representation be withheld if it is on a confidential basis and there is a determination that it should be kept confidential. It provides for cases where there is a written submission and it ought to be public, unless there is an exceptional reason to the contrary. It is somewhat different from the previous amendment I moved that was unsuccessful. If someone has made a written submission, members of the public should be able to see it, with suitable exemptions provided for.

The Hon. P. HOLLOWAY: I oppose the amendment on the basis that the government proposes to introduce regulations to make information more freely available to people who have been notified and need such information during the assessment appeal process. We believe that that matter would be better addressed through regulation, which is ultimately subject to the scrutiny of both houses of parliament. It gives a greater degree of flexibility in relation to that matter and that is why we would prefer the regulatory approach.

The Hon. D.W. RIDGWAY: The Liberal opposition will not support the Hon. Nick Xenophon's amendment. We have had extensive consultation with a range of stakeholder groups in relation to this bill. Some are passionately in favour of it and others are passionately opposed to major components of the bill. This issue was not raised with the opposition.

The Hon. SANDRA KANCK: I indicate Democrat support for the amendment. Unlike the government, I do not support the regulatory approach. We have an opportunity to put things into legislation or have regulations. It is the legislation that gets the real scrutiny and regulations will often creep through because we do not get time to look at them, or they are mostly good so we accept the mostly good and let the bits that are bad slide by. It is good to put something like this into the legislation and it does not stop the government at some stage adding regulations that support it.

The Hon. M.C. PARNELL: I support the amendment. It is a sensible measure of accountability and it is not that different from the way many planning authorities behave already. If you make a submission on a rezoning, a plan amendment report, you see on the internet all the submissions listed. When the final result comes out you can see which submissions were the most influential and from where they came. The only difficulty I have with this—and it is not enough for me to oppose it; it is for another day, perhaps—is that we are seeing a trend of developers who are taking the letters of objectors and sending them threatening letters in the

mail saying, 'You've criticised my project, that's defamatory and I'm going to have a go at you.' It is for another day to try to enshrine some protection for people exercising their legal right to comment on development. I support the amendment.

Amendment negatived.

The Hon. SANDRA KANCK: I move:

Page 7, lines 30 to 42, page 8, lines 1 to 39, page 9, lines 1 to 8—
Delete paragraphs (b) and (c) and substitute:

(b) the panel must be constituted so that the number of members of the panel who are members or officers of the council exceeds the number of members of the panel who are not members or officers of the council by one, unless the council, with the approval of the minister, determines to constitute a panel that has a majority of its members who are not members or officers of the council;

(c) in appointing persons who are not members or officers of the council, the council should seek to select persons so as to provide a range of knowledge, skills and experience across the areas that are relevant to the functions of the panel, such as—
  (i) urban or regional planning;
  (ii) local government operations;
  (iii) biodiversity or conservation management;
  (iv) the built environment, as it relates to heritage;
  (v) community affairs and community development;
  (vi) transport development (including, if relevant, transport flow management);
  (vii) if relevant, coast, estuarine or marine management;

(ca) if the council decides to appoint an officer of the council as a member of the panel, the council must take steps to ensure that the officer is not directly involved in the assessment of applications under the act (other than as a member of the panel), or in the preparation of any council report to the panel on the assessment of particular applications;

This amendment follows on from what I said in my second reading speech that, while I respect what the government intends to do as regards having independent members on panels, I remain to be convinced that we will have anything better by having independent members in the majority. In the first part this amendment says that whatever the number the development assessment panel ends up being, there will always be a majority of the council members or officers.

The government's favoured number for the size of a DAP is seven, which would mean the makeup of a DAP of seven would include three independents; for a DAP of nine there would be four independents; and for a DAP of three there would be one independent. By doing it this way, it puts some sort of brake on councils that might be tempted to flaunt what this bill is attempting to do, where some are saying, 'We will have all our members of council on the DAP'. It will mean that, if they put up a DAP of 11 members, they will have to fund another 10 independents onto that body. Some councils, which are looking to flaunt this legislation in one way or another, or may have been flaunting it, will have to look at it from a cost perspective.

I have also addressed the issue of the sorts of qualifications that the independents should have. Claims were made—last year at least—that we do not have enough planners in South Australia to be able to fulfil the role of independents on council panels. If it were to be just planners, we would have enormous problems, particularly in rural areas. I have set out a range of qualifications or experience that would assist councils when making the decision as to who would be the independent members on their DAP; it is a group of people that most likely would be able to provide the expertise that is needed in a council. For instance, transport development is one of the skills, and, if relevant, coast, estuarine or marine management.

Obviously, Adelaide City Council would have no value in having someone with coast, estuarine or marine management skills; neither would Streaky Bay have any value in having someone with transport development skills. Within the range of seven things that I have suggested, it is highly likely that a council anywhere in the state would be able to find a number of people with that appropriate mix of skills. They do not have to be people currently operating in that area; for instance, it could be a retired planner or retired architect. It gives councils a lot more room to move. There is one final part to this amendment. If in that majority of the council that comprises a DAP one is a council officer, effectively it sets in place requirements so that there cannot be any conflict of interest for that council officer.

The Hon. P. HOLLOWAY: This amendment deletes the provisions specifying the appointment of the presiding member, the appointment of specialist members and the mix of elected and specialist members. This amendment promotes the Marion council model (if I can so describe it) whereby the elected members outnumber the specialist members by one, and the presiding member is selected by the council development assessment panel. The amendment also lists a range of knowledge, skills and experience that the council should consider when appointing specialist members to the panel. This goes to the heart of the key part of this bill.

While it is acknowledged that the Hon. Sandra Kanck has recognised the need for improvements in the impartiality and smaller size of panels, this proposal in the government's view does not adequately address the issues of impartiality, consistency and transparency. In particular, the government has three concerns with this amendment. First, the majority of CDAP are elected members or officers of the council; hence the perception of bias and the potential of conflict between the requirements of the Development Act and the Local Government Act remain in the majority. In a sense, if this amendment was carried it would defeat one of the central purposes of this bill. The second concern is that the presiding member could be an elected member; hence, the benefits identified by those councils that have already seen the wisdom of appointing a specialist presiding member would not be realised across the state.

Thirdly, we believe that the list of optional knowledge skills and experience is too restricted. While acknowledging the valuable contribution made by the Hon. Sandra Kanck to improving the state's planning and development system, the government does not support this amendment, as we do not believe that it delivers the full range of benefits as set out in the bill as introduced.

The Hon. D.W. RIDGWAY: I rise on behalf of the opposition to indicate that we do not support the Hon. Sandra Kanck's amendment. As I indicated earlier, from the consultation the Liberal Party has had with interested parties, stakeholders and, in particular, parties interested in this legislation, it has become apparent that the Liberal Party favours the model of an independent development panel. To go back to a development panel with a majority of its membership comprised of members of the council is not a position the Liberal Party wishes to support. I will speak to another clause in a few minutes. The Liberal Party wants to leave as much choice as possible to local councils to determine the make up of its development assessment panel, and we do not believe that this amendment does that at all.

The Hon. M.C. PARNELL: I support the amendment. The view I expressed in my second reading speech was that the important factor was the mix of expertise and the mix

between elected members and appointed people, rather than the absolute numbers. It is not my experience that people would necessarily vote in a block, where the elected members would vote together and the appointed people would vote together, although it might be how it is seen. Whether it is three/four or four/three, I am happy with the amendment.

I am very pleased with the range of experience set out in the Hon. Sandra Kanck's amendment which indicates the types of people who should be on the panels. What we find when we look at the reasons many people on panels make decisions, it is things such as property values, where they say, 'We're not going to support this development, because the neighbours' property values will go down,' which is a completely irrelevant consideration. What the Hon. Sandra Kanck's list (which is more or less extracted from the topics set out in the planning schemes) does is focus the mind of those appointing people to panels that this is the type of expertise we need to make quality decisions.

The Hon. NICK XENOPHON: I indicate my support for the Hon. Sandra Kanck's amendment. I indicated at the second reading stage my reservations about the number of experts that are required to be on these panels, and this amendment in some ways ameliorates that. I understand the minister's intent, but I still think that, where councils have planning departments, they should be able to rely on the expert advice of those planning departments as well. I am concerned about the costs involved in having to require so many experts on development panels, and I query whether it would have the desired effect of consistency in decision making any more than, say, requiring some further training and education of panel members who are non-experts to achieve the same goal. I regard this as an improvement on the government's position, which is why I support the amendment.

The committee divided on the amendment:

AYES (5)

Evans, A. L.	Hood, D.
Kanck, S. M. (teller)	Parnell, M.
Xenophon, N.	

NOES (16)

Bressington, A.	Dawkins, J. S. L.
Finnigan, B. V.	Gago, G. E.
Gazzola, J. M.	Holloway, P. (teller)
Hunter, I.	Lawson, R. D.
Lensink, J. M. A.	Lucas, R. I.
Ridgway, D. W.	Schaefer, C. V.
Stephens, T. J.	Wade, S. G.
Wortley, R.	Zollo, C.

Majority of 11 for the noes.

Amendment thus negatived.

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

Page 8, lines 1 to 7—Delete subparagraph (iv).

This amendment is a test for the following four amendments. The result of consultation undertaken by the opposition and representations made by many of the Liberal members in another place who are in direct contact (on almost a daily basis) with local government is that there appears to be a general view within the Liberal Party that we do not want to have too much ministerial concurrence, interference or power of veto over the activities of local government. The Liberal Party feels, pretty much generally, that local government has the ability to appoint development assessment panels which will have the confidence of councillors and the community. If a council appoints a development panel and it fails to deliver good outcomes for the community, then the councillors will wear the brunt of that at their next council elections.

I do not want to make too many comments other than to say that this will give councillors and their local communities an opportunity for local democracy to have an influence. Councils will be able to choose all the members of their development assessment panels (albeit independent panels with independent presiding members) without the necessity for ministerial concurrence. It will be pretty much totally their choice and decision as to the make-up of their development assessment panels.

The Hon. P. HOLLOWAY: The government opposes the amendment. The provision in the bill was essentially a veto provision (if I can describe it as that) where the minister had the capacity, in exceptional circumstances, to override a decision that councils might make in relation to appointing panel members. As I see it, this measure certainly would be a rarely used power, involving only those cases where, for example, there might be a clear conflict of interest in the appointment, or where someone might not be truly independent, and so on.

Whilst the government supports the original measure, we believe it is prudent to have that veto power remain in there. As I said, it was certainly my intention to see this as a power of last resort, not as a power that the minister would frequently exercise. If it is struck out, I do not see it as a fatal flaw in the bill. But, on balance, the government believes that there should be this power in the bill in case a council makes an appointment that is clearly inappropriate.

The Hon. SANDRA KANCK: I indicate that the Democrats will be supporting the amendment. We are not enthusiastic supporters but, in a sense, this becomes part of a fallback position, given the defeat of my earlier amendment, which I thought was a much more prescriptive amendment. Although it did not have the minister involved in any way, it set things out more clearly, whereas this one leaves things a little more open. Of course, if the opposition's amendment does get up and the government is not happy about it, then we may be able to negotiate between the houses, or before it gets back here to us, to see whether some compromise can be reached. But at the moment this is all that has been left to us.

The Hon. M.C. PARNELL: I am supporting these amendments for the reasons given by the Hon. David Ridgway.

The Hon. NICK XENOPHON: I too support the amendments. I see it as a fallback position, but it is preferable to the bill in its current form, in my view.

The Hon. D.G.E. HOOD: Family First also supports the amendments for the reasons given by the other members.

The Hon. P. HOLLOWAY: I will not divide on the clause given that we clearly do not have the numbers. As I said, the government would have preferred the existing provision for reasons that I indicated—not as a measure that the government would use every day, but rather as a reserve power. I will have a look at the situation between the houses. As I said, it may not be a fatal flaw for the bill, but it certainly may create problems in view of the Hon. Sandra Kanck's comments. We will examine whether some other provision can be adopted, but that is something we will consider between the houses. At this stage I will not divide.

Amendment carried.

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

Page 9. lines 1 to 8—
Delete subsubparagraph (D)

I move this amendment for the reasons I outlined previously and ask for its support.

Amendment carried.

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

Page 10, lines 6 to 8—Delete subsection (4a)

As it is consequential to the others, I will not explain my reasons again.

The Hon. P. HOLLOWAY: We will not repeat the debate. We oppose it but will not divide.

Amendment carried.

The Hon. NICK XENOPHON: I move:

Page 11, lines 13 to 38, page 12, lines 1 to 21—
Delete subclauses (11), (12) and (13) and substitute:
(11) Section 56A(12)—delete subsection (12) and substitute:
(12) A council development assessment panel may exclude the public from attendance during so much of a meeting as is necessary to receive, discuss or consider in confidence any of the following information or matters:
(a) information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);
(b) information the disclosure of which—
(i) could reasonably be expected to confer a commercial advantage on a person, or to prejudice the commercial position of a person; and
(ii) would, on balance, be contrary to the public interest;
(c) information the disclosure of which would reveal a trade secret;
(d) commercial information of a confidential nature (not being a trade secret) the disclosure of which—
(i) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and
(ii) would, on balance, be contrary to the public interest;
(e) matters affecting the safety or security of any person or property;
(f) information the disclosure of which could reasonably be expected to prejudice the maintenance of law, including by affecting (or potentially affecting) the prevention, detection or investigation of a criminal offence, or the right to a fair trial;
(g) matters that must be considered in confidence in order to ensure that the panel does not breach any law, order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty;
(h) legal advice;
(i) information relating to actual litigation, or litigation that the panel believes on reasonable grounds will take place;
(j) information the disclosure of which—
(i) would divulge information provide on a confidential basis by or to a minister of the Crown, or another public authority or official (not being an employee of a council, or a person engaged by a council); and
(ii) would, on balance, be contrary to the public interest.

We have already had this debate in relation to regional development assessments panels. The only distinction is that this relates simply to council development assessment panels. I will not seek to divide on it, but it will be interesting to see whether the government or the opposition have a different position in relation to council development assessment panels.

The Hon. P. HOLLOWAY: The government does not support the amendment for the reasons that we outlined earlier. We support the retention of the existing provisions in the act, which enable individual panels to hold their deliberations on an application in private, so as to promote open and frank discussion between panel members, just as, I am sure, all of us would within our respective party rooms.

The Hon. D.W. RIDGWAY: For the reasons I outlined earlier, we do not support this amendment.

The Hon. SANDRA KANCK: I indicate our support.

The Hon. M.C. PARNELL: And the Green's support.

The Hon. D.G.E. HOOD: And Family First's support.

Amendment negatived.

The Hon. SANDRA KANCK: I move:

Page 13, after line 32—
Insert:
(24a) A council must prepare and adopt (and may then from time to time vary) a training policy for the members of its council development assessment panel.
(24b) The policy must be aimed at assisting members of its council development assessment panel to understand the operation of the Development Plan or Development Plans that relate to the area of the council, the principles that should be applied in the assessment of applications under this Act, and the operation of the other relevant provisions of the act (and may incorporate such other elements as the council thinks fit).

When I gave my second reading speech, I put on the record some comments that had been made to me by a local councillor who had served on a DAP, and I could only feel horror at some of the reasons that were given by council members for supporting things, or even opposing them. It is very important, given the power of DAPS, that the members who are on them understand what it is they are doing, and why they are doing it. I think the Hon. Mark Parnell made the comment about councillors making decisions based on property values, which is not what the Development Act requires of them at all. So, this amendment requires the councils to prepare a policy regarding the training of the members of their council DAP.

The Hon. P. HOLLOWAY: The government does not support this policy. The sentiment behind it is a fine one, and that will be addressed in the development regulations which will arise from clauses 11 and 12 of the bill. However, it is not considered appropriate that each of the 68 councils in this state have a separate training policy. It is more appropriate that there be a standard program. I put on the record that I would welcome the assistance of the Local Government Association in working with Planning SA on developing and implementing such a training program. It could be done across the board rather than with individual councils.

The Hon. D.W. RIDGWAY: I indicate that the opposition will not be supporting the Hon. Sandra Kanck's amendment. We have a large degree of comfort that, by and large, councils will not appoint people who they do not believe have the skills or expertise to make appropriate decisions.

The Hon. M.C. PARNELL: In my second reading contribution, I referred to the issue of education of panel members. It was actually put to me by some people from local government that education was the entirety of the solution to this problem and that we did not need experts or outside people at all; we should just educate the elected members properly to do their role. I was not convinced that

that was the whole of the answer. In response to what the minister said, it would not make sense for every small local council to have its own training program. I think that they would look to the peak bodies—whether it be the Local Government Association, the Planning Institute or the National Environmental Law Association—to provide a generic training course for elected members and to make that part of their policy. I still think this amendment is sensible, and the Greens will be supporting it.

The Hon. NICK XENOPHON: I support the amendments. It emphasises the point that adequate training could make a very big difference. It could achieve many of the outcomes that the government is seeking by measures that I am concerned will lead to the increased cost of development in this state by requiring a majority of so-called experts on panels. Are the proposals for there to be uniform training of panels via regulation? Is there any time frame in respect of that? What does the government envisage the regulations will encompass in terms of the prescriptiveness of such training?

The Hon. P. HOLLOWAY: I indicate that, before this becomes operational, we would expect that all members of council development assessment panels would have undertaken an awareness program in relation to this matter. As I indicated earlier, regulations will arise from clauses 11 and 12 of this bill and, as is the normal practice, we would endeavour to have those in place before we had the new system operational. I mean, that is the normal way in which things are done. You pass the bill and then you prepare the regulations against the details, and you ensure that they are ready before you bring the new sections of the act into operation, and that is what we would expect here. As I said earlier, we would welcome the assistance of the LGA in developing these so we can get some scaled efficiencies and reduce the cost of such programs.

The Hon. SANDRA KANCK: In relation to consultation, will the minister ensure that there is consultation with groups such as the National Environmental Law Association and the EDO in South Australia?

The Hon. P. HOLLOWAY: The honourable member has selected a couple of organisations which obviously have an interest in this. There will be others. We will endeavour to ensure that the widest possible consultation takes place before these measures come into place.

Amendment negatived.

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

Page 13, lines 36 to 42 and page 14, lines 1 to 3—Delete subsection (26).

Again, this amendment is consequential.

Amendment carried.

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

Page 14, after line 9—Insert:

(28) In addition, the Minister may, on application by a council with an area that lies wholly outside Metropolitan Adelaide, exempt the council from the requirement to establish a panel under this section if the Minister is satisfied that the number of applications for development plan consent made to the council as a relevant authority under this Act in any year (on average) does not justify the constitution of a panel under this section.

(29) The Minister may, after consultation with the relevant council, revoke an exemption under subsection (28) if the Minister forms the view that circumstances within the area of the council have changed to such an extent that an exemption under that subsection is no longer appropriate.

(30) If a council is granted an exemption under subsection (28), subsections (23) to (26) (inclusive) of section 34 do not apply in relation to the council while the exemption is in force.

This amendment has come about because of a concern the Liberal Party has about small country councils, such as Karoonda East Murray or Kimba district councils, ones with relatively small populations, budgets and rate revenue and, unfortunately, like a lot of rural areas, very little development activity. It is felt by the opposition that this bill may pose too great a burden on those small councils.

At this point I pose a question to the minister in relation to the burden and costs, and I do so on behalf of the Local Government Association. The LGA wrote a letter to me saying that the bill proposes that councils will be responsible for all costs associated with the work of the council development assessment panel and, despite local government's opposition to the membership of the panels as currently proposed, it is unacceptable that the council would have to fund the liability costs of a panel member who acts inappropriately and not in good faith. The Local Government Association would seek to have the same conditions imposed on these panel members as are provided for under the Local Government Act for council members, and it draws my attention (and I draw the attention of the minister) to section 39 of the Local Government Act as a model for the provision that the Local Government Association would like to have included. I welcome the minister's comments on that suggestion.

The Hon. P. HOLLOWAY: First, I will respond in relation to the amendments moved by the honourable member. I am happy to accept the amendment. It allows a greater level of flexibility in relation to dealing with small councils. As indicated in the second reading explanation, the government recognises that there are some smaller councils and, of course, there is the capacity already in the bill that takes into account some of the difficulties that smaller councils may face. This allows an extra degree of flexibility, so we are certainly happy to accept it.

The honourable member asked a question in relation to liability. The Local Government Association has sought a clarification of the relationship between sections 56A(10) and 56A(25) to ensure that councils are not liable for dishonest actions of a council development assessment panel member. I can give a commitment to address this matter in the other place, which will provide the house with an opportunity to consider the amendment at a later date. This matter has just been brought to us and probably requires some consideration. But I accept that there is an issue here and I can undertake to address that between the houses.

The Hon. M.C. PARNELL: I can see the numbers are against this, but I oppose this amendment because, as I set out in my second reading contribution, it is these smaller councils that need the most help when it comes to getting together quality development panels. In many ways I have perhaps done a disservice to some of the metropolitan councils which have done a better job, and they have been hung on the petard of the small councils who have messed it up—such as Streaky Bay, Kangaroo Island, Goyder and Lower Eyre Peninsula. That is the experience I have had as an environmental lawyer. So I think the answer to the small councils who will have difficulty setting up a panel for a small population is the model of the regional development assessment panels, which has been in the act for some time and has not been used. Councils can share these responsibilities the same way that

they share their waste management responsibilities. I oppose the amendment.

The Hon. SANDRA KANCK: For the same reasons as the Hon. Mark Parnell has offered, I too oppose the amendment.

Amendment carried; clause as amended passed.

Remaining clauses (11 to 13), schedule and title passed.

Bill reported with amendments; committee's report adopted.

Bill read a third time and passed.

LAND MANAGEMENT CORPORATION

The Hon. P. HOLLOWAY (Minister for Police): I lay on the table a copy of a ministerial statement relating to the Land Management Corporation made today in another place by the Treasurer (Hon. K.O. Foley).

GAS PIPELINES ACCESS (SOUTH AUSTRALIA) (GREENFIELDS PIPELINE INCENTIVES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 6 June. Page 317.)

The Hon. P. HOLLOWAY (Minister for Police): I understand that all members who wish to speak in this debate have already done so. I thank members for their indication of support for the bill and look forward to its speedy passage.

Bill read a second time.

In committee.

Clause 1.

The Hon. T.J. STEPHENS: As I indicated in my second reading speech, the Liberal Party supports this bill and we look forward to its speedy passage.

Clause passed.

Remaining clauses (2 to 5) and title passed.

Bill reported without amendment; committee's report adopted.

Bill read a third time and passed.

WATER EFFICIENCY LABELLING AND STANDARDS BILL

Adjourned debate on second reading.

(Continued from 1 June. Page 269.)

The Hon. SANDRA KANCK: There is no doubt that Australia's environment is now in a dire situation as a consequence of our profligate use of water and, of course, increasing population wanting to access that same amount of water at the same levels. The plight of the River Murray is the most obvious example for South Australians. We all bear an element of responsibility for turning this situation around. A couple of years ago the state government introduced restrictions on the domestic use of water. We supported the ban on hosing down concrete driveways and using sprinklers during the middle of the day. They were quite sensible measures and they were designed to limit some of the waste that was occurring in households across South Australia.

We have also seen legislation requiring the installation of water tanks in all new housing developments. That was just another step. This legislation is another small step along that path. Whilst it is questionable just how many water-using products are produced and sold only in South Australia, it is still a worthwhile legislative effort. The minister may be able to tell me about products that fit this category.

There is a need for a comprehensive Australia-wide legislative labelling regime and I believe it will also have popular support. People do want to take steps to be responsible water users and to reduce their water usage. They will be influenced by a labelling system that informs them which is the most water-efficient appliance, just as they are with energy rating systems; after all, it will reflect in their water bills. Most people want to do what is best for the environment. But there is another lurking issue here, something that is not really being stated.

Despite the fact that Adelaide householders could become the most frugal water users in the world, the River Murray still could die. That is because—and nobody wants to say this—its irrigators and its industry are the principal consumers of water from the River Murray. In an average year Adelaide takes about 72 gigalitres of water from the Murray. That includes household, industrial and commercial users. Meanwhile, conservative estimates indicate that we will need to return at least 1 500 gigalitres of water to the Murray in environmental flows if the river is to survive. Those extra savings can come only from irrigators and industry. Unfortunately, no government has been willing to fully confront the reality of that situation.

So, yes, let us look for ways to reduce household water consumption, but the real savings will need to be made amongst those who make a living from the water. That may mean that, in the longer term, we will need to look at closing down some commercial operations and it may be a painful necessity if we have to save the Murray, but we really must begin to address these unspoken issues as well as the sorts of additions to the strategy we are dealing with now. I indicate Democrat support for the second reading.

The Hon. A.L. EVANS: In 2003, we in South Australia were faced with the first compulsory water restrictions since the construction of the Mannum-Adelaide pipeline in 1955. The restrictions were required due to a period of reduced rain across the Adelaide Hills and the Murray-Darling Basin, as outlined in the Waterproofing Adelaide report *A Thirst for Change* published last year. Water in South Australia is a scarce resource. It is often said that we live in the driest state on the driest continent on earth. There is a gathering urgency and a realisation that we need to do more to ensure the quality and availability of our water supply for future generations. Each year in Australia, households consume 1 800 billion litres of mains-supplied water, and heavy water use strains our ability to provide a quality supply to households.

It puts a strain on the Murray River, from which on average 40 per cent of Adelaide mains water is sourced, and the quality of waste water we deposit strains our waterways and marine environments such as the Barker Inlet, home for the swan and the sharp-tailed sandpiper that visit us from Siberia and Alaska. The bill will introduce water efficiency labelling on some of our new appliances. New washing machines, dishwashers, shower systems and the like will be sold with a water-rating label prominently attached. This will be much like the energy-rating star label that many of us are already familiar with. I note that the energy rating level system has proved to be effective, credited with improving the power efficiency of refrigerators and freezers by 50 per cent over a 13-year period.

A recent Bureau of Statistics report on environmental issues, people's views and practice tells us that energy-rating

efficiency and costs are the two main factors considered by householders when buying or replacing whitegoods. We can confidently hope that consumers will also pay special attention to the new water efficiency labels. The commonwealth Department of Environment and Heritage estimates that, by 2021, water efficiency labels will cut domestic water use across Australia by 5 per cent to 87 200 million litres per year. A total of 610 million litres is projected to be conserved by 2021, enough water to fill the Happy Valley reservoir 50 times over.

I pause to note that household water counts for only approximately 16 per cent of Australia's mains water consumption: agriculture counts for approximately 75 per cent. This bill does not address the complex topic of agricultural water users in any significant way. Family First is committed to the environment and recognises that environment stewardship includes the small as well as the significant decisions, and that both lead to a sustainable society. We acknowledge that the government's partnership with industry is crucial in addressing the serious environmental challenge of water shortage management across large parts of Australia. Accordingly, at this stage, I support the second reading.

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

SOUTH AUSTRALIAN CERTIFICATE OF EDUCATION

The Hon. CARMEL ZOLLO (Minister for Emergency Services): I lay on the table a ministerial statement on the South Australian Certificate of Education made by the Minister for Education and Children's Services in another place.

ADJOURNMENT

At 4.52 p.m. the council adjourned until Tuesday 20 June at 2.15 p.m.